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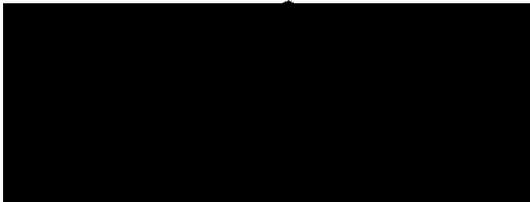
AUG 17 2005

FILE: LIN 04 079 52259 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, 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 is a publisher and distributor of a Korean-language newsmagazine. In order to employ the beneficiary as a graphic designer, 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 two independent grounds, namely, that the petitioner had failed to establish that (1) the proffered position meets the definition of a specialty occupation at 8 C.F.R. § 214.2(h)(4)(iii)(A), and (2) the beneficiary is qualified to serve in a specialty occupation in accordance with 8 C.F.R. § 214.2(h)(4)(iii)(C).

The AAO agrees with counsel that, on the facts of this particular case, the petitioner has established that the proffered position is a specialty occupation. Accordingly, the AAO withdraws the director's contrary finding and enters a finding that the proffered position is a specialty occupation. Counsel is also correct in asserting that CIS regulations do not require a petitioner to show that its beneficiary has a substantial amount of academic coursework in order to demonstrate education, training, and/or experience sufficient to qualify the beneficiary to perform services in a specialty occupation. However, as discussed below, the AAO will dismiss the appeal on the basis that the petitioner has not established that the beneficiary is qualified to serve in a specialty occupation position.

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:

- (A) full state licensure to practice in the occupation, if such licensure is required to practice in the occupation,
- (B) completion of the degree described in paragraph (1)(B) for the occupation, or
- (C) (i) experience in the specialty equivalent to the completion of such degree, and
(ii) recognition of expertise in the specialty through progressively responsible positions relating to the specialty.

The degree referenced by section 214(i)(1)(B) of the Act means one in a specific specialty that is characterized by a body of highly specialized knowledge that must be theoretically and practically applied in performing the duties of the proffered position.

In implementing section 214(i)(2) of the Act, 8 U.S.C. § 1184(i)(2), the regulation at 8 C.F.R. § 214.2(h)(4)(iii)(C) states that an alien must meet one of the following criteria in order to qualify to perform services in a specialty occupation:

- (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.

Only criterion 4 will be discussed. The other criteria are not relevant, as the beneficiary does not hold a U.S. baccalaureate or higher degree, a foreign degree that is the equivalent of such a U.S. degree, or qualifying licensure or certification.

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 under 8 C.F.R. § 214.2(h)(4)(iii)(C)(4) would require 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;¹
- (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

¹ The petitioner should note that, in accordance with this provision, the AAO will accept a credentials evaluation service's evaluation of *education only*, not experience.

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

Only criteria 1 and 5 are relevant to this appeal, and the petitioner has satisfied neither.

With regard to criterion 1, counsel relies upon the two work experience evaluations in the record, both of which conclude that the beneficiary's work experience is the equivalent of a U.S. bachelor's degree in Graphic Design. One evaluation is provided by the person who is Chair of the MFA Computer Art Department and the Director of Computer Education at the School of Visual Arts (SVA) in New York. The other evaluation is presented by a professor of information services at the Department of Information Systems at Medgar Evers College (MEC) of the City University of New York. The AAO discounts both of these documents for the reasons discussed below.

The AAO will first discuss why the evidence of record does not establish that the SVA faculty member as an official who has authority to grant college-level credit for training and/or experience in the pertinent specialty, as required by 8 C.F.R. § 214.2(h)(4)(iii)(D)(1).

Citizenship and Immigration Services (CIS) will not accept a faculty member's opinion as to the college-credit equivalence of a particular person's work experience or training, unless authoritative, independent evidence from the official's college or university, such as a letter from the appropriate dean or provost, establishes *both* that the college or university has a program for granting college-level credit in the pertinent specialty *and* that the official is authorized to grant such credit for that institution. The SVA faculty member's credit granting authority was endorsed in a letter from SVA's Executive Director of Student Services (EDSS). The AAO does not consider this office to represent the official position of a college or university on the credit granting issue.

The AAO also discounts the SVA faculty member's evaluation because the evidence of record does not establish that the faculty member has the authority to grant college-level credit on the basis of work experience. The endorsement letter provided by the EDSS would be insufficient even if it were from an authorized spokesman for SVA, because it fails to establish that the faculty member has authority to grant college credit for experience alone. The EDSS letter states that SVA "has a program for granting college-level *transfer credit/and or advanced placement* based on a candidate's foreign educational credentials, training, and/or employment experience." (Italics added.) The ordinary meaning of "transfer credit" is credit based on coursework at another educational institution, not work experience; and advanced placement is not an award of college credits based on training or work experience. The AAO also notes these other statements of the EDSS that suggest that a SVA faculty member is not authorized to grant college credit for work experience:

The School regards Department Chairs as appropriate evaluators of academic and professional credentials and work experience for the purposes of *admissions, advising, placement in the degree programs, exempting students from course work, and the granting of transfer credits, as well as in the development of university policies and programs in the areas of general education and educational equivalencies.* . . .

[This faculty member] has the authority to make determinations concerning the granting of college-level *transfer credit* for all fields related to digital art. . . .

I trust that this information is sufficient documentation to support the conclusion that [this faculty member] has the authority *to assess and to evaluate college credit* for training and experience. . . .

[Italics added.]

Finally, the credibility of the evaluation has not been established.

