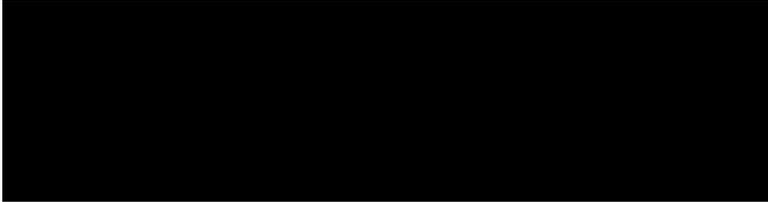




U.S. Citizenship  
and Immigration  
Services



D2

FILE: SRC 05 132 51604 Office: TEXAS SERVICE CENTER Date: DEC 01 2005

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:  
[Redacted]

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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 corporation that supplies engineering and equipment to power utility companies. In order to employ the beneficiary as its director of engineering services, 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 petitioner had failed to establish that the beneficiary was qualified to serve in the specialty occupation position that is the subject of this petition.

The director's decision noted that, according to the petitioner, the position requires a minimum of a bachelor's degree in mechanical or industrial engineering. The decision summarized and noted the evidentiary deficiencies of the following documentation that was submitted in support of the petition: (1) an evaluation of the beneficiary's academic credentials and work experience that was rendered on October 13, 2004 by [REDACTED] the Director of the Industrial Management Program at the State University of New York at Stony Brook; (2) two letters submitted by [REDACTED] retired Chief Engineer at H.F. Engineering Services, dated March 9, 2005; (3) several certificates from the City and Guilds of London Institute regarding the beneficiary's coursework at that institution; and (4) a letter from the human resources manager of a former employer, WVC UK LTD;

At section 3 of the Form I-290B, counsel introduced the evidence newly submitted on appeal and framed the appeal as follows:

Employer/Petitioner is submitting a new and more detailed expert educational evaluation to verify the petitioner's credentials, which fully equate to a Bachelor's degree in Mechanical Engineering. Also, Petitioner is submitting several letters of reference detailing the beneficiary's technical expertise and knowledge – to verify his skills as a specialty occupation professional. Based on the enclosed evidence to support the professional position and the professional skills of the alien worker, we respectfully request that his H-1B nonimmigrant status be approved.

Accompanying the Form I-290B are: (1) a four-page brief, in the form of a June 14, 2005 letter to the Texas Service Center, requesting reconsideration of the director's decision; (2) an evaluation of the beneficiary's "academic and professional experience," rendered on June 2, 2005, by [REDACTED], Professor of Mechanical and Aerospace Engineering at the University of Florida; (3) a letter endorsing [REDACTED] from [REDACTED] Professor and Acting Chair of the Department of Mechanical and Aerospace Engineering at the College of Engineering of the University of Florida; (4) a memorandum, dated June 13, 2005, from the president of the petitioning corporation; (5) an undated, two-page job description, on the petitioner's letterhead, for the position Director of Engineering Field Services; (6) a copy of a letter, dated May 27, 2005, from the president of The Latitude Group, Winston-Salem, North Carolina, to a U.S. Senator; (7) a letter, dated May 26, 2005, to the petitioner's president from [REDACTED] a partner of Buchanan-Cowan, Mechanical & Electrical Engineers, of Glasgow, Scotland; (8) a June 8, 2005 letter from [REDACTED] of Olney, Illinois, a Senior Field Service Engineer for SPX Valves; (9) a third letter from the aforementioned [REDACTED] dated June 6, 2005; and (10) an undated, four-page document in which

the beneficiary outlines his work experience and training, with particular emphasis upon the procedures involved in the commissioning and start-up of soot blowing systems on large utility boilers.

The AAO has determined that the director was correct in denying the petition on the basis that the petitioner has not established that the beneficiary is qualified to perform services in the proffered mechanical engineering position in accordance with the governing regulations at 8 C.F.R. §§ 214.2(h)(4)(iii)(C) and (D). The AAO has also determined that the petitioner's appeal has not overcome the basis of the director's decision to deny the petition. The AAO bases its decision upon consideration of the entire evidence of record, including the documents identified above and all of the petitioner's submissions into the record from the filing of the Form I-129 (Petition for Nonimmigrant Worker) through the appeal.

