



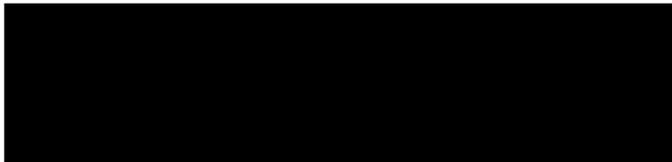
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U.S. Department of Justice

Immigration and Naturalization Service

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OFFICE OF ADMINISTRATIVE APPEALS
425 Eye Street N.W.
ULLB, 3rd Floor
Washington, D.C. 20536



File: LIN 99 022 52257

Office: NEBRASKA SERVICE CENTER

Date: 15 FEB 2002

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)

IN BEHALF OF PETITIONER:



Public Copy

INSTRUCTIONS:

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

If you believe the law was inappropriately applied or the analysis used in reaching the decision was inconsistent with the information provided or with precedent decisions, you may file a motion to reconsider. Such a motion must state the reasons for reconsideration and be supported by any pertinent precedent decisions. Any motion to reconsider must be filed within 30 days of the decision that the motion seeks to reconsider, as required under 8 C.F.R. 103.5(a)(1)(i).

If you have new or additional information which you wish to have considered, you may file a motion to reopen. Such a motion must state the new facts to be proved at the reopened proceeding and be supported by affidavits or other documentary evidence. Any motion to reopen must be filed within 30 days of the decision that the motion seeks to reopen, except that failure to file before this period expires may be excused in the discretion of the Service where it is demonstrated that the delay was reasonable and beyond the control of the applicant or petitioner. Id.

Any motion must be filed with the office which originally decided your case along with a fee of \$110 as required under 8 C.F.R. 103.7.

FOR THE ASSOCIATE COMMISSIONER,
EXAMINATIONS

Robert P. Wiemann, Director
Administrative Appeals Office

DISCUSSION: The nonimmigrant visa petition was denied by the Director, Nebraska Service Center, and certified to the Associate Commissioner for Examinations for review. The director's decision will be affirmed.

The petitioner is a firm involved in group purchasing and other general services in the health care sector with 12 employees and a gross annual income of \$600,000. It seeks to employ the beneficiary as a contract specialist for a period of three years. The director denied the petition finding that the beneficiary was not qualified to perform duties in a specialty occupation.

The director provided counsel with an opportunity to submit a brief or written statement addressing the issues discussed in the decision. As the period of time granted to counsel has elapsed and no additional evidence has been received, the record of proceeding is considered complete. Therefore, a decision will be rendered on the record as it is presently constituted.

The regulation at 8 C.F.R. 214.2(h)(4)(ii) defines the term "specialty occupation" as:

an occupation which requires theoretical and practical application of a body of highly specialized knowledge in fields of human endeavor including, but not limited to, architecture, engineering, mathematics, physical sciences, social sciences, medicine and health, education, business specialties, accounting, law, theology, and the arts, and which requires the attainment of a bachelor's degree or higher in a specific specialty, or its equivalent, as a minimum for entry into the occupation in the United States.

Further, the regulation at 8 C.F.R. 214.2(h)(4)(iii)(A) that a petitioner could qualify the offered position as a specialty occupation if the petitioner could establish that:

1. A baccalaureate or higher degree or its equivalent is normally the minimum requirement for entry into the particular position;
2. The degree requirement is common to the industry in parallel positions among similar organizations or, in the alternative, an employer may show that its particular position is so complex or unique that it can be performed only by an individual with a degree;
3. The employer normally requires a degree or its equivalent for the position; or
4. The nature of the specific duties is so specialized and complex that knowledge required to perform the

duties is usually associated with the attainment of a baccalaureate or higher degree.

In addition, the regulation at 8 C.F.R. 214.2(h)(4)(i)(A)(1) provides that an H-1B classification may be granted to an alien who:

Will perform services in a specialty occupation which requires theoretical and practical application of a body of highly specialized knowledge and attainment of a baccalaureate or higher degree or its equivalent as a minimum for entry into the occupation in the United States, and who is qualified to perform services in the specialty occupation because he or she has attained a baccalaureate or higher degree or its equivalent in the specialty occupation.

The petition is supported by a description of the duties of the proffered position that indicates that the beneficiary will be responsible for, among other things, reporting to the director of contracts, promoting and selling products and services, generating and developing at least two vendor contracts each month, analyzing contract quotations, developing incentive programs with vendors, developing marketing programs, consulting with sales and wholesale departments for product or vendor feedback forecasts demand and supplies of products, proposing changes or revisions to ongoing contract practices, developing sources of vendor information, maintains data, and utilizing data to further enhance sales.

