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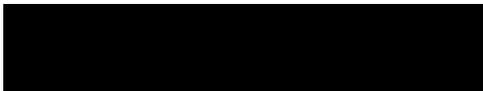
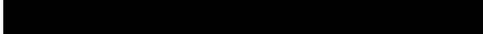
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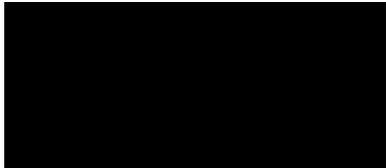


FILE: WAC 03 245 50127 Office: CALIFORNIA SERVICE CENTER Date: **JAN 06 2005**

IN RE: Petitioner: 
Beneficiary: 

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:



INSTRUCTIONS:

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

Robert P. Wiemann, Director
Administrative Appeals Office

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

The petitioner is a seafood products wholesaler and distributor that seeks to employ the beneficiary as an accountant. The petitioner, therefore, endeavors to classify the beneficiary 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 because the beneficiary is not qualified to perform the duties of a specialty occupation. On appeal, counsel states that the beneficiary is qualified for the proffered position.

Section 214(i)(2) of the Act, 8 U.S.C. § 1184(i)(2), states that an alien applying for classification as an H-1B nonimmigrant worker must possess full state licensure to practice in the occupation, if such licensure is required to practice in the occupation, and completion of the degree in the specialty that the occupation requires. If the alien does not possess the required degree, the petitioner must demonstrate that the alien has experience in the specialty equivalent to the completion of such degree, and recognition of expertise in the specialty through progressively responsible positions relating to the specialty.

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

- (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.

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

The petitioner is seeking the beneficiary's services as an accountant. In its August 19, 2003 letter, the petitioner indicated that an ideal candidate must possess a bachelor's degree in business administration. The

petitioner wished to hire the beneficiary because she possesses a bachelor's degree in business administration from Ming Chuan University in Taipei, Taiwan, and has over three years of experience.

The director stated that the credentials evaluator determined that that the beneficiary holds the equivalent of a bachelor's degree in business administration, which is insufficient to qualify her as a member of the professions or for a specialty occupation. The director found the beneficiary's coursework and knowledge were not realistic prerequisites for the proffered position, and that the submitted job postings required a bachelor's degree in accounting.

In the appeal brief, counsel contends that because the director never raised the issue of the beneficiary's credentials in the request for evidence, the petitioner did not have an opportunity to counter the director's determination. Counsel states that the petitioner has obtained clarification on the beneficiary's evaluation report; it shows that she holds a baccalaureate degree in business administration – accounting. Counsel contends that the beneficiary is qualified for the proffered position because the evaluator found that the beneficiary's foreign education and work experience are the equivalent of a U.S. bachelor's degree in business administration with a major in accounting.

Upon review of the record, the petitioner has failed to establish that the beneficiary is qualified to perform an occupation that requires a baccalaureate degree in accounting or a related field. The beneficiary does not hold a baccalaureate degree from an accredited U.S. college or university in any field of study, or a foreign degree determined to be equivalent to a baccalaureate degree from a U.S. college or university in any field of study. Therefore, the petitioner must demonstrate that the beneficiary meets the criterion at 8 C.F.R. § 214.2(h)(4)(iii)(C)(4).

Pursuant to 8 C.F.R. § 214.2(h)(4)(iii)(D), equating the beneficiary's credentials to a United States baccalaureate or higher degree shall be determined by 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; or
- (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 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.

On appeal, counsel claims that the evaluation from Global Education Group Inc., a company that specializes in evaluating academic credentials, stated that the beneficiary earned the equivalent of a “U.S. degree of [b]achelor of [b]usiness [a]dministration in [a]ccounting awarded by a regionally accredited university in the United States. However, the evaluation from Global Education Group Inc. is based upon the beneficiary’s education, training, and work experience. A credentials evaluation service may not evaluate an alien’s work experience or training; it can only evaluate educational credentials. See 8 C.F.R. § 214.2(h)(4)(iii)(D)(3). Thus, the evaluation carries no weight in these proceedings. *Matter of Sea, Inc.*, 19 I&N Dec. 817 (Comm. 1988).

