U.S. Department of Homeland Security
20 Mass Ave., N.W., Rm. A3042,
Washington, DC 20529

U.S. Citizenship and Immigration Services

FILE: EAC 03 245 55476 Office: VERMONT SERVICE CENTER Date:

IN RE: Petitioner:
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:

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 sign manufacturing and repair company that seeks to employ the beneficiary as a mechanical engineer. 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 petitioner had not submitted a requested educational equivalency document or other documents to establish that the beneficiary is qualified to perform the duties of a specialty occupation. On appeal, the petitioner states that the educational evaluation company was unable to finish the evaluation of the beneficiary's university studies during the period of time allotted in the request for further evidence. Counsel submits new documentation.

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.

In addition, 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.

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 entirety before issuing its decision.

The petitioner is seeking the beneficiary's services as a mechanical engineer. The petitioner indicated that it wished to hire the beneficiary because he possessed a bachelor's degree in mechanical engineering, and had five years of hands-on experience in the area of mechanical design and supervision of neon advertisement billboards and other types of products such as neon, plastic, steel, bronze and leather covers. In addition, the beneficiary had worked as a designer and supervisor of propagation and graphics in Iran, and presented a proposal for opening a new independent department of graphics and propagation within the Iranian government that had been approved. The petitioner required a minimum of a bachelor's degree for entry into the position.

The director found that the petitioner had not submitted evidence previously requested by the director. Specifically the director determined that the petitioner had not submitted an educational equivalency document that established that the beneficiary's university studies in Iran are the equivalent of a baccalaureate degree in a specific specialty from an accredited U.S. university. The director also noted that the petitioner had not provided "a copy of the type of degree awarded to the beneficiary." Pursuant to 8 C.F.R. § 103.2(b)(8) that relates to requests for further evidence, the director determined that the petitioner had not submitted the requested additional evidence within the 12 weeks provided, and denied the petition.

On appeal, the petitioner states that it asked Engineering Credentials Evaluation International (ECEI), a service of the Accreditation Board of Engineering and Technology, Inc. (ABET), Baltimore, Maryland, to evaluate the beneficiary's academic credentials. The petitioner further states that on January 16, 2004, ABET informed the petitioner that it was unable to complete the educational equivalency document. The petitioner then states that the circumstances for the delay in submitting the requested document to CIS was beyond the control of the petitioner. The petitioner also notes that, although the director stated in his decision that the record did not have a copy of the type of degree awarded to the beneficiary, all this documentation was provided in the initial petition. The petitioner states that it sent the original and a notarized copy of the degree awarded to the beneficiary with a translation in English. The petitioner resubmits a copy of a document in Arabic with an English translation that states the beneficiary completed a bachelor's degree in mechanical engineering, with a major in heat and fluids on May 15, 1999. The certificate is from the Islamic Azad University, Tehran Central Branch. The petitioner also resubmits an English translation of the beneficiary's coursework. Finally, the petitioner submits the ECEI letter that states the group has not been able to complete an educational equivalency document for the petitioner.

Upon review of the record, the petitioner has failed to establish that the beneficiary is qualified to perform an occupation that requires a baccalaureate degree in mechanical engineering. First, it should be noted that the record is not clear with regard to the director's reference to "a copy of the type of degree" awarded to the beneficiary. The petitioner appears to have submitted a copy of the certification of the type of degree, with a certified translation, that the beneficiary received from the Islamic Azad University. If the director was requesting original documents, such as a diploma, he did not indicate this in either his request for further evidence or in the denial of the petition. With regard to the petitioner's assertion on appeal, that it submitted an original certification, while the translation of the certification document appears to be an original, the university certificate itself appears to be a copy. The petitioner also provides no clarification as to whether the certification of the degree is considered to be the equivalent of the actual university diploma.

With regard to the director's request for an educational equivalency document, his request for an educational equivalency document is quite clear. It is equally clear, that the petitioner was unable to submit this documentation to respond to the director's request in a timely manner. As correctly noted by the director, and pursuant 8 C.F.R. § 103.2(b)(8), if evidence that is deemed material to the adjudication is not submitted within the allotted period of twelve weeks, additional time may not be granted. Thus, the director's denial of additional time and his examination of the instant petition based on the evidence already in the record is correct.

Since the petitioner has not submitted an educational equivalency document to the record, the beneficiary cannot be found to 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*).

