U.S. Department of Homeland Security
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Washington, DC 20529

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U.S. Citizenship and Immigration Services

PUBLIC COPY

[redacted]

FILE: WAC 03 202 50741 Office: CALIFORNIA SERVICE CENTER Date:

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.

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 AAO will dismiss the appeal.

The petitioner sells new and used vehicles. It seeks to employ the beneficiary as vice-president of sales and marketing. 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: (1) an educational evaluation from [redacted] Dean of Studies at Saint Vincent College, Pennsylvania; (2) a letter from [redacted] Registrar, at Saint Vincent College; and (3) several pages from Saint Vincent College's 2001-2003 Bulletin. Counsel also submits an affidavit from the beneficiary, and several letters. Counsel requests that the AAO approve the petition based upon the attached documentation.

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 vice-president of sales and marketing. The petitioner indicated that a candidate must possess a bachelor's degree or its equivalent in business administration, management, or marketing.

The petitioner did not submit sufficient evidence with the petition establishing the beneficiary's qualifications to perform the duties of a specialty occupation. As required by 8 C.F.R. § 103.2(b)(8), the director requested the following additional evidence on July 2, 2003: (1) the H classification supplement to Form I-129; (2) a job description; (3) a description of the position's requirements; (4) the position announcement; (5) an evaluation of the beneficiary's education and/or experience from an official who has authority to grant college-level credit for training and/or experience in the specialty of sales and marketing, evidence from the institution (on the institution's letterhead) that this official is authorized to grant college-level credit on behalf of their institution, and evidence that the institution is accredited and has a program for granting college-level credit based on training and/or experience; (6) letters verifying the beneficiary's employment; (7) the petitioner's U.S. Corporation Income Tax Return for the last three years; and (8) a list of employees with their names and job titles, their pay stubs, and the quarterly payroll tax returns.

In response, the petitioner submitted the H classification supplement to Form I-129, a job description, evidence of the position's requirements, a position announcement, an educational evaluation from [redacted] employment verification letters, the petitioner's last three U.S. Corporation Income Tax Returns, a list of employees and their pay stubs, and the most recent quarterly payroll tax return. The director subsequently denied the petition noting that, although specifically requested, the petitioner did not submit an evaluation of the beneficiary's education and/or experience from an official who has authority to grant college-level credit for training and/or experience in the specialty of sales and marketing, evidence from the institution (on the institution's letterhead) that this official is authorized to grant college-level credit on behalf of their institution, and evidence that the institution is accredited and has a program for granting college-level credit based on training and/or experience. The director found the submitted evaluation was from a consultant from a private educational service. According to the director, no evidence established that Wilfrid Laurier University employed the evaluator; that the evaluator is authorized to grant college-level credit for training and/or experience in the field of business marketing; and that the institution is accredited. The director therefore determined that the beneficiary was ineligible for classification as an alien employed in a specialty occupation.

On appeal, counsel submits the following documentation, which was previously requested by the director: (1) an educational evaluation from [redacted] Dean of Studies at Saint Vincent College, Pennsyslvania; (2) a letter from [redacted] Registrar, at Saint Vincent College; and (3) several pages from Saint Vincent College's 2001-2003 Bulletin. Counsel also submits an affidavit from the beneficiary, and several letters. Counsel requests that the AAO approve the petition based upon the additional evidence.

On review, the AAO agrees with the decision of the director. The record does not establish that the beneficiary is qualified to perform duties in a specialty occupation. The failure to submit requested evidence that precludes a material line of inquiry shall be grounds for denying the petition. 8 C.F.R. § 103.2(b)(14). The purpose of the request for evidence is to elicit further information that clarifies whether eligibility for the benefit sought has been established, as of the time the petition is filed. *See* 8 C.F.R. §§ 103.2(b)(8) and (12). As in the present matter, where a petitioner has been put on notice of a deficiency in the evidence and has been given an opportunity to respond to that deficiency, the AAO will not accept evidence offered for the first time on appeal. *See Matter of Soriano*, 19 I&N Dec. 764 (BIA 1988); *Matter of Obaigbena*, 19 I&N Dec. 533 (BIA 1988). If the petitioner had wanted the submitted evidence to be considered, it should have submitted the documents in response to the director's request for evidence. *Id.* Under the circumstances, the AAO need not and does not consider the sufficiency of the evidence submitted on appeal. Consequently, the appeal will be dismissed.

Should the petitioner wish CIS to consider the submitted evidence, the petitioner may file a new visa petition on the beneficiary's behalf that is supported by competent evidence that the beneficiary is entitled to the status sought under the immigration laws.

In visa petition proceedings, the burden of proving eligibility for the benefit sought remains entirely with the petitioner. Section 291 of the Act, 8 U.S.C. 1361. Here, that burden has not been met. Accordingly, the director's decision will be affirmed and the petition will be denied.

ORDER: The appeal is dismissed.