The evaluator found (at page 2) that the beneficiary's work experience was "characterized by the theoretical and practical application of specialized knowledge under superiors, together with peers, with baccalaureate-level training in Graphic Design." The record contains only one document from a prior employer that delineates the beneficiary's work experience from January 1992 to May 2003, namely, the January 27, 2004 letter from News Life. Presumably this is the "detailed letter of reference from [the beneficiary's] employer" upon which the SVA faculty member based his evaluation. That letter does not address the training, education, or educational equivalency credentials of anyone with whom the beneficiary worked, and it provides only a very generalized description of work at the former employer and the beneficiary's interaction with other employees there. Thus, the evidence of record does not provide a factual basis for the conclusion that the beneficiary worked with persons "with baccalaureate-level training in graphic design." Doubt cast on any aspect of the petitioner's proof may, of course, lead to a reevaluation of the reliability and sufficiency of the remaining evidence offered in support of the visa petition. It is incumbent upon the petitioner to resolve any inconsistencies in the record by independent objective evidence, and attempts to explain or reconcile such inconsistencies, absent competent objective evidence pointing to where the truth, in fact, lies, will not suffice. *Matter of Ho*, 19 I&N Dec. 582, 591-92 (BIA 1988).

The AAO also notes that the aforementioned one-page News Life letter upon which the SVA faculty member apparently founded his evaluation provides only generalized work experience. This letter does not provide an adequate factual basis for a credible opinion as to college credit equivalency. The AAO also finds that the evaluation does not adequately analyze the factual grounds for its conclusion. The evaluation's substantive content basically consists of a rendition of the generalized information in the News Life letter, and leaves unexplained its findings about the education to which that generalized information equates. There is no discussion of the analytical process by which the evaluator determined that the limited and generalized work information of the News Life letter is "indicative of bachelor's level coursework in Graphic Design, internet content development, copy writing, advertising, storyboard development, public relations, design methodology, digital graphic design, color, animation, audio/video design and production, computer-aided design, visual arts, and related subjects."

The AAO discounts the MEC faculty member's evaluation of experience because the MEC dean's letter of endorsement does not state that the faculty member has the authority to grant college credit in the specialty pertinent to this proceeding, which is graphic design. Criterion 1 of 8 C.F.R. § 214.2(h)(4)(iii)(D) requires that the official evaluating experience have 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.” The dean’s letter does not include the graphic design specialty within the areas where this faculty member is authorized to grant college-level credit. The pertinent statement of the dean is: “[This faculty member] has the authority to make determinations concerning the granting of college-level credit for training and experience in computer science and engineering and computer information systems in computer science and engineering and computer information systems courses at The City University of New York.” Furthermore, aside from the faculty member’s unsubstantiated statement that he is authorized to grant college-level credit in Computer Graphics Design, there is no evidence in the record that that MEC offers coursework or a degree in graphic design and has a program for granting college-level credit in that particular specialty.

The AAO also notes that the MEC faculty member’s evaluation is inadequate. The evaluator does not identify or provide copies of the documents on which he based his evaluation: he only describes them as “documents provided by representatives of [the beneficiary].” Without presentation of the documentation upon which he based his evaluation the evaluator cannot establish the accuracy of his conclusions. 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)).

The petitioner also failed to satisfy the criterion at 8 C.F.R. § 214.2(h)(4)(iii)(D)(5) for a CIS determination that the beneficiary has accumulated three years of specialized training and/or work experience for each year of college-level training the alien lacks. This provision establishes a multi-faceted burden of proof, which the petitioner has not met:

[I]t must be *clearly demonstrated* [1] that the alien’s training and/or work experience included the theoretical and practical application of specialized knowledge required by the specialty occupation; [2] 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 [3] 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 occupation²;
- (ii) Membership in a recognized foreign or United States association or society in the specialty occupation;

² *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).

- (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.

[Italics added.]

The former employer's documentation about the beneficiary's experience is skeletal. It does not clearly demonstrate that the alien's training and/or work experience included the theoretical and practical application of specialized knowledge required by a specialty occupation. It provides no information about the degree or degree-equivalency status of the peers, supervisors, and subordinates with whom the beneficiary worked. It does not merit weight under any criterion of 8 C.F.R. §§ 214.2(h)(4)(iii)(C) and (D). Furthermore, the record contains no evidence of the recognition of expertise required by 8 C.F.R. § 214.2(h)(4)(iii)(D)(5).

It must be noted that counsel's assertion (brief at page 3, subsection (2)) that the two faculty members who rendered evaluations are recognized authorities is not supported by the record. *See* footnote 2 of this decision. While the faculty member from MEC may be distinguished in his respective field, there is no documentation of record to establish his expertise in the field of graphic design. The faculty member from SVA is documented as an expert in the pertinent field. However, as referenced at footnote 2, expertise is not alone sufficient to merit evidentiary weight as a recognized authority within the meaning of the regulatory definition at 8 C.F.R. § 214.2(h)(4)(ii). The expert must specify his or her experience in giving the type of opinion provided in the record, and must cite specific instances where this type of opinion from him or her has been accepted as authoritative. Furthermore, the regulation at 8 C.F.R. § 214.2(h)(4)(iii)(D)(5) requires recognition of expertise from two authorities in the field.

In short, the record provides no basis for disturbing the director's denial of the petition on the basis that the petitioner failed to establish that the beneficiary is qualified to perform services in a specialty occupation according to the standards of 8 C.F.R. §§ 214.2(h)(4)(iii)(C) and (D).

As always, the burden of proving eligibility for the benefit sought remains entirely with the petitioner. Section 291 of the Act, 8 U.S.C. § 1361. The petitioner has not met that burden.

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