



U.S. Citizenship
and Immigration
Services

DR



FILE: LIN 01 269 52739 Office: NEBRASKA SERVICE CENTER Date:

IN RE: Petitioner:
Beneficiary:



AUG 31 2004

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 of the Administrative Appeals Office 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.

Mari Johnson

Robert P. Wiemann, Director
Administrative Appeals Office

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invasion of personal privacy

DISCUSSION: The service center director denied the nonimmigrant visa petition and the matter is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed. The petition will be denied.

The petitioner is a consulting firm that seeks to employ the beneficiary as a project engineer. The petitioner endeavors to classify the beneficiary as a nonimmigrant worker in a specialty occupation pursuant to 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).

The director denied the petition because the proffered position is not a specialty occupation and the beneficiary is not qualified to perform a specialty occupation. On appeal, counsel submits a brief.

The AAO will first address the director's conclusion that the position is not a specialty occupation.

Section 214(i)(1) of the Act, 8 U.S.C. § 1184(i)(1), defines the term "specialty occupation" as an occupation that requires:

- (A) theoretical and practical application of a body of highly specialized knowledge, and
- (B) 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 8 C.F.R. § 214.2(h)(4)(iii)(A), to qualify as a specialty occupation, the position must meet one of the following criteria:

- (1) A baccalaureate or higher degree or its equivalent is normally the minimum requirement for entry into the particular position;
- (2) The degree requirement is common to the industry in parallel positions among similar organizations or, in the alternative, an employer may show that its particular position is so complex or unique that it can be performed only by an individual with a degree;
- (3) The employer normally requires a degree or its equivalent for the position; or
- (4) The nature of the specific duties is so specialized and complex that knowledge required to perform the duties is usually associated with the attainment of a baccalaureate or higher degree.

Citizenship and Immigration Services (CIS) interprets the term "degree" in the criteria at 8 C.F.R. § 214.2(h)(4)(iii)(A) to mean not just any baccalaureate or higher degree, but one in a specific specialty that is directly related to the proffered position.

The record of proceeding before the AAO contains: (1) Form I-129 and supporting documentation; (2) the director's request for additional evidence; (3) the petitioner's response to the director's request; (4) the

director's denial letter; and (5) Form I-290B and supporting documentation. The AAO reviewed the record in its entirety before issuing its decision.

The petitioner is seeking the beneficiary's services as a project engineer. Evidence of the beneficiary's duties includes the I-129 petition and supporting documents, and the petitioner's response to the director's request for evidence. According to this evidence, the beneficiary would perform duties that entail, in part: providing planning support to a cross-functional team in the development of schedules to manage cross-functional vehicle program deliverables versus owners at a vehicle sub-system level; developing a program management process at the vehicle subsystem level based on the product manufacturing, engineering and marketing requirements; developing and maintaining an integrated critical path project plan for manufacturing transmissions to support the vehicle program plan; facilitating problem solving by determining the root cause; verifying and recommending corrective actions to drive process and quality improvements with leveraged results; coordinating, documenting and tracking projects to facilitate manufacturing, engineering and planning changes needed to resolve issues; developing, implementing and validating systems and processes for continuous improvement of the manufacturing process and product quality; developing specific workplans from Powertrain generic templates, including the integration of component and manufacturing plans to support the overall Powertrain level workplan; developing a recovery work plan for transmission level work plans; and working with a business process specialist to ensure adherence of process and compiling enablers to the process for review with the process team. The petitioner indicated that a qualified candidate for the job would possess a bachelor's degree.

The director found that the proffered position was not a specialty occupation.

On appeal, counsel states that the proffered position qualifies as a specialty occupation because it meets three of the four criteria found at 8 C.F.R. § 214.2(h)(4)(iii)(A).

Upon review of the record, the petitioner has established one of the four criteria outlined in 8 C.F.R. § 214.2(h)(4)(iii)(A). Therefore, the proffered position is a specialty occupation.

The AAO turns first to the criteria at 8 C.F.R. § 214.2(h)(4)(iii)(A)(1) and (2): a baccalaureate or higher degree or its equivalent is the normal minimum requirement for entry into the particular position; a degree requirement is common to the industry in parallel positions among similar organizations; or a particular position is so complex or unique that it can be performed only by an individual with a degree.

Factors often considered by CIS when determining these criteria include: whether the Department of Labor's *Occupational Outlook Handbook (Handbook)* reports that the industry requires a degree; whether the industry's professional association has made a degree a minimum entry requirement; and whether letters or affidavits from firms or individuals in the industry attest that such firms "routinely employ and recruit only degreed individuals." See *Shanti, Inc. v. Reno*, 36 F. Supp. 2d 1151, 1165 (D.Min. 1999)(quoting *Hird/Blaker Corp. v. Slattery*, 764 F. Supp. 872, 1102 (S.D.N.Y. 1991)).

