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U.S. Citizenship
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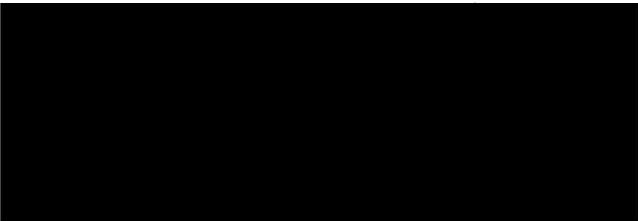


FILE: WAC 00 054 52766 Office: CALIFORNIA SERVICE CENTER Date:

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:



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, Director
Administrative Appeals Office

DISCUSSION: The service center director denied the nonimmigrant visa petition and the Administrative Appeals Office (AAO) dismissed a subsequent appeal. The matter is again before the AAO on motion to reopen or reconsider. The motion will be granted. The previous decision shall be affirmed. The petition will be denied.

The petitioner is a corporation engaged in the fabrics wholesale business. In order to employ the beneficiary as an accountant, 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, 8 U.S.C. § 1101 (a)(15)(H)(i)(b).

In a decision dated October 23, 2003, the AAO affirmed the director's decision that denied the petition on the basis that the evidence had not established that the beneficiary was qualified to serve in the accountant specialty occupation in accordance with the criteria set forth at 8 C.F.R. §§ 214.2(h)(4)(iii)(C) and (D).

Pursuant to 8 C.F.R. § 103.5(a)(3), a motion to reconsider must:

State the reasons for reconsideration and be supported by any pertinent precedent decisions to establish that the decision was based on an incorrect application of law or Service policy. A motion to reconsider a decision on an application or petition must, when filed, also establish that the decision was incorrect based on the evidence of record at the time of the initial decision.

Upon review of the entire record of proceeding, including counsel's brief on the motion to reconsider and its appended exhibits, the AAO has determined that its previous decision was correct. Accordingly, the previous decision shall be affirmed and the petition will be denied.

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.

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 under 8 C.F.R. § 214.2(h)(4)(iii)(C)(4) 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 Citizenship and Immigration Services (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. As the wording of this section clearly conveys, for the beneficiary's specialized training or work experience to merit such equivalency recognition, the petitioner must *clearly demonstrate* that the training and/or work experience possessed certain characteristics *and* that the beneficiary has achieved a certain level of recognition in the relevant specialty occupation, as evidenced by types of documentation specified in the section.

Counsel contends that the AAO had erroneously applied two regulatory provisions, namely, 8 C.F.R. § 214.2(h)(4)(iii)(D)(1) on evaluation of the educational equivalency of work experience, and 8 C.F.R. § 214.2(h)(4)(iii)(D)(4) on certification or registration from a nationally-recognized professional association or society. Counsel asserts that the beneficiary is qualified to serve as an accountant under each of these provisions, if they are properly applied to the evidence of record.

The first issue for discussion is counsel's assertion that the petitioner satisfied 8 C.F.R. § 214.2(h)(4)(iii)(D)(1). This provision provides for beneficiary qualification by "[a]n 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."

Two documents are central to this educational equivalency: (1) a July 3, 2000 memorandum from ██████████ Associate Dean and Director of Graduate Programs at the School of Business and Economics of Seattle Pacific University (SPU), that evaluated the beneficiary's work experience; and (2) a copy of a January 2, 2001 letter from an associate provost at SPU regarding SPU faculty members' authority to grant college credit.¹

In his memorandum, ██████████ stated that he had "reviewed [the beneficiary's] resume showing about 22 years of work experience (based on employment verification letter information)," and he opined that the beneficiary's work experience "included theoretical and practical knowledge in the accounting area functionally equivalent to a bachelor's degree in business administration specializing in accounting from a U.S. university."

The associate provost's letter attested that the SPU faculty has "the authority to grant college level credit for training and experience, both in their areas of training and more generally in those foundational areas of university education commonly considered 'general education,' 'distribution requirements,' or 'related instruction in communication, computation, and human relations.'" The memorandum also stated, in part:

[S]eattle Pacific University faculty generally and often use this experience in the course of advising advanced transfer students, in assessing the credentials of students from other universities and from other nations, and in the development of university policy in the areas of general education and educational equivalencies.

