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U.S. Citizenship and Immigration Services

[redacted]

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FILE: LIN 03 120 53038 Office: NEBRASKA SERVICE CENTER Date: MAY 06 2004

IN RE: Petitioner: [redacted]
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:

[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.

Mari Johnson

for 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 designs, manufactures, and sells automotive components. It seeks to employ the beneficiary as a manufacturing engineer. The petitioner, therefore, endeavors to classify the beneficiary as a nonimmigrant worker in a specialty occupation pursuant to section 101(a) 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 previously submitted evidence.

Section 214(i)(2) of the Immigration and Nationality Act (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 AAO reviewed the record in its entirely before issuing its decision.

The petitioner is seeking the beneficiary's services as a manufacturing engineer. The petitioner indicated in its February 21, 2003 letter that a candidate must possess a bachelor's of science degree, or its equivalent, in an engineering field and a strong background in powder metals.

The director found that the beneficiary was not qualified for the proffered position because the beneficiary's education, experience, and training were not equivalent to a baccalaureate degree in a specialty required by the occupation. On appeal, counsel states that the beneficiary is qualified for the position because two independent credentials evaluators consider the beneficiary's 22 years of experience in the powder metal industry the equivalent of a bachelor's degree in industrial or manufacturing engineering technology from an accredited U.S. college or university. Counsel asserts that the beneficiary's 22 years of experience in progressively responsible positions in the powder metal industry clearly meets the three for one rule for substituting experience for college-level training to reach a baccalaureate equivalency. Moreover, counsel also submits letters and an affidavit from Stackpole, the beneficiary's former employer of 22 years. This evidence, counsel claims, verifies that the beneficiary's progressively responsible experience was gained under the direction of senior operators and supervisory and management personnel. Counsel avers that Dr. Foutz qualifies as an official who has authority to grant college-level credit in engineering and technology programs, and that the credentials evaluation provided by Dr. Del Rey, Director of Educational Assessment, Inc., verifies this.

Upon review of the record, the petitioner has failed to establish that the beneficiary is qualified to perform an occupation that requires a bachelor's of science degree, or its equivalent, in an engineering field. The beneficiary does not hold a baccalaureate degree from an accredited U.S. college or university in any field of study, or a foreign degree determined to be equivalent to a baccalaureate degree from a U.S. college or university in any field of study. The petitioner, therefore, 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 an evaluation from the Foundation for International Services, a company that specializes in evaluating academic credentials. The evaluator concluded that the beneficiary possesses the equivalent of a bachelor's degree in industrial engineering technology from an accredited U.S. college or university. However, the evaluation is 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 evaluation carries no weight in these proceedings. *Matter of Sea, Inc.*, 19 I&N Dec. 817 (Comm. 1988).

The record contains an evaluation of the beneficiary's education from a second credentials evaluation service – Educational Assessment, Inc. The evaluator found that the beneficiary's 22 years of experience are the equivalent of a U.S. baccalaureate degree in manufacturing engineering technology from an accredited university in the United States. The evaluator also states:

> This statement is supported by the attached evaluation report prepared by a full professor of engineering at an accredited U.S. university. As a full professor, [u]ndergraduate [c]oordinator, and member of the [g]raduate [f]aculty, Dr. Foutz is authorized to evaluate prior education and experience for college credit.

The record also contains a letter fro[redacted] Professor and Coordinator of Undergraduate Engineering Programs at The University of Georgia. This letter evaluates the beneficiary's training and experience and states that the beneficiary has gained knowledge that is the equivalent of a Bachelor of Science degree in manufacturing engineering technology from an accredited U.S. university. The letter, furthermore, states that Dr. Foutz has "evaluated the transcripts and experience of students who have studied in areas similar to [m]anufacturing [e]ngineering [t]echnology."

Upon careful review of the record, the AAO finds that the evaluations by Educational Assessment, Inc. and Dr. Foutz are without value. As discussed, Educational Assessment, Inc. - an education evaluation service - can evaluate education only. 8 C.F.R. § 214.2(h)(4)(iii)(D)(*3*). In addition, no independent evidence is provided by The University of Georgia to confirm that [redacted] has authority to grant college-level credit for training and/or experience in the proffered position's specialty – manufacturing engineering. Next, with regards to Dr. Foutz's evaluation, in order to meet the criterion at 8 C.F.R. § 214.2(h)(4)(iii)(D)(*1*), the evaluation must be submitted on university letterhead to show that the evaluator is speaking on behalf of the university. Because Dr. Foutz's evaluation was not done on behalf of the university, it cannot meet the criterion at 8 C.F.R. § 214.2(h)(4)(iii)(D)(*1*).

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 occupation[1];

(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 also contains: (1) the beneficiary's secondary school graduation diploma; (2) module examination certifications dated April 1, 2001 and March 23, 2001; (3) certificates from the Industrial Accident Prevention Association, GRT, MPIF, Technical Loadarm Ltd., and SCC; and (4) an affidavit and two letters verifying employment from Stackpole.

The AAO now considers the beneficiary's prior training and work experience to determine whether it included the theoretical and practical application of specialized knowledge required by the specialty occupation. Most of the certificates do not indicate the length of training; those with this information mention it is for one to two days only. The affidavit and letters from Stackpole suggest that during the beneficiary's 22 years of employment the beneficiary may have acquired theoretical and practical application of specialized knowledge required by the specialty occupation. For example, the affidavit states that the beneficiary acquired furnace set up and operation knowledge in endothermic and endo/nitrogen sintering; controlled a product's production; and designed and implemented an inline part length verification process of coining presses, a walking beam furnace boat straightening press, and nitrogen safety systems on sintering and steam furnaces. Nonetheless, neither the affidavit nor the letters attest 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. 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, which in this case is manufacturing engineering.

Finally, there is insufficient evidence that the beneficiary has recognition of expertise in the field of manufacturing engineering. The AAO notes that Dr. Foutz's resume illustrates that he specializes in biological and agricultural engineering. As such, he cannot be considered a "recognized authority" in the beneficiary's field of manufacturing engineering.
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.

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[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).

Beyond the decision of the director, the AAO does not find that the proffered position is a specialty occupation because the petitioner has not clearly defined the beneficiary's proposed duties. However, as the AAO is dismissing the appeal on another ground, it will not examine this issue 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. The petition is denied.