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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, DC 20536

OCT 27 2003

FILE: SRC-02-185-53969 OFFICE: TEXAS 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:

SELF-REPRESENTED

PUBLIC COPY

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

The petitioner is a construction company that employs 385 persons and has a gross annual income of \$56,000,000. It seeks to employ the beneficiary as a senior construction cost accountant. The director denied the petition because the beneficiary is not qualified to perform the services of a specialty occupation.

On appeal, the petitioner submits a written statement and new evidence. The petitioner provides three additional credential evaluations concerning the beneficiary's qualifications to perform the services of a specialty occupation.

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

The 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) experience in the specialty equivalent to the completion of such 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 Citizenship and Immigration Services (CIS) 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 accordance with 8 C.F.R. § 214.2(h)(4)(iii)(D)(5):

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 nonimmigrant visa petition was filed by the petitioner in May 2002 for a senior construction cost accountant.¹ The position

¹ The position is a specialty occupation as a management

requires a baccalaureate degree or higher or its equivalent in accounting. Submitted with the petition were copies of the beneficiary's credentials which indicate that he has achieved the following: (1) Bachelor of Commerce degree in the subject of financial accounting and auditing from the University of Bombay in 1994; (2) Master of Commerce Part I Examination from the University of Mumbai in May 2001; (3) Intermediate Examination Certificate from the Chartered Accountants of India in August 1997; and (4) employment experience working as a "Senior Construction Cost Accountant" for Nahalchand Laloochand Pvt. Ltd. in Mumbai, India "since 11/1/1998." Also submitted with the initial petition was a credential evaluation prepared by Josef Silny & Associates, Inc. in May 2002 (hereinafter, "May 2002 Silny credential evaluation"). The May 2002 Silny credential evaluation stated the beneficiary's credentials to be "the equivalent of completion of seven years of undergraduate study in Business Administration, Accounting, Law and related courses at a regionally accredited institution of higher education in the United States."²

Subsequent to the petitioner's filing of the nonimmigrant visa petition, the director requested evidence that the beneficiary has a bachelor's degree in the specialty occupation. The director requested an evaluation of the beneficiary's degree to establish that the beneficiary's foreign education is equivalent to a bachelor degree received in the United States. In response to the director's request, the petitioner submitted another credential evaluation from Josef Silny & Associates dated June 2002 (hereinafter, "June 2002 Silny credential evaluation"). The June 2002 Silny credential evaluation was almost exactly the same as the May 2002 Silny credential evaluation; however, it concluded that the beneficiary has:

the equivalent of a U.S. Bachelor's degree earned at a regionally accredited institution of higher education in a major [sic] not offered at the undergraduate level in the United States. [The beneficiary] also has the equivalent of completion of an additional two years of undergraduate study in Business Administration, Accounting and related courses at a regionally accredited institution of higher education in the United States.

accountant under the Department of Labor's *Occupational Outlook Handbook* (*Handbook*), 2002-2003 edition, which requires a baccalaureate or higher degree or its equivalent to perform the duties of the position.

² The evaluator noted that the beneficiary also graduated with a degree of Bachelor of Law in May 1997. A copy of this credential is not in the record of proceeding.

The director denied the nonimmigrant visa petition because both the May 2002 Silny credential evaluation and the June 2002 Silny credential evaluation failed to establish that the beneficiary has the equivalent of a four-year degree in a specific specialty.

On appeal, the petitioner produces three additional credential evaluations as follows: (1) Evaluation Report from HR Analytical Services dated July 19, 2002 (hereinafter "first HR Analytical credential evaluation"); (2) Evaluation Report from HR Analytical Services dated July 23, 2003 (hereinafter "second HR Analytical credential evaluation"); and (3) an evaluation by Timothy S. Thompson of International Education Consulting dated July 22, 2003 (hereinafter "Thompson credential evaluation").

The evidence fails to prove that the beneficiary has the equivalent of a bachelor's or higher degree or its equivalent in the field required by the specialty occupation, which, in this case, is accounting. The Department of Labor's (DOL) *Occupational Outlook Handbook (Handbook)*, 2002-2003 edition, on page 22 states that "most accountant[s] and internal auditor positions require at least a bachelor's degree in accounting or a related field." While the beneficiary has a bachelor's degree in accounting from a university in India, the program was a three-year program so it cannot be established as equivalent to a four-year program in accounting or a related field at an accredited university in the United States. The director was correct in seeking additional evidence and eventually denying the nonimmigrant visa petition since both the May and June 2002 Silny credential evaluations failed to specify the specific specialty in which the beneficiary received the equivalent of a bachelor's degree.

The evidence on appeal also fails to establish that the beneficiary has a baccalaureate or higher degree or its equivalent in the field of accounting. At the outset, the AAO notes that the National Association of Credential Evaluation Services (NACES) requires its members, private credential evaluation services, to commit to high standards of integrity and professionalism. Josef Silney & Associates is a member of NACES. HR Analytical Services is not a member of NACES. Citizenship and Immigration Services (CIS) 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, CIS is not required to accept or may give less weight to that evidence. *Matter of Caron International*, 19 I&N Dec. 791 (Comm. 1988). Since HR Analytical Services is not a member of NACES, its credential evaluations will be considered accordingly.

