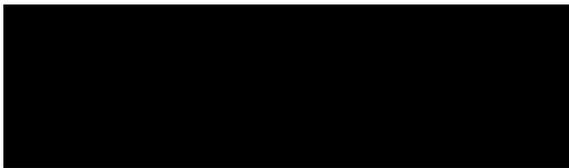


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FILE: WAC 02 204 50210 Office: CALIFORNIA SERVICE CENTER Date: **AUG 18 2005**

IN RE: Petitioner: [Redacted]
Beneficiary: [Redacted]

PETITION: Petition for a Nonimmigrant Worker Pursuant to Section 101(a)(15)(H)(i)(b) of the
Immigration and Nationality Act, 8 U.S.C. § 1101(a)(15)(H)(i)(b)

ON BEHALF OF PETITIONER:
[Redacted]

INSTRUCTIONS:

This is the decision of the Administrative Appeals Office in your case. All materials have been returned to the office that originally decided your case. Any further inquiry must be made to that office.

A handwritten signature in cursive script, appearing to read "Robert P. Wiemann".

Robert P. Wiemann, Director
Administrative Appeals Office

DISCUSSION: The service center director denied the nonimmigrant visa petition. The matter is now on appeal before the Administrative Appeals Office (AAO). The appeal will be dismissed. The petition will be denied.

The petitioner is a textile printing company. It seeks to employ the beneficiary as a laboratory manager and to classify him as a nonimmigrant worker in a specialty occupation pursuant to section 101(a)(15)(H)(i)(b) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1101(a)(15)(H)(i)(b).

The director denied the petition on the ground that the record failed to establish that the beneficiary is qualified to perform services in a specialty occupation and thereby eligible for H-1B classification.

Section 214(i)(1) of the Act, 8 U.S.C. § 1184(i)(1), defines the term "specialty occupation" as an occupation that requires:

- (A) theoretical and practical application of a body of highly specialized knowledge, and
- (B) attainment of a bachelor's or higher degree in the specific specialty (or its equivalent) as a minimum for entry into the occupation in the United States.

Section 214(i)(2) of the Act, 8 U.S.C. § 1184(i)(2), provides that an alien must have the following credentials to be qualified to perform the services of a specialty occupation:

- (A) full state licensure to practice in the occupation, if such licensure is required to practice in the occupation,
- (B) completion of the degree described in paragraph (1)(B) for the occupation, or
- (C) (i) experience in the specialty equivalent to the completion of such degree, and (ii) recognition of expertise in the specialty through progressively responsible positions relating to the specialty.

As further explained in 8 C.F.R. § 214.2(h)(4)(iii)(C), an alien must meet one of the following criteria to qualify to perform the services of a specialty occupation:

- (1) Hold a United States baccalaureate or higher degree required by the specialty occupation from an accredited college or university;
- (2) Hold a foreign degree determined to be equivalent to a United States baccalaureate or higher degree required by the specialty occupation from an accredited college or university;
- (3) Hold an unrestricted State license, registration or certification which authorizes him or her to fully practice the specialty occupation and be immediately engaged in that specialty in the state of intended employment; or

- (4) Have education, specialized training, and/or progressively responsible experience that is equivalent to completion of a United States baccalaureate or higher degree in the specialty occupation, and have recognition of expertise in the specialty through progressively responsible positions directly related to the specialty.

For the purpose of deciding whether the beneficiary is qualified under 8 C.F.R. § 214.2(h)(4)(iii)(C)(4), 8 C.F.R. § 214.2(h)(4)(iii)(D) provides that the determination shall be based on one or more of the following:

- (1) An evaluation from an official who has authority to grant college-level credit for training and/or experience in the specialty at an accredited college or university which has a program for granting such credit based on an individual's training and/or work experience;
- (2) The results of recognized college-level equivalency examinations or special credit programs, such as the College Level Examination Program (CLEP), or Program on Noncollegiate Sponsored Instruction (PONSI);
- (3) An evaluation of education by a reliable credentials evaluation service which specializes in evaluating foreign educational credentials;
- (4) Evidence of certification or registration from a nationally-recognized professional association or society for the specialty that is known to grant certification or registration to persons in the occupational specialty who have achieved a certain level of competence in the specialty;
- (5) A determination by the Service [CIS] that the equivalent of the degree required by the specialty occupation has been acquired through a combination of education, specialized training, and/or work experience in areas related to the specialty and that the alien has achieved recognition of expertise in the specialty occupation as a result of such training and experience. For purposes of determining equivalency to a baccalaureate degree in the specialty, three years of specialized training and/or work experience must be demonstrated for each year of college-level training the alien lacks. For equivalence to an advanced (or Masters) degree, the alien must have a baccalaureate degree followed by at least five years of experience in the specialty . . . It must be clearly demonstrated that the alien's training and/or work experience included the theoretical and practical application of specialized knowledge required by the specialty occupation; that the alien's experience was gained while working with peers, supervisors, or subordinates who have a degree or its equivalent in the specialty occupation; and that the alien has recognition of expertise in the specialty evidenced by at least one type of documentation such as: (i) Recognition of expertise in the specialty occupation by at least two recognized authorities ¹ in the same specialty

¹ *Recognized authority* means a person or organization with expertise in a particular field, special skills or knowledge in that field, and the expertise to render the type of opinion requested. A recognized authority's opinion

occupation; (ii) Membership in a recognized foreign or United States association or society in the specialty occupation; (iii) Published material by or about the alien in professional publications, trade journals, books, or major newspapers; (iv) Licensure or registration to practice the specialty occupation in a foreign country; or (v) Achievements which a recognized authority has determined to be significant contributions to the field of the specialty occupation.

The record of proceeding before the AAO contains: (1) Form I-129 and supporting documentation; (2) the director's request for evidence (RFE); (3) the petitioner's response to the RFE; (4) the notice of decision; and (5) Form I-290B, an appeal brief, and supporting materials. The AAO reviewed the record in its entirety before issuing its decision.

The petitioner is a textile printing business, in operation since 2000, which seeks to hire the beneficiary as its laboratory manager. In a letter accompanying Form I-129 the petitioner asserted that the beneficiary was qualified for the position by virtue of his 21 years of experience in the textile, dyeing and printing industry. Also accompanying the application was a report from an academic credentials evaluation service concluding that the beneficiary's graduation from Kyungbuk Technical High School in South Korea, which he attended from 1976 to 1979, and 21 years of employment experience with textile companies in South Korea and the United States from 1981 to 2002 was equivalent to a bachelor of science in polymer/textile chemistry from a U.S. college or university. In response to the RFE, in which the director advised that the academic credentials evaluation service was not qualified to evaluate work experience, the petitioner submitted a new report from an evaluator of academic and work experience who, based on the beneficiary's educational and employment record and a letter from a professor at Seattle Pacific University (SPU) in Seattle, Washington, stated that the beneficiary's academic and work experience are equivalent to a bachelor of science degree in a textile-related field in the United States.

In his decision the director noted that the petitioner was attempting to establish the U.S. degree equivalence of the beneficiary's high school record and work experience exclusively on the basis of an evaluation report of an official with authority to grant college-level credit for training and/or experience in the specialty at an accredited college or university that has a program for granting such credit based on training and work experience – *i.e.*, in accordance with 8 C.F.R. § 214.2(h)(4)(iii)(C)(4) and 8 C.F.R. § 214.2(h)(4)(iii)(D)(1). The director referred to the evaluation report from the SPU professor, Dr. Stella Warnick, and indicated that the record was insufficient to establish that she was actually employed by SPU and had the authority to grant college-level credit for training and/or experience. The director also referred to a letter from SPU's associate provost stating that “[SPU] faculty have the authority to grant college level credit for training and experience” and noted that it did not identify the professor who submitted the evaluation report as a member of its faculty and did not specifically state that SPU has a program for granting college level credit for training or experience. In the director's view, the evidence was also insufficient to show that SPU is an accredited institution. The director concluded that the record failed to establish the beneficiary's eligibility for H-1B classification.

must state: (1) the writer's qualifications as an expert; (2) the writer's experience giving such opinions, citing specific instances where past opinions have been accepted as authoritative and by whom; (3) how the conclusions were reached; and (4) the basis for the conclusions supported by copies or citations of any research material used. 8 C.F.R. § 214.2(h)(4)(ii).

