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U.S. Department of Homeland Security

Citizenship and Immigration Services

ADMINISTRATIVE APPEALS OFFICE
CIS, AAO, 20 Mass, 3/F
425 I Street, N.W.
Washington, DC 20536

[redacted]

FILE: EAC 02 287 53184 OFFICE: VERMONT SERVICE CENTER DATE: DEC 17 2003

IN RE: Petitioner: [redacted]
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:

[redacted]

INSTRUCTIONS:

This is the decision 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.

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 that 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 Citizenship and Immigration Services (CIS) 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 that originally decided your case along with a fee of $110 as required under 8 C.F.R. § 103.7.

Robert P. Wiemann, Director
Administrative Appeals Office

**DISCUSSION:** The nonimmigrant visa petition was denied by the Director, Vermont Service Center, and is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed.

The petitioner is an electrical subcontracting corporation that currently employs 24 persons and has a gross annual income of $2,700,000. It seeks to employ the beneficiary as a contract administrator for a period of three years. The director denied the petition because he found that the beneficiary was not qualified to serve in the specialty occupation proffered by the petitioner.

On appeal, counsel submits a brief with a copy of documentation previously submitted.

In his denial of the petition, the director determined, "From the list of duties submitted, it is the Service's opinion that the minimum educational requirement to perform the proffered position is a baccalaureate majoring in electrical engineering." In partial support of this finding, the director referred to the fact that a bachelor's degree in electrical engineering was stated as a hiring requirement. (The statement was in the copy of the petitioner's in-house position description submitted as part of the response to the director's request for additional evidence.) The director denied the petition because he determined that the beneficiary was not qualified to serve in a position requiring an electrical engineering degree.

Claiming that the petition denial was an abuse of discretion that lacks "application of appropriate legal criteria and the findings of fact and conclusions of Law to sustain the standard of judicial review," counsel asserts that the director erred in deciding that the petitioner was proffering an electrical engineering position, and also in deciding that the beneficiary was not qualified.

Counsel maintains that the proffered position is a non-engineering specialty occupation for which no bachelor's degree is offered, but whose performance requires the equivalent of a bachelor's degree in a specific specialty. According to counsel, the beneficiary's education and experience has equipped him with a bachelor's-degree equivalent of highly specialized knowledge.

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 petitioner has provided several documents with regard to the beneficiary's educational credentials.

A diploma from the City & Guilds of London Institute certifies that, in 1961, the beneficiary "passed in the First Class in the year 1961 the FINAL Examination in shipbuilding."

A diploma from the University of Calcutta certifies that the beneficiary obtained "the Degree of Bachelor of Science" in 1956.

A "Diploma in Electrical and Mechanical Engineering" issued by the Board of Apprenticeship Training, West Bengal, India, attests that the beneficiary served an apprenticeship at Garden Reach Workshops Ltd., Calcutta. For the same apprenticeship, "Final Certificate" document signed by the Garden Reach's managing director, dated October 14, 1961, certifies that the beneficiary served four years, six months, and seven days as a Shipwright Apprenticeship Engineer, and details how the beneficiary's apprenticeship was divided among the following areas: mould loft, R.S. repair, boat shed, joiner shop and saw mill, welding section, plate yard, deep sea vessel repair, docking and repair, new construction, fitting out, and drawing office. No details are provided as to the exact duties involved in the apprenticeship work.

Another document from the West Bengal Board of Apprenticeship Training attests that the beneficiary also attended the Calcutta Technical School where he passed the Board's examinations in machine drawing and sketching, applied mathematics, practical mathematics (elementary), magnetism and electricity, plane and solid geometry, heat engines (elementary), workshop management, practical mathematics (advanced), and ship drawing.

A memorandum of reference from Aktien-Geseelschaft "Weser" of Bremen, Germany, states, in part, that the beneficiary was employed by this company from November 6, 1961 to January 7, 1963, "to enlarge his knowledge in the shipbuilding sector." According to this document, during his time there, the beneficiary worked in two sections of the shipbuilding department, namely, the building birth and thereafter the mould loft.

Finally, a two-page "Credential Evaluation" from International Credential Evaluators, Inc. of Norman, Oklahoma, opines that the beneficiary has attained the equivalent of a U.S. "Bachelor of Science degree with course work in Shipbuilding." This document indicates that the firm based its determination on the beneficiary's work experience as well as education. It determined that the University of Calcutta degree was equivalent to "three years of post-secondary education in Science from an accredited university in the United States." On the basis of the experience reflected in the Garden Reach and Aktien-Gessellschaft "Wesser" documents, the firm concluded that the beneficiary had acquired the equivalent of "one year of degree credits in Shipbuilding." Finally, this evaluation concluded that the combination of the aforementioned formal education and shipbuilding experience was the equivalent of a U.S. bachelor of science degree with course work in shipbuilding.

Citizenship and Immigration Services (CIS) uses an evaluation by a credentials evaluation organization of a person's foreign education as an advisory opinion only. Where an evaluation is not in accord with previous equivalencies or is in any way questionable, it may be discounted or given less weight. *Matter of Sea, Inc.*, 19 I&N Dec. 817 (Comm. 1988).