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 submitted documentation does not establish equivalence to a baccalaureate degree in mechanical engineering. While the certificate submitted by the petitioner states that the beneficiary earned a baccalaureate degree in mechanical engineering, the transcript of the beneficiary's university studies states that he earned a baccalaureate degree in mechanics, with a specialization in heat and fluids. The transcript of his coursework lists several electrical engineering courses such as Physics II- electricity and magnetism, basic electrical engineering, I and II, physics of electricity and magnetism, and engineering mathematics. Although the petitioner mentioned some training certificates for courses that the beneficiary had taken in Iran, no such documents are found in the record. Simply going on record without supporting documentary evidence is not sufficient for the purpose of meeting the burden of proof in these proceedings. *See Matter of Treasure Craft of California*, 14 I&N Dec. 190 (Reg. Comm. 1972). Without more persuasive evidence, the record is not clear that the beneficiary has the equivalent of a bachelor's degree in mechanical engineering from an accredited U.S. educational institution.

The AAO now turns to the beneficiary's prior work experience, and whether it included the theoretical and practical application of specialized knowledge required by the specialty. The record contains the following documentation:

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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).

A letter from [redacted] Research Department Manager, [redacted] Iran. This entity is described as a political, economic, social and scientific monthly. The writer certified that the beneficiary worked in the field of design, graphics, and propagation from the year 2000 to November 2002, and that the beneficiary's work had been quite satisfactory.

A letter from [redacted] which is described as a maker of neon billboards, plastics and steel covers. This letter states that the beneficiary worked at the company as a designer and supervisor of neon advertisement billboards and other types of products from October 4, 2000 to June 27, 2002. This work was done on a part-time basis.

A second letter from [redacted] Economic Research Department Manager, Office of Propagation and Publications [redacted] The letter writer stated that the beneficiary was employed on a part-time basis as designer and supervisor of propagation and graphics as well as industrial design at the company from June 23, 2000 until May 15, 2002.

A letter from Faezeh Bagherpour, Executive Manager, Office of Propagation and Publications, Hamed Graphics. This letter stated that the beneficiary's proposals for opening a new independent department of graphics and propagation were reviewed and approved. The letter writer invited the beneficiary to work as the manager of the graphics department.

All the letters from the former employers describe work involving graphic design within a department of propagation and within a company that produced neon billboards. While all the employers commend the beneficiary for his work, the record is not clear as to the relationship between his work experiences and the academic field of mechanical engineering. There is no description of specific work products, or the level of responsibility the beneficiary had, while working in Iran. Thus, the AAO cannot conclude that the beneficiary's past work experiences included the theoretical and practical application of a body of highly specialized knowledge, which, in this case, is mechanical engineering. Furthermore, none of the employers indicate 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 letter from Mr. Faezeh Bagherpour, without further clarification, is not persuasive enough to establish recognition of the beneficiary's expertise in the field of mechanical engineering.

Beyond the decision of the director, the record lacks sufficient information to establish the requirement of licensure of the beneficiary to perform the duties of the proffered position.

With regard to licensure for H classification, 8 C.F.R. § 214.2(h)(4)(v), states the following:

> (A) *General.* If an occupation requires a state or local license for an individual to fully perform the duties of the occupation, an alien (except an H-1C nurse) seeking H classification in that occupation must have that license prior to approval of the petition to be found qualified to enter the United States and immediately engage in employment in the occupation.
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> (B) *Temporary licensure.* If a temporary license is available and the alien is allowed to perform

> the duties of the occupation without a permanent license, the director shall examine the nature of the duties, the level at which the duties are performed, the degree of supervision received, and any limitations placed on the alien. If an analysis of the facts demonstrates that the alien under supervision is authorized to fully perform the duties of the occupation, H classification may be granted.
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> (C) *Duties without licensure.* In certain occupations which generally require licensure, a state may allow an individual to fully practice the occupation under the supervision of licensed senior or supervisory personnel in that occupation. In such cases, the director shall examine the nature of the duties and the level at which they are performed. If the facts demonstrate that the alien under supervision could fully perform the duties of the occupation, H classification may be granted.

The petitioner has stated that it wishes to employ the beneficiary as a mechanical engineer; however, the petitioner has not explained whether the state of Maryland requires the beneficiary to be licensed prior to performing the duties of the proffered position. Without further explanation and clarification, the evidence in the record is insufficient to resolve this licensure issue. The record does not reflect that the beneficiary is licensed.

Also 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 and their relationship to the requisite level of knowledge usually found in a baccalaureate degree in mechanical engineering. The petitioner is a sign manufacturer and repairer. Although it indicated that the beneficiary's duties would include planning and designing mechanical products and systems, and directing activities in the operation, application, installation and repair of systems, this limited information is not sufficient to establish that the petitioner could meet any of the four criteria outlined in 8 C.F.R. § 214.2(h)(4)(iii)(A). For these additional reasons, the petition may not be approved.

ORDER: The appeal is dismissed. The petition is denied.