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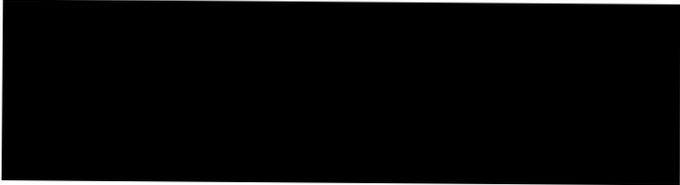
FILE: WAC 03 258 52899 Office: CALIFORNIA SERVICE CENTER Date: MAR 22 2006

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.

for Michael T. Kelly
Robert P. Wiemann, Director
Administrative Appeals Office

DISCUSSION: The service center director 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 engaged in restaurant business that seeks to employ the beneficiary as a full-time accountant. The petitioner 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 files a brief and additional documentation.

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.

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;
- (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.

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, 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.

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).

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 and supporting documentation. The AAO reviewed the record in its entirety before issuing its decision.

The petitioner is seeking the beneficiary's services as a full-time accountant. The petitioner indicated in its letter of support of the initial petition that it requires the beneficiary to possess a bachelor's degree in a related field. The petitioner conceded that the beneficiary did not have a baccalaureate degree and contended that the beneficiary had 19 years experience in the field of accounting. The petitioner submitted one work-experience letter from the beneficiary's prior employer. The director found that the nature of the proposed duties did not appear to involve such specialization or complexity as to require the knowledge associated with the attainment of a baccalaureate degree, and he requested additional evidence to establish that the proffered position was a specialty occupation. Additionally, the director requested evidence to establish that the beneficiary was qualified for the specialty occupation.

In response, counsel for the petitioner restated the duties of the proffered position and submitted information about the petitioner. The petitioner submitted a letter from a professor at California State University, Fullerton. The petitioner asserted that the letter substantiates its contention that the beneficiary has the equivalent of a bachelor's degree based on work experience.

The director found that there was no evidence that the beneficiary holds a baccalaureate degree in any field. The director noted that although the petitioner submitted an evaluation from a foreign educational credentials evaluator to show that degree equivalency was being sought for the beneficiary based on the beneficiary's foreign education, training, and/or experience, foreign educational credentials evaluators may only evaluate an individual's foreign educational credentials – not training or work experience. The director noted that foreign education credentials evaluators do not have the 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 as required by the regulation at 8 C.F.R. § 214.2(h)(4)(iii)(D)(1).

The director found that the petitioner did not meet the criterion listed under 8 C.F.R. § 214.2(h)(4)(iii)(D)(5). The director determined that the petitioner did not establish that the beneficiary has the recognition of expertise by at least one of the forms of documentation shown in 8 C.F.R. § 214.2(h)(4)(iii)(D)(5)(i) – (v). The director determined that the petitioner has not established that the beneficiary qualifies to perform the duties of the specialty occupation.

On appeal, counsel contends that the beneficiary is qualified to perform the services of a specialty occupation based on his more than 19 years of relevant work experience. Counsel explains that the letter from the professor was submitted as an expert opinion and not as an evaluation. Counsel contends that the letter submitted from the beneficiary's previous manager is sufficient to demonstrate the beneficiary's recognition of expertise in the field.

The Department of Labor's *Occupational Outlook Handbook* (the *Handbook*) indicates that to perform services in a specialty occupation accountant position a beneficiary would need a degree in accounting or a related discipline. The petitioner has failed to establish such an educational credential.

The beneficiary does not hold a baccalaureate degree from an accredited U.S. college or university in any field of study.

The petitioner does not claim to prove the beneficiary's credentials through 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.

Therefore, it appears that the petitioner is attempting to meet the criterion at 8 C.F.R. § 214.2(h)(4)(iii)(D)(5), which is a determination by the CIS that (1) 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 (2) that the alien has achieved recognition of expertise in the specialty occupation as a result of such training and experience.

From the beneficiary's previous employer, [REDACTED] the petitioner submitted: (1) a one-page letter that addresses the beneficiary's employment as "an Accounting Analyst in our Financial Control and Accounts Department for the period August 8, 1983 to October 15, 2002"; (2) a director's report; and (3) balance sheets. None of these documents provides specific, substantive information about any highly specialized accounting or accounting-related knowledge that the beneficiary applied in the course of his work. Therefore they merit no significant evidentiary weight in this proceeding.

As requested, the AAO has analyzed the opinion of the Cornell University professor as one submitted for consideration under 8 C.F.R. § 214.2(h)(4)(iii)(D), that is, to determine its evidentiary value toward persuading the AAO that the beneficiary has achieved the equivalent of the degree required by the specialty occupation by a combination of (1) the beneficiary's education, specialized training, and/or work experience in areas related to the specialty and (2) recognition of expertise that the beneficiary has earned in the specialty occupation as a result of such training and experience.

The AAO recognizes the professor's expertise. However, the AAO is not persuaded by his opinion, in that the professor formed it on the basis of the aforementioned former employer's letter, which the AAO finds to be inadequate information about the actual work that the beneficiary had performed. The letter provides no information about the level of specialized knowledge that the beneficiary applied, and no information about the degrees held by the subordinates, peers, and superiors with whom the beneficiary worked. The AAO may, in its discretion, use as advisory opinions statements submitted as expert testimony. However, where an opinion is not in accord with other information or is in any way questionable, the AAO is not required to accept or may give less weight to that evidence. *Matter of Caron International*, 19 I&N Dec. 791 (Comm. 1988).

The petitioner did not submit evidence of the beneficiary's expertise in the specialty occupation from at least two recognized authorities in the same occupation. The opinion letter from the professor and the letter from the former employer are insufficient to meet this criterion of 8 C.F.R. § 214.2(h)(4)(iii)(D)(5)(i), as the record does not establish their authors as recognized authorities in the specialty occupation.²

² See footnote 1

The petitioner has not established the two letters or any other submissions as sufficient documentation to satisfy any one of the recognition-of-expertise criteria at 8 C.F.R. § 214.2(h)(4)(iii)(D)(5)(i)-(v).

The petitioner has not met the terms of 8 C.F.R. § 214.2(h)(4)(iii)(D)(1) and has not otherwise established that the beneficiary has satisfied the beneficiary qualification criteria at 8 C.F.R. §§ 214.2(h)(4)(iii)(C) and (D). 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.

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.