

U.S. Department of Homeland Security

Citizenship and Immigration Services

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ADMINISTRATIVE APPEALS OFFICE
CIS, AAO, 20 MASS. 3/F
425 Eye Street N.W
Washington, D.C. 20536

NOV 19 2003

File: EAC 02 038 54379 Office: VERMONT SERVICE CENTER Date:

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:

Identifying data removed to
prevent disclosure of unreviewed
invasion of personal privacy

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 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 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. The matter is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed.

The petitioner is a corporation that provides engineering services to the general public. It has 11 employees, a gross annual income of \$599,814, and seeks to employ the beneficiary as an engineer. The director denied the petition because the beneficiary did not qualify to perform the duties of a specialty occupation.

On appeal, counsel states that the beneficiary is qualified to perform the duties of the proffered position. Specifically, counsel asserts that the beneficiary's education and prior work experience have been determined by a reliable credentials evaluation service to be equivalent to a Bachelor's Degree in Mechanical Engineering, and that the degree is closely related to the duties of the offered position.

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 the classification of qualified nonimmigrant aliens who are coming temporarily to the United States to perform services in a specialty occupation.

The director concedes that the proffered position qualifies as a specialty occupation. The director's determination denying the I-129 petition was based solely on the beneficiary's qualifications to perform the duties associated with that occupation. The only issue to be discussed in this proceeding is whether the beneficiary is qualified to perform the duties of a specialty occupation.

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:

- (A) full state licensure to practice in the occupation, if such licensure is required to practice in the occupation,
- (B) completion of the degree described in paragraph (1)(B) for the occupation, or
- (C) (i) completion of such experience in the specialty equivalent to the degree, and
 - (ii) 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, 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.

Pursuant to 8 C.F.R. § 214.2(h)(4)(iii)(D), for purposes of paragraph (h)(4)(iii)(C)(4) of this section, equivalence to completion of a United States baccalaureate or higher degree shall mean achievement of a level of knowledge, competence, and practice in the specialty occupation that has been determined to be equal to that of an individual who has a baccalaureate or higher degree in the specialty and 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 or 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.

The director determined that the beneficiary did not qualify to perform the duties of a specialty occupation because the beneficiary did not possess a degree in a field of study closely related to the offered specialty. On appeal, counsel asserts that the beneficiary is qualified to perform the duties of the proffered position. The record does not establish, however, that the beneficiary has a degree or its equivalent in **any** field of study. (Emphasis added.) As such, it is not necessary to determine whether the beneficiary's education is closely related to the offered position.

The proffered position is that of an engineer, with concentration in the area of soils engineering. The position requires a baccalaureate or higher degree, or its equivalent, in a related field of engineering as a minimum requirement for entry into the position. The petitioner seeks to qualify the beneficiary by establishing that the beneficiary meets the requirements of 8 C.F.R. § 214.2 (h)(4)(iii)(C)(4). In support of this assertion, the petitioner submitted two experiential evaluations. The first evaluation is dated October 10, 2001, and was prepared by [REDACTED] of Globe Language Services, Inc. Mr. [REDACTED] states that the beneficiary's education (one year of undergraduate study) and 18 years six months of work experience are equivalent to a Bachelor's Degree in Engineering Technology from a regionally accredited institution of higher education in the United States. The second evaluation is dated March 8, 2002, and was prepared by [REDACTED] of Morningside Evaluations and Consulting. Mr. [REDACTED] opined that the

beneficiary possessed the equivalent of a Bachelor of Science Degree in Mechanical Engineering from an accredited institution of higher education in the United States based upon the beneficiary's education (one year of undergraduate study) and 22 years of work experience.

The record does not, however, establish that either evaluator is qualified to render an opinion on degree equivalence based upon the beneficiary's work experience. There is no proof in the record that either evaluator possesses authority to grant college-level credit 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 8 C.F.R. § 214.2 (h)(4)(iii)(D)(1). The evaluations are, therefore, of little evidentiary value and will be weighed accordingly. See *Matter of Sea, Inc.*, 19 I&N Dec. 817 (Comm., 1988). Counsel also implies that the evaluations should be accepted by Citizenship and Immigration Services (CIS) pursuant to 8 C.F.R. § 214.2 (h)(4)(iii)(D)(3), as they are from reliable credentials evaluation services. Credentials evaluation services may only evaluate an individual's **foreign educational credentials**, however, not training or work experience. (Emphasis added). The petitioner has, accordingly, failed to qualify the beneficiary to perform the duties of the specialty occupation.

It should further be noted that the record is insufficient for CIS to determine that the beneficiary is qualified to perform the duties of the specialty occupation pursuant to 8 C.F.R. § 214.2(h)(4)(iii)(D)(5). The documentation submitted by the petitioner establishes that: the beneficiary was employed from 1977 - 1983 by Continental Gears Company, and that during that time frame he obtained experience in design development with automotive parts and equipment; the beneficiary was employed from 1983 - 1986 with Vishwa Automobiles during which time he was responsible for testing automotive parts and equipment to ensure that tested components meet design specifications and performance standards; and the beneficiary was employed from 1986 - 1999 by Conflo Systems as a Technology Manager where he worked with mechanical repair and maintenance of company equipment, as well as building and site inspection for construction projects. The submitted documentation lacks sufficient detail to establish that the beneficiary's training or experience is equivalent to a baccalaureate degree required by the specialty, or that the beneficiary achieved recognition of expertise in the specialty occupation as a result of such training and experience.

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 and the appeal shall accordingly be dismissed.

ORDER: The appeal is dismissed.