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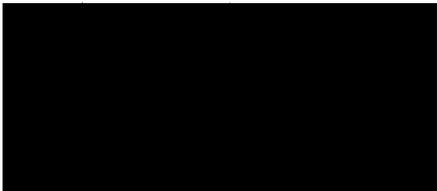
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FILE: WAC 98 075 52480 Office: CALIFORNIA SERVICE CENTER Date: JUL 23 2004

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 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 chain of eight healthcare facilities that provides board and care for the elderly. 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 (the Act), 8 U.S.C. § 1101 (a)(15)(H)(i)(b).

The director denied the petition on the basis that the evidence of record did not establish that the beneficiary is qualified to perform the duties of a specialty occupation.

On appeal, counsel submits a brief and additional documentary evidence to establish that the director's decision was erroneous.

The AAO has determined that the director was correct in deciding to deny the petition for insufficient evidence that the beneficiary is qualified to serve in a specialty occupation position. The AAO based this decision on review of the entire record in this proceeding, which consists of: (1) the petitioner's Form I-129 and supporting documentation; (2) the director's denial letter; and (3) the Form I-290B, counsel's brief, and the exhibits accompanying the brief.

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.

To qualify the beneficiary in this particular proceeding, the evidence must demonstrate that she meets the criterion at section 2. The evidence of record does not establish that the other three criteria are met.

Pursuant to 8 C.F.R. § 214.2(h)(4)(iii)(D), equating the beneficiary's education, specialized training, and/or experience 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.

Only sections 3 and 5 need be addressed. There is no evidence of record relevant to sections 1, 2, and 4.

With regard to section 3, counsel submits a revised evaluation from the Foundation for International Services, Inc. (FIS), which now takes into account the beneficiary's transcript from Aquinas University in Legazapi, Philippines, as well as the beneficiary's work experience.

The AAO accepts the education component of the FIS evaluation, which opined that the beneficiary's studies at Aquinas University are "equivalent to three years of university-level credit from an accredited college or university in the United States." However, CIS does not recognize credentials evaluation services as competent authorities in the area of the educational equivalent of work experience. Thus, section 3 limits its consideration to "[a]n evaluation of education" by credentials evaluations services. Accordingly, the AAO does not accept the FIS opinion on the educational equivalent of the beneficiary's work experience.

The AAO must then turn to 8 C.F.R. § 214.2(h)(4)(iii)(D)(5) and its rules for CIS evaluation of work 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. To meet this standard, the evidence must clearly demonstrate each of three qualifications, namely, that: (1) the alien's training and/or work experience included the theoretical and practical application of specialized knowledge required by the specialty occupation; (2) 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 (3) 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<sup>1</sup>;
- (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.

Each of the three qualifications shall be addressed separately.

First, the evidence 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. Even the revised employer letters which speak about accounting duties do so in general terms that do not illuminate the complexity of duties or the level of accounting knowledge that the beneficiary had to apply. As indicated in the treatment of bookkeeping clerks in the Department of Labor's *Occupational Outlook Handbook (Handbook)* – which the AAO recognizes as an authoritative source on the duties and educational requirements of a wide variety of occupations – full-charge bookkeepers “are called upon to do much of the work of accountants, as well as perform a wider variety of financial transactions, from payroll to billing.” The employer letters are not specific enough to convey that their accountant positions actually required the highly specialized knowledge of accounting principles that is acquired by a baccalaureate or higher degree in accounting.

Second, the information from former employers is insufficient to establish that the beneficiary's experience was gained while working with peers, supervisors, or subordinates who have a bachelor's degree or its equivalent in the specialty occupation.

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<sup>1</sup> *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).

Finally, there is no evidence relating to the type of professional recognition required by 8 C.F.R. § 214.2(h)(4)(iii)(D)(5)(i) to (v).

Beyond the decision of the director, the AAO also notes that the record before it does not contain a certified labor condition application (LCA). If the director were to determine that the petitioner actually failed to file a certified LCA in accordance with the regulations at 8 C.F.R. §§ 214.2(b)(4)(iii)(B)(I) and (h)(4)(i)(B)(I), that would be an additional basis for denying 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.