The petitioner asserts that the position requires a bachelor's degree in Business Administration or its equivalent with an emphasis on accounting or purchasing. The petition is supported by an evaluation performed by a professional credentials evaluation service that provides that the beneficiary has the equivalent of a bachelor's degree in business administration based on his education and experience.

The director determined that the petitioner had not established that the beneficiary had the equivalent of a bachelor's degree in business administration. The director found that the record did not establish that the beneficiary's experience and education were equivalent to a bachelor's degree and was therefore not qualified to perform the duties of a specialty occupation.

Upon review, the record does not establish that the beneficiary is qualified to perform the duties of a specialty occupation. As a result, the director's decision will be affirmed.

In order to establish the beneficiary's eligibility to perform duties in a specialty occupation, the petitioner is required to establish that the beneficiary's training, education, and experience are equivalent to an academic degree that would prepare

him for a position in the specialty.

The record in this matter contains an evaluation performed by a professional credentials evaluation service that indicates that the combination of the beneficiary's nine years of experience and his two-years of academic study is equivalent to a bachelor's degree in business administration.

The regulation at 8 C.F.R. 214.2(h)(4)(iii)(D) describes the methods that a petitioner can use to establish that the beneficiary has the equivalent of a bachelor's degree. The regulation at 8 C.F.R. 214.2(h)(4)(iii)(D)(3) clearly indicates that evaluations performed by credentials evaluators are limited solely to the beneficiary's educational achievements and are not to address the beneficiary's employment. Since the evaluation submitted by the petitioner considers the alien's employment history, and was performed by a credentials evaluation service, it does not comport with the Service's regulations and is of little value in this proceeding. Further, it is noted that the evaluator has not specifically demonstrated how the evaluation was performed or the basis for making it (including copies of the relevant portions of any research materials used).

The regulation at 8 C.F.R. 214.2(h)(4)(iii)(D)(1) provides that 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 can be submitted to establish that the beneficiary has the equivalent of a bachelor's degree.

While the individual who performed the evaluation in question claims to be an official who meets the above criteria, it is noted that the evaluation was performed while the individual was employed by a professional credentials evaluation service and not as an official of a university. The evaluation was not performed under the authority granted to him by the university. As such, the evaluator must be considered to be a recognized authority as described at 8 C.F.R. 214.2(h)(4)(ii) and is required to meet the requirements for such a designation. The regulation clearly provides that as a recognized authority, the individual must state how the conclusion was reached and the basis for the conclusion supported by copies or citations of any research material used. The record does not contain such information.

The regulation at 8 C.F.R. 214.2(h)(4)(iii)(D)(5) allows the Service to determine whether an alien's education and experience is the equivalent of a bachelor's degree. The regulation provides that three years of specialized training and/or work experience must be demonstrated for each year of college-level training the alien lacks. The regulation also provides that 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. Finally, in order to establish the alien's experience and training is equivalent to academic training, the regulation provides that one of the following types of documentation must be submitted:

1. Recognition of expertise in the specialty occupation by at least two recognized authorities in the same specialty occupation;
2. Membership in a recognized foreign or United States association or society in the specialty occupation;
3. Published material by or about the alien in professional publications, trade journals, books, or major newspapers;
4. Licensure or registration to practice the specialty occupation in a foreign country; or
5. Achievements which a recognized authority has determined to be significant contributions to the field of the specialty occupation.

While the record contains employment letters relating to the beneficiary's past employment, none of the letters contain a comprehensive description of the beneficiary's duties. In addition, the record does not contain any evidence establishing that the beneficiary is a member of an organization whose prerequisite for entry is a baccalaureate degree in a specialized area of study. The record does not contain any evidence that the beneficiary holds a state license, registration, or certification that authorizes him to practice a specialty occupation. In view of the foregoing, it is concluded that the petitioner has not demonstrated that the beneficiary qualifies to perform services in a specialty occupation.

In closing, while not addressed by the director in his decision, the record does not establish that the proffered position qualifies as a specialty occupation. The record does not establish that the position meets any of the four criteria enumerated above. Should this matter be reopened or a new petition filed on behalf of the beneficiary, the petitioner should be prepared to submit additional information with regards to this issue.

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. Accordingly, the decision of the

director will not be disturbed.

ORDER: The director's decision will be affirmed.