

PUBLIC COPY

U.S. Department of Homeland Security

Bureau of Citizenship and Immigration Services

**identifying data deleted to
prevent clearly unwarranted
invasion of personal privacy**

DR

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



SEP 04 2005

File: WAC-01-198-57853

Office: CALIFORNIA 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:



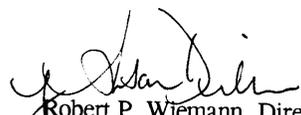
INSTRUCTIONS:

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 the Bureau of Citizenship and Immigration Services (Bureau) 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 now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed.

The petitioner is a manufacturing business with 150 employees and a gross annual income of \$25 million. It seeks to employ the beneficiary as an accounting systems analyst 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 demonstrated that the beneficiary has the necessary recognition of expertise to qualify for a specialty occupation. On appeal, counsel states, in part, that the beneficiary's two years of general coursework and more than 14 years of progressively responsible work experience qualify her for the proffered position. Counsel further states that the record contains two advisory opinions and a letter of evaluation in support of her assertion.

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), 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:

- (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

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 record contains the following documentation related to the beneficiary's educational, training, and employment experience:

- Translation of the beneficiary's provisional certificate for completion of a bachelor's course of study in "English Language Translation" at an Iranian institution, and a copy of her transcripts;
- Undated letter from the managing director of the Iranian company, [REDACTED] who states that the beneficiary "successfully completed courses in basic accounting principals [sic], financial accounting and cost accounting during the period of summer 1992 - summer 1993";
- Undated letter from the managing director of [REDACTED] who states, in part, that the beneficiary worked at this company from February 1992 through August 2000, and was responsible for the following: sales order transactions, customer invoicing and relations, collections and shipment accuracy assurance, computer system vendor relations, and monitoring the operation and maintenance of the company accounting and distribution system;
- A second undated letter from the managing director of [REDACTED] who states, in part, that the beneficiary started as an "interim accounting systems supervisor overlooking the receivable and payable accounts [and] reporting to the vice president of

- finance" and that in 1995, the beneficiary attended several courses pertaining to accounting principles;
- A credentials evaluation indicating that the beneficiary holds the equivalent of a bachelor's degree in foreign language translation (English) from an accredited college or university in the United States, and that as a result of her educational background and employment experiences, she holds the equivalent of a bachelor's degree in accounting from an accredited college or university in the United States;
 - Opinion from Gary L. Karns, Ph.D., Associate Professor of Marketing, SeattlePacific University, who concludes that the beneficiary's academic background and 14.75 years of professional work experience with positions such as Accounting Representative, Accounts Payable/Receivable Supervisor, and Accounting System Supervisor, are the equivalent of a bachelor's degree in accounting from a U.S. university; and
 - Opinion from Kenneth E. Knight, Ph.D, Professor of Management, SeattlePacific University, who concludes that the beneficiary's 14+ years of professional employment in progressively more responsible accounting positions (Accounting Department representative from 1985 - 1989; Accounts Payable Supervisor from 1998 [sic] - 1992; and Accounting Systems Supervisor from 1992 - 2000) are the equivalent of a U.S. bachelor's degree in accounting.

In a cover letter dated April 17, 2001, the petitioner's chief financial officer/owner states, in part, that a bachelor's degree in accounting, business, or a related field, is required for the proffered position of "accounting systems analyst." The beneficiary holds a baccalaureate degree in English Language Translation from an Iranian institution. A credentials evaluator has found that the beneficiary's foreign degree is equivalent to a bachelor's degree in foreign language translation (English) from an accredited college or university in the United States. Accordingly, it is concluded that the petitioner has not shown that the beneficiary qualifies to perform the duties of the proffered position based upon education alone.

The record indicates that the beneficiary had more than 14 years of employment experience at the time of the filing of the petition. In the petitioner's April 17, 2001 cover letter, the petitioner's chief financial officer/owner states, in part, that the beneficiary "began her work as an Accounting Systems Analyst with Tehran Berkeley Corporation from September 1989 to February

1992." It is noted that Dr. Knight also includes the beneficiary's employment with Tehran Berkeley Corporation in his evaluation of the beneficiary's professional work experience. Dr. Karns additionally makes reference to the beneficiary's "14.75 years of experience," which would include the beneficiary's employment with Tehran Berkeley Corporation. The record, however, (other than an affidavit from the beneficiary) contains no independent, corroborating evidence of this employment, such as a letter from an authorized official of Tehran Berkeley Corporation confirming such employment and describing the beneficiary's duties. 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).

This Bureau 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. *Matter of Sea, Inc.*, 19 I&N Dec. 817 (Comm. 1988).

Here, the evaluation of the beneficiary's foreign credentials and the advisory opinions are based on employment experience and educational background. As previously discussed, however, not all of the beneficiary's claimed employment has been independently corroborated. Accordingly, the evaluation and the advisory opinions are accorded little weight.

Furthermore, a review of the Department of Labor's *Occupational Outlook Handbook*, 2002-2003 edition, finds that the usual requirement for employment as a computer scientist, systems analyst, or engineer is a baccalaureate degree in computer science, information science, or management information systems. The record, however, contains no evidence that the beneficiary holds the equivalent of a baccalaureate degree in computer science, information science, or management information systems.

The beneficiary is not a member of any organizations whose usual prerequisite for entry is a baccalaureate degree in a specific specialty. The record contains no evidence that the beneficiary holds a state license, registration, or certification that 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.

Beyond the decision of the director, the petitioner has not demonstrated that the proffered position is a specialty occupation. As this matter will be dismissed on the grounds discussed, this issue need not be examined further.

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.