In the exercise of this discretion, the AAO, as a matter of course, will discount an educational evaluation service's degree-equivalency determination to the extent that it considers work experience instead of education only. *See* 8 C.F.R. § 214.2(h)(4)(iii)(D)(3). Accordingly, the AAO discounts the International Credential Evaluators, Inc. evaluation beyond its education-based conclusion that the beneficiary's University of Calcutta courses are the equivalent of "three years of post-secondary education in Science from an accredited university in the United States."

Accordingly, the AAO finds that the record only establishes that the beneficiary has achieved the U.S. equivalent of three years of course work towards a generalized bachelor's degree in science. This obviously does not meet the requirement of a bachelor's degree in the proffered position's specialty occupation. Accordingly, the beneficiary lacks the educational credentials required by 8 C.F.R. § 214.2(h)(4)(iii)(C)(2).

Pursuant to 8 C.F.R. § 214.2(h)(4)(iii)(C)(4), a beneficiary who lacks a required degree may still qualify to perform services in a specialty occupation if the beneficiary's education, specialized training, and/or progressively responsible experience are equivalent to completion of a United States baccalaureate or higher degree in the specialty occupation, and the beneficiary has 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), equivalence to completion of a degree may 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.

In the instant record, there is no evaluation from an official authorized to grant college-level credit for training and/or experience, no results of recognized college-level equivalency examinations or special credit programs, and no evidence of certification or registration from a nationally-recognized professional association or society for the proffered position's

specialty. As indicated in the discussion of the beneficiary's educational credentials, the evaluation of the beneficiary's foreign education establishes no more than the U.S. equivalent of three years of a generalized bachelor's degree in science.

The AAO now turns to 8 C.F.R. § 214.2(h)(4)(iii)(D)(5), which allows CIS to determine whether the beneficiary has acquired the equivalent of the required degree through a combination of education, specialized training, and/or work experience.

In pertinent part, 8 C.F.R. § 214.2(h)(4)(iii)(D)(5) provides:

> 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. . . . 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 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 petitioner's evidence fails to meet these requirements.

The petitioner did not present any letters from the beneficiary's past employers, Garden Reach Workshops Ltd. and Aktien-Gessellschaft "Weser," to show that the beneficiary's prior work experience included the theoretical and practical

application of specialized knowledge required by the specialty, and that the beneficiary's experience was gained while working with peers, supervisors, or subordinates who have a degree or its equivalent in the specialty occupation. The documents from the former employers provide no substantial information beyond the positions that the beneficiary held and the dates of his employment.

Finally, the petitioner did not present any of the documentation required to establish that the beneficiary has recognition of expertise in the specialty occupation.

As discussed above, the evidence does not satisfy the beneficiary qualification requirements under the Act as implemented by 8 C.F.R. § 214.2(h)(4)(iii)(C). Thus, the director's decision will not be disturbed.

Beyond the decision of the director, it should be noted that it appears that the director was mistaken in characterizing the proffered position as an electrical engineering job. The AAO regularly consults the Department of Labor's *Occupational Outlook Handbook (Handbook)* to determine where a proffered position may fit among the spectrum of occupations that it identifies. Here the AAO researched the *Handbook's* 2002-2003 edition. In the petitioner's case, the proposed duties do not fall within the ambit of the normal work of an electrical engineer occupation, outlined at pages 110 to 112 of the 2002-2003 edition of the *Handbook*. This excerpt from page 111 is instructive:

> Electrical and electronics engineers design, develop, test, and supervise the manufacture of electrical and electronic equipment. Some of this equipment includes power generating, controlling, and transmission devices used by electric utilities; and electric motors, machinery controls, lighting, and wiring in buildings, automobiles, aircraft, radar and navigation systems, and broadcast and communications systems.

The duties described in the record involve primarily contract development and contract implementation aspects of electrical construction work, and not with designing, developing, testing, or manufacturing electrical equipment. While the job announcement's many duties included "designing," there is no indication that this function exceeded electrical layout design or would involve knowledge exclusively associated with an electrical engineer.

The duties appear to combine those of the cost estimator and construction manager occupations. Such an amalgam occupation is not distinctly addressed in the *Handbook*, but the major duty components are: pages 40-42 deal with cost estimators, and pages 37-39 with construction managers.

The *Handbook* indicates that a major function of cost estimators is to develop accurate cost information for the preparation of a competitive and profitable bid. In this endeavor, construction cost-estimators compile and analyze data on all cost aspects of a prospective project. This would include review of a project proposal's preliminary drawings and specifications, onsite inspection, evaluation of onsite cost factors, determination of the required labor and material, completion of standard cost-estimating forms, decisions about required equipment and crew size, development of a sequence of operations, and estimation of possible but unforeseen cost factors. Cost estimators also prepare a total project-cost summary and those with proper authority prepare bid documents for their company's submission.

From the *Handbook's* section on construction managers, it can be extrapolated that trade subcontractors, such as the petitioner, would have project managers or supervisors, to oversee the cost, quality, and efficiency of the subcontractor's work and to coordinate with the project's higher-level, outside managers and with the management of the subcontractor company as well. Part of the proffered duties fit this bill. As this matter was not relevant to the AAO decision, it shall not be further discussed.

The burden of proof in these proceedings rests solely with the petitioner. Section 291 of the Act, 8 U.S.C. § 1361.

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