The University regards faculty members as appropriate evaluators of academic and professional credentials for the purposes of admissions, advising, placement in degree

¹ In its deliberation on the motion, the AAO accorded no evidentiary weight to the revised version of the July 3, 2000 Evaluation Report from the Foundation for International Services, Inc. (FIS) on the beneficiary's educational credentials. FIS erroneously adopted Doctor Karn's evaluation of the educational equivalency of experience as if it were a formal education credential, which it is not. The regulation at 8 C.F.R. § 214.2(h)(4)(iii)(D)(3) only recognizes "evaluation[s] of education" by credentials evaluation services.

programs, substitutions of courses, judgments on petitions, assessments of internships, and other routine university evaluations. . . .

In its previous opinion, the AAO cited two reasons for discounting [REDACTED] evaluation on the educational equivalency of the beneficiary's work experience: insufficient evidence that [REDACTED] was on the SPU faculty when he issued his memorandum, and "no proof in the record that [REDACTED] 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 evidence of record does not establish that, as required by 8 C.F.R. § 214.2(h)(4)(iii)(D)(1), SPU has a program for granting college credit for any work experience other than that gained in its intern program. The AAO does not consider an internship program to qualify as a program for granting college credit based upon an individual's training and/or work experience.

Although the assistant provost's letter opens with a declaration that SPU faculty has "the authority to grant college level credit for training and experience," the letter's explanatory language, quoted above, qualifies that authority in terms that fail to establish that SPU is "a college or university which has a program for granting such credit based on an individual's training and/or work experience." The assistant provost's descriptions of faculty use of work-evaluation authority does not clearly indicate that faculty members ever convert non-SPU-internship work experience into SPU college credits. Counsel has not remedied this deficiency on motion, for the exhibits now presented on this issue include not confirmatory evidence from SPU but, rather, only evidence about gaining college credit via faculty-approved internships worked in conjunction with related SPU course work (not the case here) or success at certain specified types of examination. Therefore, on the basis of the totality of evidence of record, the petitioner has failed to establish that [REDACTED] evaluation is acceptable under 8 C.F.R. § 214.2(h)(4)(iii)(D)(1). The AAO has independently verified that SPU only provides college credit for work experience gained through its internship program.

Counsel styles his next basis for relief as the director's failure to recognize the American Institute of Certified Public Accountants (AICPA) as, in the language of 8 C.F.R. § 214.2(h)(4)(iii)(D)(4), "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."

Counsel's contention is that the petitioner has satisfied 8 C.F.R. § 214.2(h)(4)(iii)(D)(4) by the combination of the beneficiary's AICPA membership card and the information at the AICPA Internet site that counsel references on the motion. 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). Furthermore, the assertions of counsel do not constitute evidence. *Matter of Obaigbena*, 19 I&N Dec. 533, 534 (BIA 1988); *Matter of Ramirez-Sanchez*, 17 I&N Dec. 503, 506 (BIA 1980). Counsel's position is not substantiated by the evidence of record.

The information on the Internet site establishes that the AICPA is a nationally-recognized professional association or society chartered mainly, but not exclusively, for CPAs and certain other accountants. However, proof of membership in a national professional organization is not enough. Neither this Internet information nor any evidence in the record of proceeding establishes that AICPA is, in the language of the regulation, "known to grant certification or registration to persons in the occupational specialty who have achieved a certain level of competence." It is the petitioner's burden to establish that AICPA grants not just membership or even limited membership, but is known to grant the aforementioned "certification or registration" as to professional standing as an accountant or CPA, and that the beneficiary has been so certified or registered.

For the reasons discussed above, the AAO found that the AAO's previous decision must be affirmed.

Beyond the decision of the director, it is noted that the petition should also be denied because the petitioner failed to establish that the proffered position is actually that of an accountant or any other specialty occupation. The proposed duties and the business context in which they are to be performed are described in terms that are too generic and generalized to establish that the proffered position qualifies as a specialty occupation under any criterion of 8 C.F.R. § 214.2(h)(4)(iii)(D).

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. Accordingly, the appeal will be dismissed.

ORDER: The previous AAO decision of October 23, 2003 is affirmed. The petition is denied.