

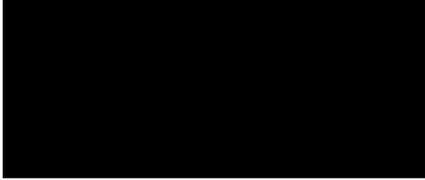


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U.S. Department of Justice
Immigration and Naturalization Service

Decision was denied to
petitioner's spouse pursuant to
provision of person's travel.

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



File: LIN-01-165-51797 Office: Nebraska Service Center Date: 17 MAY 2002

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)

IN BEHALF OF PETITIONER: SELF-REPRESENTED

FILED
MAY 17 2002

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 and is now before the Associate Commissioner for Examinations on appeal. The appeal will be dismissed.

It is noted that the appeal has been filed by an attorney whose standing in this proceeding has not been demonstrated by the filing of a properly executed Notice of Entry of Appearance as Attorney or Representative (Form G-28). In the interest of due process, the matter will be reviewed on certification pursuant to 8 C.F.R. 103.4.

The petitioner is a manufacturing business with 151 employees and an approximate gross annual income of \$10 million. It seeks to employ the beneficiary as a project design leader for a period of three years. The director determined the petitioner had not established that the beneficiary is qualified to perform the duties of a specialty occupation.

On appeal, counsel submits a brief.

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), provides in part for nonimmigrant classification to qualified aliens who are coming temporarily to the United States to perform services in a specialty occupation. Section 214(i)(1) of the Act, 8 U.S.C. 1184(i)(1), defines a "specialty occupation" as an occupation that requires theoretical and practical application of a body of highly specialized knowledge, and 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.

Pursuant to section 214(i)(2) of the Act, 8 U.S.C. 1184(i)(2), to qualify as an alien coming to perform services in a specialty occupation the beneficiary must hold full state licensure to practice in the occupation, if such licensure is required to practice in the occupation. In addition, the beneficiary must have completed the degree required for the occupation, or have 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.

The director denied the petition because the petitioner had not established that the beneficiary holds a baccalaureate degree or an equivalent thereof. On appeal, counsel states, in part, that the beneficiary's educational and employment backgrounds qualify her for the proffered position. Counsel submits two credentials evaluations in support of her claim.

Pursuant to 8 C.F.R. 214.2(h)(4)(iii)(C), to qualify to perform services in a specialty occupation, the 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 beneficiary holds an associate of applied science degree in computer-aided architectural design conferred by a U.S. institution. The record indicates that the beneficiary also completed an additional 15 credit hours at a U.S. institution. Accordingly, it is concluded that the petitioner has not demonstrated that the beneficiary is qualified to perform services in the specialty occupation based upon education alone.

The record also indicates that at the time of the filing of the instant petition, the beneficiary had been employed by the petitioner for more than five years.

The record contains evaluations from two credentials evaluations services. One evaluator found the beneficiary's educational background and employment experience equivalent to a bachelor's degree in engineering design. Another evaluator found the beneficiary's educational background and employment experience equivalent to a bachelor of science degree in industrial design.

This Service uses an independent evaluation of a person's foreign credentials in terms of education in the United States as an advisory opinion only. Where an evaluation is not in accord with previous equivalencies or is in any way questionable, it may be rejected or given less weight. See Matter of Sea, Inc., 19 I&N Dec. 817 (Comm. 1988).

Here, in the evaluation dated November 21, 2001, the evaluator states, in part as follows:

We therefore conclude . . . that [the beneficiary's] five years and one month of work experience are equivalent to one and two-thirds years of undergraduate education (50 semester hours) in Engineering Design and, in conjunction with the Associate's Degree in Architectural Design and an additional 22 semester credits through formal education, fulfill the requirements for a Bachelor's Degree in Engineering Design in the United States.

In addition to the transcripts reflecting the beneficiary's associate degree, the record contains a transcript for the beneficiary from the College of Dupage in Glen Ellyn, Illinois. Such record reflects that the beneficiary received ten hours for two math courses and five hours for a biology course. Although a course in anatomy is also listed on the transcript, it does not appear that the beneficiary received any credit for such course. As such the transcript reflects a cumulative total of 15 hours earned. This conflicts with the information on the November 21, 2001 evaluation which indicates that the beneficiary had received an additional 22 semester hours through formal education. This inconsistency has not been addressed by the petitioner.

In both evaluations (one dated November 19, 2001 and the other dated November 21, 2001) the evaluators include the beneficiary's more than five years employment experience with the petitioner in making their determinations. Information on Part 3 of the instant petition, however, does not indicate that the beneficiary is present in the United States. Yet, in his letter dated December 4, 2001, the petitioner's president indicates that the beneficiary "is certainly operating at an advanced level in her role with us." The beneficiary's status as an employee of the petitioner is not clear and thus her employment experience has not been sufficiently corroborated. As such, the evaluations are accorded little weight.

Doubt cast on any aspect of the petitioner's proof may lead to a reevaluation of the reliability and sufficiency of the remaining evidence offered in support of the visa petition. Further, it is incumbent on the petitioner to resolve any inconsistencies in the record by independent objective evidence, and attempts to explain or reconcile such inconsistencies, absent competent objective evidence pointing to where the truth, in fact, lies will not suffice. Matter of Ho, 19 I&N Dec. 582. (Comm. 1988).

The beneficiary is not a member of any organizations whose usual prerequisite for entry is a baccalaureate degree in a specialized area. The record contains no evidence that the beneficiary holds a state license, registration, or certification which authorizes her to practice a specialty occupation. In view of the foregoing, it is

concluded that the petitioner has not demonstrated that the beneficiary is qualified to perform services in a specialty occupation.

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 appeal is dismissed.