The first HR Analytical credential evaluation concludes that the beneficiary has:

the equivalent of five years of undergraduate study in accounting, including one year of upper-division study in business administration with emphasis in financial accounting and cost accounting, at an accredited university in the United States. He has also completed the equivalent of two years of professional study in a law program at an accredited university.

The first HR Analytical credential evaluation goes on to consider the beneficiary's employment experience. However, this experiential aspect of the evaluation will be discounted since under the regulations at 8 C.F.R. § 214.2(h)(4)(iii)(D)(1), only 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 may make such an evaluation. There is no evidence in the record that HR Analytical has authority to grant college-level credit for training and/or experience in the specialty at an accredited college or university that has a program for granting such credit.

The first HR Analytical credential evaluation fails to specify that the beneficiary has a bachelor's or higher degree or its equivalent in a specific specialty. Its determination that the beneficiary has the equivalent of five years of undergraduate studies in accounting is inconclusive. Spending five years towards undergraduate studies is different than completing a baccalaureate degree program.

The second HR Analytical credential evaluation concludes that the beneficiary has:

the equivalent of a Bachelor of Business Administration degree with a major in Accounting and a Master of Business Administration degree with specialization in Accounting from an accredited university in the United States. He has also completed the equivalent of two years of professional study in a law program at an accredited university.

The second HR Analytical credential evaluation bases its conclusion upon the beneficiary's "Certificate of the Number of Marks issued by the University of Mumbai in July 2002 to confirm that [the beneficiary] passed the Master of Commerce (M.Com.) Degree Examinations in April 2002." The petitioner, in its written appellate statement, indicates that this second HR

Analytical credential evaluation was produced because the beneficiary "recently took the Master of Commerce exam in April 2002 and the results were recently declared." However, to date, there is no evidence in the record that the beneficiary took or passed the April 2002 Master of Commerce examination prior to filing the instant nonimmigrant visa petition or at all. Simply going on record without supporting documentary evidence is not sufficient for the purpose of meeting the burden of proof in these proceedings. *Matter of Treasure Craft of California*, 14 I&N Dec. 190 (Reg. Comm. 1972). Thus, without supporting documentation, the second HR Analytical credential evaluation is given no evidentiary weight. Even assuming, arguendo, that the beneficiary had produced a copy of a certificate evidencing successful completion of the April 2002 Master of Commerce examination, the record does not contain evidence that the successful completion occurred prior to filing the nonimmigrant visa petition. CIS regulations affirmatively require a petitioner to establish eligibility for the benefit it is seeking at the time the petition is filed. See 8 C.F.R. § 103.2(b)(12). Any facts that come into being subsequent to the filing of a petition cannot be considered when determining whether the beneficiary is qualified to perform a particular specialty occupation. See *Matter of Michelin Tire*, 17 I&N Dec. 248, 249 (Reg. Comm. 1978).

A new credential evaluation, written by Timothy Thompson, is submitted on appeal. On "International Education Consulting" letterhead, the Thompson credential evaluation reviews the beneficiary's combination of educational and experiential background to conclude that the beneficiary "has achieved the equivalent amount of post-secondary level education as a major in Accounting for a Bachelor of Business Administration from a regionally accredited college or university in the United States." Mr. Thompson claims that he is a "Senior Admission Officer for [sic] international graduate professional admissions for the University of Pittsburgh, a position that I have held since 1984 where my primary full-time responsibility is the evaluation of foreign academic credential for admission to the thirteen graduate professional schools for the University of Pittsburgh." An attached resume details Mr. Thompson's employment history and achievements. However, no evidence is provided from the University of Pittsburgh to prove that Mr. Thompson is 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. As noted above, simply going on record without supporting documentary evidence is not sufficient for the purpose of meeting the burden of proof in these proceedings. *Matter of Treasure Craft of California*, *supra*. Thus, the Thompson

credential evaluation fails to establish the beneficiary is qualified to perform the services of the specialty occupation under 8 C.F.R. § 214.2(h)(4)(iii)(D)(1).

Finally, the multitude of varying opinions concerning the beneficiary's credentials is inconsistent and undermines the evidence in its totality. Doubt cast on any aspect of the petitioner's proof may, of course, lead to a reevaluation of the reliability and sufficiency of the remaining evidence offered in support of the visa petition. It is incumbent upon 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, 591-92 (BIA 1988).

Based on the foregoing discussion, the petition has failed to establish that the beneficiary is qualified to perform the services of the specialty occupation under 8 C.F.R. § 214.2(h)(4)(iii)(D)(1) through (4) of the regulations.

CIS may undertake its own examination of the beneficiary's credentials under 8 C.F.R. § 214.2(h)(4)(iii)(D)(5). However, the evidence in the record does not establish that the beneficiary has the equivalent of the degree required by the specialty occupation 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 letter submitted into evidence as proof of the beneficiary's past employment experience fails to specify the duties of the position and the types of employees who supervised the beneficiary or were supervised by him. It also does not provide an employment termination date to establish how long the employee worked as a "senior construction cost accountant" for Nahalchand Laloochand Pvt. Ltd. Thus, the letter does not clearly demonstrate that the alien's training and/or work experience included the theoretical and practical application of specialized knowledge required by the specialty occupation, and 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, as required under 8 C.F.R. § 214.2(h)(4)(iii)(D)(5). Because the beneficiary has failed to provide meritorious experiential evidence, no further analysis is necessary under 8 C.F.R. § 214.2(h)(4)(iii)(D)(5).

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.