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U.S. Citizenship
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Services

DQ

DEC 02 2004

[Redacted]

FILE: SRC 03 198 53284 Office: TEXAS SERVICE CENTER Date:

IN RE: Petitioner: [Redacted]
Beneficiary: [Redacted]

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 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.

Robert P. Wiemann

Robert P. Wiemann, Director
Administrative Appeals Office

DISCUSSION: The director of the service center 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 an importer and exporter of computers and supplies. It seeks to employ the beneficiary as a general and operations manager. The petitioner, therefore, 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 beneficiary is not qualified to perform the duties of a specialty occupation. On appeal, counsel submits a brief and additional evidence.

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 record of proceeding before the AAO contains, in part: (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 petitioner is seeking the beneficiary's services as a general and operations manager. The petitioner's July 3, 2003 letter indicated that a candidate must possess a bachelor's degree or its equivalent in business administration.

The director mentioned that the beneficiary does not hold a U.S. baccalaureate or higher degree or an equivalent foreign degree, and stated that the beneficiary was not qualified for the proffered position because his education, experience, and training were not equivalent to a baccalaureate degree in a specialty required by the occupation. Finally, the director stated that the submitted evidence did not show that: (1) the beneficiary had progressively responsible work experience; (2) his work experience required a theoretical and practical application of specialized knowledge; and (3) the work experience was gained while working with persons who already possessed a degree or its equivalent in the specialty occupation.

On appeal, counsel states that the beneficiary is qualified for the position based on his progressively responsible employment experience with PACCU S.A. and T-COPIA. Counsel states that Silvergate Evaluations, Inc. and Global Education Group consider the beneficiary's work experience the equivalent of a bachelor's degree in business administration. Counsel submits the evaluations and employment verification letters.

Upon review of the record, the petitioner has failed to establish that the beneficiary is qualified to perform the duties of the proffered position.

The beneficiary does not hold a baccalaureate degree from an accredited U.S. college or university in any field of study. Nor does the beneficiary 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. Thus, 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; or
- (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.

On appeal, counsel submits evaluations from Silvergate Evaluations, Inc. and Global Education Group, companies that specialize in evaluating academic credentials. The evaluators concluded that the beneficiary possesses the equivalent of a U.S. baccalaureate degree in business administration. However, the evaluations are based upon the beneficiary's education, training, and work experience. A credentials evaluation service may not evaluate an alien's work experience or training; it can only evaluate educational credentials. See 8 C.F.R. § 214.2(h)(4)(iii)(D)(3). Thus, the evaluations carry no weight in these proceedings. *Matter of Sea, Inc.*, 19 I&N Dec. 817 (Comm. 1988).

██████████ the evaluator from Global Education Group, Inc., stated that for applicants to Florida International University he has "advisory authority to grant college-level credit for training and/or experience in the field of business administration." However, this is not persuasive in equating the beneficiary's credentials to a U.S. baccalaureate degree pursuant to 8 C.F.R. § 214.2(h)(4)(iii)(D)(1) which requires 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. ██████████ evaluated the beneficiary's credentials as a consultant of the Global Education Group, Inc.; ██████████ did not perform the evaluation on behalf of Florida International University. Furthermore, no independent evidence in the record of proceeding corroborated ██████████ statement of authority to grant college-level credit based on an applicant's foreign educational credentials, training, and/or employment experience. 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).

Consequently, CIS must determine the beneficiary's qualifications pursuant to 8 C.F.R. § 214.2(h)(4)(iii)(D)(5). 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 record contains letters from [REDACTED]. The beneficiary began employment in 1987 with [REDACTED] as a technician working with cooler machines. In 1989, he was promoted to supervisor of quality control, and in 1991 he was promoted to marketing and sales manager. In 1995 the beneficiary resigned from the company. From 1996 to 2000, the beneficiary was hired by [REDACTED] as a manager and systems engineer consultant; in 2002, the beneficiary was sent abroad to represent the company.

Based on the evidentiary record, the petitioner cannot demonstrate that the beneficiary'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; or that the beneficiary has recognition of expertise. Both employers described the beneficiary's duties generically; there is no specificity as to the beneficiary's daily activities. For example, [REDACTED] stated that the beneficiary had to "maintain control in the arrival and departure of [REDACTED] products" and analyze and supervise "quality control." In 1991, the beneficiary was charged to:

[O]rganize the employees by departments, assign duties to each employee, [have] control of payroll and employee benefits, develop marketing goals and planning, design marketing campaigns and hiring [sic] sales support staff.

[REDACTED] described the beneficiary as responsible for ensuring that "all photocopier machines were in perfect conditions [sic]" for sale or rental and for processing employee payroll, keeping track of employee schedules, and testing the skills of employees. In 2000, the beneficiary formed part of T-Copia's Department of Importation of photocopier machines and accessories. None of the duties performed by the beneficiary at [REDACTED] would require a theoretical and practical application of specialized knowledge required by a specialty occupation.

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).

Again, the duties are generic in nature and do not describe daily activities with any specificity. Neither [REDACTED] indicated whether the beneficiary's experience was gained while working with peers, supervisors, or subordinates who have a degree or its equivalent in the specialty occupation. Finally, the beneficiary does not seem to have recognition of expertise. Neither [REDACTED] qualify as experts in a relevant field. [REDACTED] expertise is in the unrelated field of industrial engineering, and [REDACTED] did not provide his qualifications as an expert; no resume or other evidence was attached to the evaluation.

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.

Beyond the decision of the director, the proffered position does not qualify as a specialty occupation. 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.

CIS interprets the term "degree" in the regulation set forth 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 petitioner stated that its job requirement for the proffered position was a bachelor's degree in business administration. As stated by the court in *Matter of Micheal Hertz Assocs.*, 19 I&N Dec. 558, 560 (Comm. 1988), for a position to qualify as a specialty occupation:

A petitioner must establish that the position realistically requires knowledge, both theoretical and applied, which is almost exclusively obtained through studies at an institution of higher learning. The depth of knowledge and length of studies required are best typified by a degree granted by such institution at the baccalaureate level. It must be demonstrated that the position requires a precise and specific course of study which relates directly and closely to the position in question. Since there must be a close corollary between the required specialized studies and the position, the requirement of a degree of generalized title, such as

business administration or liberal arts, without further specification, does not establish eligibility.

Because the petitioner simply requires a bachelor's degree in business administration, without indicating a specific field of concentration, it cannot establish that a baccalaureate or its equivalent in a specific specialty is required for the proffered position.

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.