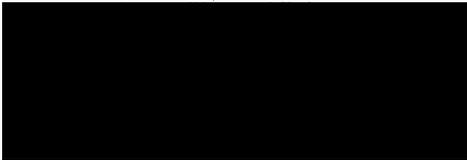




U.S. Citizenship
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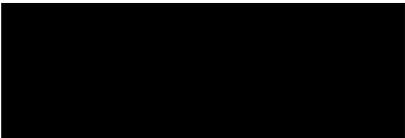


FILE: WAC 03 112 55267 Office: CALIFORNIA SERVICE CENTER Date: OCT 22 2004

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

identifying data deleted to
prevent clearly unwarranted
invasion of personal privacy

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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 helicopter service that seeks to employ the beneficiary as a director of business and development. 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 because the proffered position is not a specialty occupation, and the beneficiary is not qualified to perform the duties of a specialty occupation. Counsel submitted a timely Form I-290B on which he indicated that he would send a brief and/or other evidence to the AAO within thirty days. As of this date, however, the AAO has not received a brief or further documentation; thus, the record is complete.

On the Form I-290B, counsel fails to address the director's finding that the proffered position was not a specialty occupation. The AAO has reviewed the record and concurs with the director's determination that the evidence does not demonstrate that the position is a specialty occupation. This issue will not be analyzed further. However, since counsel challenges the director's interpretation of the regulations regarding the beneficiary's qualifications, the AAO will address this matter below.

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. The AAO reviewed the record in its entirety before issuing its decision.

The petitioner is seeking the beneficiary's services as a director of business and development. The petitioner indicated that it requires a baccalaureate degree or its equivalent in management for the proffered position. The petitioner submitted an evaluation of the beneficiary's education and work experience that indicated that the beneficiary holds the equivalent of a U.S. bachelor's degree in business administration.

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. Therefore, 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;
- (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 [CIS] 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.

Applying the regulatory standards at 8 C.F.R. § 214.2(h)(4)(iii)(D)(5), 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 Form I-290B, counsel wrote that the educational equivalency from Globe Education Group, Inc., rendered by Professor ██████████ ██████████ of Florida International University meets the regulatory requirements of § 214.2(h)(4)(iii)(D)(1) and demonstrates that the beneficiary holds the equivalent of a bachelor's degree in business administration.

The AAO notes that there is no independent evidence in the record that supports Professor ██████████'s assertion that he has the authority to grant college-level credit for training and/or experience in the field of business administration. Moreover, his opinion is based, in part, on two employment letters included in the record that explain the beneficiary's previous experience in relatively generic terms. These two letters do not show that the beneficiary's work experience included the theoretical and practical application of specialized knowledge required by the specialty occupation or that the beneficiary was working with peers, supervisors, or subordinates who have a degree or its equivalent in business administration. Due to the lack of specificity in the documents upon which Professor ██████████ based his opinion, the AAO finds this opinion of questionable merit. Where an evaluation is not in accord with previous equivalencies or is in any way questionable, it may be discounted or given less weight. *Matter of Sea, Inc.*, 19 I&N Dec. 817 (Comm. 1988). The evidence, thus, does not meet the regulatory requirements of § 214.2(h)(4)(iii)(D)(1).

Furthermore, the AAO concurs with the director's analysis of the evidence pursuant to the regulatory standards at 8 C.F.R. § 214.2(h)(4)(iii)(D)(5). When CIS determines an alien's qualifications pursuant to this provision, 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

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).

- (v) Achievements which a recognized authority has determined to be significant contributions to the field of the specialty occupation.

While Professor [REDACTED] evaluation on behalf of Globe Education Group, Inc. is unacceptable as a determination of the equivalency of the beneficiary's academic studies and work experience, it is allowable as an evaluation of the beneficiary's formal studies only. The evaluation indicates that the beneficiary's British studies amount to the equivalent of one year of undergraduate studies at a U.S. college. Turning to the beneficiary's prior work experience, as noted above, the two employers' letters on the record fail to provide sufficient detail. The letters do not communicate whether the beneficiary's previous positions included the theoretical and practical application of specialized knowledge required by the specialty, or that the beneficiary's work experience was gained while working with peers, supervisors, or subordinates who have a degree or its equivalent in the specialty occupation. Finally, there is insufficient evidence that the beneficiary has recognition of expertise. The AAO notes that Professor [REDACTED] cannot be considered a "recognized authority" because he 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. As noted, the petitioner also failed to show that the proffered position is a specialty occupation. Accordingly, the AAO shall not disturb the director's denial of 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.