The petitioner filed a motion to reconsider and submitted additional documentation pertaining to the faculty status of [REDACTED] her authority to grant college level credit for training or experience, and the accreditation of SPU. The director dismissed the motion on the grounds that it did not state new facts and did not address the crucial issue of whether SPU grants credit for training and employment experience toward an academic degree for an individual with no post-secondary education.

On appeal counsel contends that the director abused his discretion in requesting information not required in the regulations and in denying the petition based on a faulty interpretation of the regulations. In particular, counsel asserts that the regulation at 8 C.F.R. § 214.2(h)(4)(iii)(D)(I) does not require that the college or university grant credit *toward an actual degree* for training and/or experience in the specialty. According to counsel, “credit can be granted for any number of reasons by a college which may or may not have anything to do with a program leading to an ‘actual degree’.” SPU, counsel points out, “grants college level credit for admission . . . for admission to a program or major . . . for qualification for or for substitution for a course . . . [and] for internships.”

The AAO does not agree with counsel’s interpretation of 8 C.F.R. § 214.2(h)(4)(iii)(D)(I). The term “college-level credit,” as used in the regulation, means academic credit hours toward a degree. In this connection, the letter submitted with the motion to reconsider from [REDACTED] Director of Family and Consumer Sciences at SPU, states that [REDACTED] as an adjunct faculty member, can supervise “independent studies and internships” and, in that capacity “is authorized to grant college level credits for training and/or experience in the field of textiles and clothing.” This language does not specifically state that “college level credits” means academic credit hours toward a degree. Moreover, the letter does not indicate that [REDACTED] authorized to grant college level credits of any kind for outside employment – like the beneficiary’s in this petition – which is unconnected to a university-sanctioned internship or independent study, or that SPU has a program for granting college-level credit based on an individual’s training and/or experience, as required by the regulation. As for the letter from SPU’s associate provost, previously submitted in response to the RFE, it states that “[SPU] faculty have the authority to grant college level credit for training and experience, both in their areas of training and more generally in those foundational areas of university education commonly considered ‘general education’, distribution requirements’, or ‘related instruction in communication, computation and human relations’.” Like the letter from [REDACTED] the letter from the associate provost does not state that an SPU professor has the authority to grant college-level credits (*i.e.*, academic credit hours toward a degree) for employment experience or training, or that SPU has a program for granting such college-level credits for employment experience or training.

For the reasons discussed above, the documentation of record fails to meet the evidentiary requirements of 8 C.F.R. § 214.2(h)(4)(iii)(D)(I). The letters in the file do not establish that Dr. Warnick has the authority to grant college-level credit for training and/or experience in the beneficiary’s specialty, or that SPU has a program for granting such college-level credit for training and/or experience.

Nor does the record establish that the beneficiary has a combination of education, specialized training, and/or work experience in the specialty occupation or related areas, and recognition of expertise therein, as required to meet the alternative qualifying criteria of the regulation at 8 C.F.R. § 214.2(h)(4)(iii)(D)(5). Though the petitioner states that the beneficiary has 21 years of work experience in the textile field – which exceeds the twelve years of experience the regulation would require to compensate for the beneficiary’s lack of any college-level education toward a four-year baccalaureate degree (in determining

equivalency to a baccalaureate degree in the specialty three years of specialized experience equal one year of college education) – there is no documentary evidence that the beneficiary’s work experience included the theoretical and practical application of specialized knowledge required by the specialty occupation; that his experience was gained while working with peers, supervisors, or subordinates who have a degree or its equivalent in the specialty occupation; and that the alien has documented recognition of expertise in the specialty, as required under the regulation. Accordingly, the AAO determines that the beneficiary does not have the equivalent of a baccalaureate or higher degree under 8 C.F.R. § 214.2(h)(4)(iii)(D)(5) that would qualify him to perform the services of a specialty occupation.

Based on the foregoing discussion, the AAO determines that the petitioner has failed to establish that the beneficiary is qualified to perform services in a specialty occupation.

The petitioner bears the burden of proof in these proceedings. *See* section 291 of the Act, 8 U.S.C. § 1361. The petitioner has not sustained that burden. Accordingly, the AAO will not disturb the director’s decision denying the petition.

ORDER: The appeal is dismissed. The petition is denied.