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 a baccalaureate or higher degree 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 the context of this proceeding, that degree is in mechanical engineering or a related specialty.

In implementing 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.

The first three of the above criteria are not relevant to this appeal: there is no evidence that the beneficiary possesses a U.S. baccalaureate or higher degree, a foreign degree that is the equivalent of such a U.S. degree, or an unrestricted license, registration, or certification that authorizes the beneficiary to fully practice and immediately engage in a pertinent specialty occupation. Therefore, the AAO must determine whether the petitioner has satisfied the fourth criterion, 8 C.F.R. § 214.2(h)(4)(iii)(C)(4), by establishing that the beneficiary has obtained the equivalent of at least a U.S. baccalaureate degree in mechanical engineering by the combination of his formal education and his years of work experience.

Three evidentiary thresholds or elements of proof are manifest in the language at 8 C.F.R. § 214.2(h)(4)(iii)(C)(4). The petitioner must establish: (1) that the beneficiary has “education, specialized training, and/or progressively responsible experience”; (2) that the education, specialized training, and/or progressively responsible experience is “equivalent to completion of a United States baccalaureate or higher degree in the specialty occupation”; and (3) that the beneficiary has “recognition of expertise in the specialty through progressively responsible positions directly related to the specialty.”

The regulation at 8 C.F.R. § 214.2(h)(4)(iii)(D) expands upon 8 C.F.R. § 214.2(h)(4)(iii)(C)(4) by specifying how a petitioner is to establish that the beneficiary’s education, specialized training, and/or progressively responsible experience is equivalent to completion of a U.S. baccalaureate or higher degree in the pertinent specialty.

According to 8 C.F.R. § 214.2(h)(4)(iii)(D), a petitioner must establish the beneficiary’s “achievement of a level of knowledge, competence, and practice in the specialty occupation that has been determined to be equal to that of an individual who has a baccalaureate or higher degree in the specialty.” This regulation specifies that one or more of the following four avenues shall be used to establish the requisite achievement:

- (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;<sup>1</sup>
- (4) Evidence of certification or registration from a nationally-recognized professional association or society for the specialty that is known to grant certification or

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<sup>1</sup> 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.

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. . .

As there is no evidence of college-level equivalency examinations or special credit programs (criterion 2) or certification or registration of professional standing (criterion 4), only criteria 1, 3, and 5 are relevant to this appeal. As will be discussed below, the petitioner has not satisfied any of them.

The petitioner has not satisfied criterion 1 of 8 C.F.R. § 214.2(h)(4)(iii)(D), which deals with the evaluation of a beneficiary's training and/or experience in the pertinent specialty.

This criterion states several requirements that an evaluator must meet in order for his or her evaluation of training and/or experience to qualify for CIS consideration. First, he or she must be an official at an accredited U.S. college or university. Second, that educational institution must have a program for granting college-level credit for training and/or work experience in the pertinent specialty. Third, he or she must have authority to grant college-level credit for training and/or experience in the specialty. As discussed below, the AAO finds that neither of the evaluators in this proceeding met these threshold requirements.

Professor ████████ does not claim authority to grant college-level credit for work experience, as required by this criterion. Rather, he asserts only that he has credit-granting authority for university courses and training that occurred within a university's academic oversight. The closing paragraph of his evaluation document states:

The foregoing evaluation of [the beneficiary] has been prepared and certified by me. Because of the positions I hold at the University of Florida, I have the authority to grant college-level credit for training, and or courses taken at other U.S., or international universities.

Furthermore, Professor ████████ evaluation document does not assert that the University of Florida has a program for granting college credit for work experience outside the University's academic oversight, which is the area addressed by the instant criterion.

Professor ████████ letter of endorsement also does not establish Professor ████████ as an official within the meaning of 8 C.F.R. § 214.2(h)(4)(iii)(D)(1). The portions of the letter most pertinent to Professor ████████ authority state that: Professor ████████ reviews foreign and domestic transfer credits (paragraph 2); the University of Florida has a program for granting credit for students' work performed "in an internship or work study fashion" (paragraph 4); Professor ████████ "is experienced in evaluating relevant international education and relevant work experience of students to determine their academic experience, and authorize that credit be awarded by the University of Florida" (paragraph 4); the University of Florida "has internship, externship, and co-op opportunities for students to earn credit for work experience gained from industrial employment (paragraph 5); and that professors, including Professor ████████, evaluate credentials that

students earn in the University of Florida's internship, externship, and co-op work. None of this information attests that Professor Klausner, on behalf of the University of Florida, has the status that 8 C.F.R. § 214.2(h)(4)(iii)(D)(1) requires for CIS consideration of an evaluation of work experience.