The AAO routinely consults the *Handbook* for its information about the duties and educational requirements of particular occupations. There is no specific entry that is identical to the proffered position, but it is most like a

management consultant. The *Handbook* indicates that most companies in private industry require management consultants to have MBA's. The position is, therefore, a specialty occupation and the director's remarks on this issue are withdrawn.

The director also found that the beneficiary would not be qualified to perform the duties of the proffered position.

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 full state licensure to practice in the occupation, if such licensure is required to practice in the occupation, and completion of the degree in the specialty that the occupation requires. If the alien does not possess the required degree, the petitioner must demonstrate that the alien has 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.

Pursuant to 8 C.F.R. § 214.2(h)(4)(iii)(C), to qualify to perform services in a specialty occupation, an 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 is seeking the beneficiary's services as a program engineer. An advertisement published by the petitioner indicated that candidates for the proffered position should have a "BS degree (prefer engineering)." In addition, the petitioner's website states that project managers "should have a BS/BA (MS/MA/MBA preferred) in engineering or business[.]" along with other skills.

The director found that discrepancies in the beneficiary's credentials cast doubt on his qualifications. On appeal, counsel states that the discrepancies have been explained, and the beneficiary is qualified for the position because he possesses a degree that is equivalent to a bachelor's degree in business administration from a U.S. university.

Upon review of the record, the petitioner has failed to establish that the beneficiary is qualified to perform an occupation that requires a master's degree in business. The beneficiary does not hold a baccalaureate degree from an accredited U.S. college or university in any field of study. The petitioner submitted an educational evaluation from Education Evaluators International, which stated that the beneficiary's three-year degree in Commerce from Gujarat University was "the functional equivalent of a major in Business Administration for a Bachelor of Science degree awarded by regionally accredited colleges and universities in the United States." It is not clear that the evaluator is actually stating that the degree is equivalent to a U.S. degree, given the "functional equivalent" language. Nonetheless, the AAO finds that a three-year degree cannot be equivalent to the typical four-year degree awarded by U.S. colleges and universities, absent some further explanation. The beneficiary's transcripts indicate that that he took six or seven year-long classes for each of three years, for a total of approximately 30 credit hours each year. The evaluator did not explain how these credit hours equated to the requirements of a U.S. university. 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). The evidence submitted does not establish that the beneficiary possesses a degree equivalent to a baccalaureate degree from a U.S. college or university. In addition, as noted above, the specialty occupation requires a master's degree, rather than just a baccalaureate degree. Therefore, the petitioner must demonstrate that the beneficiary meets the criterion at 8 C.F.R. § 214.2(h)(4)(iii)(C)(4).

Pursuant to 8 C.F.R. § 214.2(h)(4)(iii)(D), equating the beneficiary's credentials to a United States baccalaureate or higher degree 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 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.

When CIS determines an alien's qualifications pursuant to 8 C.F.R. § 214.2(h)(4)(iii)(D)(5), 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 occupation¹;
- (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 AAO turns to the beneficiary's prior work experience, and whether it included the theoretical and practical application of specialized knowledge required by the specialty. The record contains letters from two previous employers. As described by each employer, the beneficiary's duties do not appear to have involved the theoretical and practical application of project engineering or management consulting. One employer states that the beneficiary managed and operated a hotel, which included marketing, and hiring, training and supervising staff. The second employer, [REDACTED] stated that the beneficiary worked as a project manager, with duties such as managing construction projects including safety, quality, procurement, resources, planning schedules and coordinating deliverables between the customer, engineering, architects and vendors, estimating and planning, and management and cost control. The position with the hotel does not seem to relate to the proffered position in any way. The position with Bridge Construction does not indicate that the beneficiary's work experience was gained while working with peers, supervisors, or subordinates who have a degree or its equivalent in the specialty occupation. Nor does it seem directly related to the proffered

¹ *Recognized authority* means a person or organization with expertise in a particular field, special skills or knowledge in that field, and the expertise to render the type of opinion requested. A recognized authority's opinion must state: (1) the writer's qualifications as an expert; (2) the writer's experience giving such opinions, citing specific instances where past opinions have been accepted as authoritative and by whom; (3) how the conclusions were reached; and (4) the basis for the conclusions supported by copies or citations of any research material used. 8 C.F.R. § 214.2(h)(4)(ii).

position. Thus, the AAO cannot conclude that the beneficiary's past work experience included the theoretical and practical application of a body of highly specialized knowledge. Finally, there is insufficient evidence that the beneficiary has recognition of expertise.

As related in the discussion above, the petitioner has failed to establish that the beneficiary is qualified to perform the duties of the proffered position. Accordingly, the AAO shall not disturb the director's denial of the petition.

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.