Although the evaluator claimed to have authority to grant college-level credit for training and work experience in the field of business administration for applicants to Florida International University, the AAO observes that with regard to the instant evaluation, the evaluator is acting as a consultant to Global Education Group Inc.; the evaluator is not acting as a representative of Florida International University. Further, there is no evidence of record establishing that the university has a program for granting college-level credit based upon an individual’s training and/or work experience. Thus, the petitioner fails to establish the beneficiary’s credentials pursuant to 8 C.F.R. § 214.2(h)(4)(iii)(D)(1).

When CIS determines an alien’s qualifications pursuant to 8 C.F.R. § 214.2(h)(4)(iii)(D)(5), three years of specialized training and/or work experience must be demonstrated for each year of college-level training the alien lacks. 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 in the same specialty occupation¹;
- (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,

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 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).

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 contains a second evaluation of the beneficiary's education from Global Education Group, Inc. The evaluator found the beneficiary's college diploma from Ming Chuan University equivalent to the completion of three years of undergraduate study in business administration and related subjects at a regionally accredited university in the United States. The record also contains one employment letter.

Collectively, the documentation does not establish equivalence to a baccalaureate degree in accounting or a related field. The employment letter does not show the beneficiary's prior work experience as including the theoretical and practical application of specialized knowledge required by the specialty. As described by the employer, the beneficiary's duties did not appear to involve the theoretical and practical application of accounting. The beneficiary's duties of maintaining the general ledger, accounts receivables, and accounts payables; compiling accounting data to prepare financial statements; preparing and maintaining payroll records; compiling annual budgets; and auditing actual expenses do not rise to the level of duties performed by accountants as shown in the Department of Labor's *Occupational Outlook Handbook* (the *Handbook*), a resource which the AAO routinely consults for its information about the duties and educational requirements of particular occupations.

As described in the *Handbook*, the closest category to the proffered position is the management accountant. The *Handbook* states that management accountants — also called cost, managerial, industrial, corporate, or private accountants — record and analyze the financial information of the companies for which they work. Other responsibilities include budgeting, performance evaluation, cost management, and asset management. Usually, management accountants are part of executive teams involved in strategic planning or new-product development. They analyze and interpret the financial information that corporate executives need to make sound business decisions. They also prepare financial reports for nonmanagement groups, including stockholders, creditors, regulatory agencies, and tax authorities. Within accounting departments, they may work in various areas, including financial analysis, planning and budgeting, and cost accounting. None of the beneficiary's duties encompass these responsibilities. Furthermore, the employer does not indicate that the beneficiary's work experience was gained while working with peers, supervisors, or subordinates who have a degree or its equivalent in the specialty occupation.

Finally, the beneficiary may have recognition of expertise. The AAO notes that the evaluator from Global Education Group, Inc. claimed to be a "recognized authority" based on his academic qualifications and professional experience in the field of business administration. Nevertheless, the AAO cannot conclude that the beneficiary's past work experience included the theoretical and practical application of a body of highly specialized knowledge, which in this case is accounting. Furthermore, the employer does not indicate that the

beneficiary's work experience was gained while working with peers, supervisors, or subordinates who have a degree or its equivalent in the specialty occupation.

The AAO notes that counsel contends that because the director never raised the issue about the beneficiary's credentials in the request for evidence the petitioner did not have an opportunity to counter the director's determination. This contention is without merit. CIS regulations affirmatively require a petitioner to establish eligibility for the benefit it is seeking at the time the petition is filed. *See* 8 C.F.R. § 103.2(b)(12).

As related in the discussion above, the petitioner has failed to establish that the beneficiary is qualified to perform the duties of the proffered position. Accordingly, the AAO shall not disturb the director's denial of the petition.

Beyond the decision of the director, the AAO does not find that the proffered position is a specialty occupation because the petitioner has not clearly defined the beneficiary's proposed duties as relating to those of an accountant. For this additional reason, the petition is denied.

The burden of proof in these proceedings rests solely with the petitioner. Section 291 of the Act, 8 U.S.C. § 1361. The petitioner has not sustained that burden.

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