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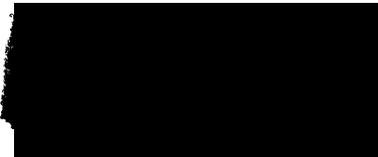
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FILE: EAC 02 118 50462 Office: VERMONT SERVICE CENTER Date: **AUG 10 2005**

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

Robert P. Wiemann, Director
Administrative Appeals Office

DISCUSSION: The Director of the Vermont Service Center denied the nonimmigrant visa petition and the Administrative Appeals Office (AAO) dismissed a subsequent appeal. The matter is again before the AAO on motion to reopen or reconsider. The motion will be granted. The previous decision shall be affirmed. The petition will be denied.

The petitioner is an insurance company that seeks to employ the beneficiary as an accounting manager. 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 on the basis that the beneficiary is not qualified to perform the duties of a specialty occupation.

On motion to reopen or reconsider, counsel relates his disagreement with the director's educational equivalency calculation. Counsel states that the AAO's decision, instead of discussing the grounds of the petition's denial, raises new issues about the credentials of the evaluators and Morningside Evaluations Consulting. Referring to letters from Queens College, which discuss [REDACTED]'s authority to grant college-level credit, counsel asserts that two of the letters confirm [REDACTED]'s authority to evaluate transfer credits in mathematics and applied mathematics based on foreign students academic and/or professional experience in mathematics, applied mathematics, and related fields such as economics, computer science, management information systems, engineering, and other sciences. Counsel states that Dr. [REDACTED]'s evaluation of the beneficiary's work experience was based on a certificate of experience from the beneficiary's former employer, and that the employer attested to the beneficiary's employment as an accounting manager for more than four years. Counsel insists that even without a comprehensive description of the beneficiary's duties, common sense dictates what services an accounting manager performs. Counsel states that accounting managers are universally known to perform certain services such as managing an accounting department and directing financial activities. Counsel asserts that had the director requested a comprehensive description of the beneficiary's past employment, this would have been provided. On appeal, counsel furnishes additional evidence regarding the beneficiary's prior employment and a copy of the beneficiary's Graduate Management Admission Test (GMAT) scores. Counsel claims that the AAO is incorrect in stating that the regulation at 8 C.F.R. § 214.2(h)(4)(iii)(D)(3) indicates that a credentials evaluation service is limited to evaluating only educational credentials, not an alien's work experience or training. Referring to letters from Queens College, counsel maintains that Dr. Itzkowitz is an acknowledged expert in the field. Counsel explains why he disagrees with the AAO statement that the proposed position is not a specialty occupation.

The AAO grants the motion to reopen or reconsider.

Counsel asserts that in the April 5, 2004 decision the AAO erroneously raised new issues about the credentials of the evaluators and Morningside Evaluations Consulting. The AAO should have given the petitioner proper notice of and a time to respond to the adverse information about Dr. [REDACTED] in the November 7, 2001 letter from the assistant vice president and special counsel to the president of Queens College. Nevertheless, counsel on motion has submitted documentary evidence which rebuts the November 7, 2001 letter. The AAO's decision did not discuss [REDACTED] credentials.

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 evidence of record does not establish the first three criteria at 8 C.F.R. § 214.2(h)(4)(iii)(C). The beneficiary does not hold a U.S. baccalaureate or higher degree required by the specialty occupation. The educational evaluations contained in the record indicate that the beneficiary holds a foreign degree determined to be equivalent to a U.S. baccalaureate degree in political science. As this degree is not appropriate for the proposed position - accounting manager - the AAO will discuss the fourth criterion at 8 C.F.R. § 214.2(h)(4)(iii)(C).

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 criterion at 8 C.F.R. § 214.2(h)(4)(iii)(D)(3) states that a beneficiary's credentials can be equated to a U.S. baccalaureate or higher degree based on "an evaluation of education by a reliable credentials evaluation service which specializes in evaluating foreign educational credentials." The AAO interprets this to mean that a credentials evaluation service evaluates whether a beneficiary's *foreign educational credentials* are equivalent to a U.S. baccalaureate or higher degree. The AAO does not interpret the evaluation of foreign educational credentials to include an evaluation of work experience.

Counsel's statement that the beneficiary qualifies for the proposed position based on educational evaluations from Dr. [REDACTED] is not persuasive. Pursuant to 8 C.F.R. § 214.2(h)(4)(iii)(D)(1), the beneficiary's credentials can be equated to a U.S. baccalaureate or higher degree based on 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. The letters in the record from Queens College relate to Dr. [REDACTED] evaluation. In the July 31, 2002 letter, the Assistant Vice President and Special Counsel to the President of Queens College states that:

The College's International Student Services Office (ISSO) evaluates foreign credentials for the purposes of admission and transfer of credits. . . . Transfer credits may be accepted from non-accredited colleges and non-traditional sources as well as from accredited foreign colleges. Once the number of transfer credits is established, the College's Office of Admissions is notified of the number of credits to be transferred, and the student is instructed to contact the appropriate academic department at the College to determine whether or not the transferred credits will be counted as "equivalents" of College courses within the specific academic disciplines for the purpose of satisfying major, distribution, and other requirements.

Each Department designates a specific faculty member to serve as the evaluator for that Department. The Chairperson of the Department of Mathematics, Professor [REDACTED], has stated that Dr. [REDACTED] currently serves as evaluator for the Department of Mathematics. In that capacity, Professor Itzkowitz determines whether any

transfer credits allowed by the ISSO may be applied as “equivalents” to College courses within the subject matter areas relevant to the requirements of the Mathematics Department.