The evaluation of the beneficiary's work experience by ██████████ of the State University of New York also does not qualify for consideration under 8 C.F.R. § 214.2(h)(4)(iii)(D)(1). This evaluator states only that he has the authority to evaluate whether his school "is to grant college-level credit for courses taken at other U.S. or international universities." This assertion does not satisfy the threshold requirements that the opening official's educational institution have a program for granting college-level credit for training and/or work experience in the pertinent specialty, and that the official have authority to grant college-level credit for training and/or experience in the pertinent specialty.

The petitioner has not satisfied criterion 3 of 8 C.F.R. § 214.2(h)(4)(iii)(D), which deals with the evaluation of a beneficiary's foreign education.

To qualify for consideration under this criterion, an evaluation of foreign education must be rendered by "a reliable credentials evaluation service which specializes in evaluating foreign educational credentials." Neither Professor Klausner's evaluation nor ██████████'s is the product of such an evaluation service. Therefore, the AAO has not considered these evaluations' opinions about the U.S. educational equivalency of the beneficiary's foreign coursework.

The petitioner also failed to satisfy the criterion at 8 C.F.R. § 214.2(h)(4)(iii)(D)(5). This section of the H-1B regulations allows for a CIS determination that the beneficiary is qualified to serve in a proffered specialty occupation position because the beneficiary has accumulated three years of education, specialized training, and/or work experience for each year of college-level training that he or she lacks. The section imposes the following burden upon the petitioner for establishing college-year credits by the three-to-one formula:

[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 occupation;<sup>2</sup>
- (ii) Membership in a recognized foreign or United States association or society in the specialty occupation;

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<sup>2</sup> *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.

The AAO finds that the petitioner has failed to establish two aspects of its burden under 8 C.F.R. § 214.2(h)(4)(iii)(D)(5). It has not clearly demonstrated (1) that the beneficiary's experience in the specialty was gained while working with peers, supervisors, or subordinates who have a degree or its equivalent in the specialty occupation, mechanical engineering; and (2) that the alien has recognition of expertise in mechanical engineering as specified in this criterion. The director's decision (paragraph 2, at page 4) noted these deficiencies.

The record provides no documentation to clearly demonstrate the extent to which the beneficiary worked with peers, supervisors, or subordinates who have at least a bachelor's degree or its equivalent in mechanical engineering. No documentation is presented to establish the educational credentials of the people with whom the beneficiary worked while gaining his experience.

The record includes no evidence that clearly demonstrates that the beneficiary has achieved recognition of expertise in the specialty evidenced by at least one type of documentation outlined in subparagraphs (i) through (v) of 8 C.F.R. § 214.2(h)(4)(iii)(D)(5). The evidence of record does not establish that any of the employers or other persons writing on the beneficiary's behalf are recognized authorities within the meaning of the H-1B regulations, and their letters do not contain the information that CIS requires from recognized authorities. *See* footnote 2. Consequently, there is no recognition of the beneficiary's expertise in mechanical engineering under subparagraph (i). There is no evidence of the beneficiary's membership in a recognized foreign or United States association or society in the specialty occupation, so as to satisfy subparagraph (ii). The record contains no "[p]ublished material by or about the alien in professional publications, trade journals, books, or major newspapers" to satisfy subparagraph (iii). The petitioner has not satisfied subparagraph (iv) by virtue of the beneficiary holding a license or registration to practice the specialty occupation in a foreign country. The record includes no "achievements which a recognized authority has determined to be significant contributions to the field of the specialty occupation," to satisfy subparagraph (v).

Because the petitioner has not satisfied the beneficiary qualification criteria set forth at 8 C.F.R. §§ 214.2(h)(4)(iii)(C) and (D), the appeal will be dismissed and the petition will be denied. 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.