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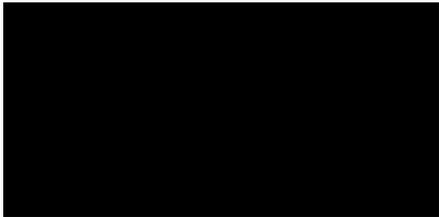


U.S. Citizenship
and Immigration
Services

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APR 23 2005



FILE: LIN 04 065 52086 Office: NEBRASKA SERVICE CENTER Date:

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

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 appeal will be dismissed. The petition will be denied.

The petitioner provides information technology consulting services. It seeks to employ the beneficiary as a systems analyst. 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 proffered position. On appeal, counsel states that the beneficiary is qualified for the proffered position and submits additional evidence.

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 systems analyst. Counsel's January 5, 2004 letter indicated that a candidate must possess a baccalaureate degree in computer science, business, engineering, math, or a related field plus two years of experience in Oracle applications or databases, or both, or i2 applications.

The director determined that the evidence in the record contained unexplained inconsistencies regarding the beneficiary's resume and educational background. The director referred to the case, *Matter of Ling*, 13 I&N Dec. 35 (Ref. Comm. 1968), to state that a bachelor's degree in business administration alone, which is what the beneficiary allegedly possesses, is insufficient to qualify the holder for a specialty occupation.

On appeal, counsel contends that the beneficiary is qualified for the proffered position.

Upon review of the record, the petitioner has not established that the beneficiary is qualified to perform the duties of the proffered position.

The record reflects two credentials evaluations from [REDACTED] Morningside Evaluations and Consulting (one is dated December 25, 2003, the other March 1, 2004); a certificate from the Caritas Centre for Further and Adult Education – Caine Road Day School; letters from IT Convergence offices in San Francisco and Hong Kong; transcript of studies from the Open University of Hong Kong; and various certificates and letters.

The beneficiary does not hold a baccalaureate degree from an accredited U.S. college or university in any field of study. Counsel on appeal asserts that the first page of the December 25, 2003 evaluation from Morningside Evaluations and Consulting indicates that the beneficiary "earned the equivalent of a bachelor's degree" based on her coursework at the Centre for Further and Adult Education.

For various reasons, this assertion is not persuasive. The evaluator's statement concerning the beneficiary's coursework does not state that the beneficiary possesses the equivalent to a bachelor's degree. The evaluator stated:

The courses completed and the number of credit hours earned indicate that [the beneficiary] satisfied requirements substantially similar to those required toward the completion of academic studies leading to a university degree from an accredited institution of higher education in the United States.

Importantly, the certificate from the Caritas Centre for Further and Adult Education – Caine Road Day School clearly indicates that the beneficiary completed a "two year full-time course of study in Business Studies during the academic year 1985 to 1987." The beneficiary completed 11 courses: auditing, business statistics, commercial law, computing studies, costing, economics, English for business communication, higher accounting, Mandarin, practical Chinese, and social ethics. Based on this evidence, the beneficiary's coursework is not equivalent to the completion of a four-year U.S. baccalaureate degree.

The AAO notes that the evaluator asserts that the beneficiary's "academic and experiential qualifications are comparable to university-level training in Business Administration and Management Information Systems." However, 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 second evaluation from [REDACTED] dated March 1, 2004 and submitted on appeal, states that the beneficiary was awarded a bachelor of business administration degree from the Open University of Hong Kong in 2003. The evaluator makes the same non-conclusive statement regarding the document from the university:

The courses completed and the number of credit hours earned indicate that [the beneficiary] satisfied requirements substantially similar to those required toward the completion of academic studies leading to a university degree from an accredited institution of higher education in the United States.

Thus, the evaluator does not explicitly state that the beneficiary possesses the equivalent to a bachelor's degree. In this evaluation, the evaluator once again states that the beneficiary's "academic and experiential qualifications are comparable to university-level training in Business Administration and Management Information Systems." As already discussed, 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). As such, this evaluation also carries no weight in these proceedings. *Matter of Sea, Inc.*, 19 I&N Dec. 817 (Comm. 1988).

The petitioner must therefore 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.

We have already discussed in this decision why the evaluation from Morningside Evaluations and Consulting Services does not satisfy 8 C.F.R. § 214.2(h)(4)(iii)(D)(3). No evidence in the record establishes the regulation at 8 C.F.R. §§ 214.2(h)(4)(iii)(D)(1), (2), and (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 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
- (v) Achievements which a recognized authority has determined to be significant contributions to the field of the specialty occupation.

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).

Many of the beneficiary's certificates in Excel v5 (WIN) – advanced, cash management I and II programme, accounting, business statistics, business arithmetic structure of commerce, commerce, and commercial studies are relevant to a management information systems (MIS) degree. The typewriting English certificates are not pertinent, however. The beneficiary's studies at Caritas Centre for Further & Adult Education are also relevant to the responsibilities of a systems analyst, except for the Mandarin, social ethics, and typewriting courses. The coursework completed at the Open University of Hong Kong is relevant to an MIS degree; however, no evidence in the record properly compares this degree to a U.S. bachelor's degree. We have already discussed the deficiency with [REDACTED] valuation. Viewed in totality, the evidence is insufficient to establish that the beneficiary's training and education equates to a U.S. baccalaureate degree in MIS.

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 beneficiary's experience as an accounts clerk, and her position with Xerox as a customer administration clerk and an accounting officer did not include the theoretical and practical application of specialized knowledge required by the specialty. The February 2004 letter from IT Convergence, Singapore, states that the beneficiary has been employed there to work on Oracle applications since December 2003, and the November 1, 2000 letter from Xerox states that the beneficiary served as a systems project coordinator for 1 year and six months. This would include the theoretical and practical application of specialized knowledge required by the specialty. Nonetheless, neither employer indicates 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. Consequently, the beneficiary's work experience is insufficient to establish the equivalency to a baccalaureate degree in MIS. The AAO notes that there is insufficient evidence to show that the beneficiary has recognition of expertise.

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.

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.