The June 18, 2002 letter from [REDACTED] Chairman and Professor of the Department of Mathematics, states in part:

[REDACTED] is authorized to evaluate transfer credits in [m]athematics and [a]ppplied [m]athematics based on foreign students’ academic and/or professional experience in [m]athematics, [a]ppplied [m]athematics, and related fields such as [e]conomics, [c]omputer [s]cience, [m]anagement [i]nformation [s]ystems, [e]ngineering, and other [s]ciences.

Mr. Goldberg’s letter also states:

The process through which [REDACTED] evaluates whether the college should grant transfer credit is based upon professional experience in related fields and includes, but is not limited to, a review of the student’s prior work; a determination of the relevance of the work to the courses offered in our [d]epartment; and the administration of exemption examinations in specific areas.

The above excerpts from the Queens College letters describe [REDACTED] authority within the Department of Mathematics; but no evidence in the record suggests that the academic discipline of business administration is within the Department of Mathematics. Thus, no evidence of record shows that his authority to grant college-level credit within the Department of Mathematics extends to the field of business administration. Going on record without supporting documentary evidence is not sufficient for purposes of meeting the burden of proof in these proceedings. *Matter of Soffici*, 22 I&N Dec. 158, 165 (Comm. 1998) (citing *Matter of Treasure Craft of California*, 14 I&N Dec. 190 (Reg. Comm. 1972)). Furthermore, Dr. [REDACTED]’s educational evaluation is not on Queens College letterhead, but is placed on Morningside Evaluations and Consulting letterhead. Although the Queens College letters discuss [REDACTED] authority at the college, placement of the educational evaluation on Morningside Evaluations and Consulting’s letterhead implies that [REDACTED] performed the evaluation as a representative of the credentials evaluation service, and not as an official with Queens College. For these reasons, [REDACTED]’s educational evaluation fails to satisfy 8 C.F.R. § 214.2(h)(4)(iii)(D)(I), which allows for equating a beneficiary’s credentials to a U.S. baccalaureate degree based on 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.

[REDACTED] educational evaluation, dated July 22, 2002, states that based on the beneficiary’s education, experience, and training, the beneficiary has the educational equivalent to a U.S. bachelor’s degree in business administration. A letter from the chairperson of the Division of Business & Accounting at Mercy College states that the Division of Business and Accounting at Mercy College has programs which award credit based on professional experience; and that [REDACTED] evaluates such credentials and determines whether the college is to award credit based on the student’s professional experience. However, this evidence is not

persuasive. Dr. [REDACTED] evaluation of the beneficiary's work experience is based on the beneficiary's assertions and a certificate of employment from the Korean-American Business Institute, dated December 27, 2001, that describes the beneficiary's department, job title, and dates of employment, but noticeably, does not describe any of the beneficiary's job duties. Consequently, Dr. [REDACTED] based his conclusions about the beneficiary's work experience on the beneficiary's statements and the tersely worded employment certification from the Korean-American Business Institute. No other independent documentary evidence corroborates the beneficiary's assertions. Simply going on record without supporting documentary evidence is not sufficient for the purpose of meeting the burden of proof in these proceedings. *Matter of Soffici*, 22 I&N Dec. 158, 165 (Comm. 1998) (citing *Matter of Treasure Craft of California*, 14 I&N Dec. 190 (Reg. Comm. 1972)). For this reason, Dr. Jelen's educational evaluation is not persuasive in establishing the beneficiary's qualifications for the proposed position.

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.

Upon a review of the record, the beneficiary's training and work experience are insufficient to establish the equivalent of a bachelor's degree in a field that relates to the proposed position.

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).

The educational evaluation from Dr. [REDACTED] states:

[T]he beneficiary satisfied requirements substantially similar to those required toward the completion of academic studies leading to a bachelor's degree from an accredited institution of higher learning in the United States.

On appeal, counsel submits a letter, dated April 26, 2004, from the Korean-American Business Institute. This letter elaborates on the beneficiary's duties. It states that the beneficiary's duties included:

[E]stablishing and recommending economic objectives and policies; directing financial planning, procurement and investment of funds; managing the accounting department; supervising the financial activities; and preparing accounting related reports.

The chairman of the Korean-American Business Institute stated that the organization is a non-profit with 57 employees and an annual budget of \$1.8 million. The chairman also stated that he is an alumnus of Harvard Business School and personally provided the beneficiary with accounting/management education sessions during her training, which was primarily based on books written by the chairman.

The job duties delineated in the April 26, 2004 letter are vague and unclear. The beneficiary established and recommended "economic objectives and policies"; but the chairman does not give any detail about the objectives and policies that had been recommended by the beneficiary. The beneficiary directed "financial planning, procurement and investment of funds"; but again, the chairman does not elaborate on what this entailed. The chairman does not elaborate on the duties of "managing the accounting department" and "supervising the financial activities." Nor does the chairman give forth a description of the "accounting related reports" which the beneficiary prepared while employed with the Korean-American Business Institute. This abstract manner in which the chairman describes the beneficiary's duties fails to establish that the beneficiary's training/work experience included the theoretical and practical application of specialized knowledge required by the specialty occupation.

The record reflects that the beneficiary has recognition of expertise in business administration from Dr. Jelen. Nevertheless, the AAO's conclusion, from the various evidences to which it has referred, is that the beneficiary's training and work experience are not equivalent to a baccalaureate degree in a specific specialty which would be required for the proposed position, which is in the accounting field.

The AAO notes that the beneficiary's GMAT scores are irrelevant in establishing whether the beneficiary's training and/or work experience included the theoretical and practical application of specialized knowledge required by the specialty occupation.

For these reasons, the petitioner fails to establish the beneficiary's qualifications pursuant to 8 C.F.R. § 214.2(h)(4)(iii)(D)(5).

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 on this ground.

Beyond the decision of the director, the proposed position fails to qualify as a specialty occupation. For this additional reason, the petition may not be approved.

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.