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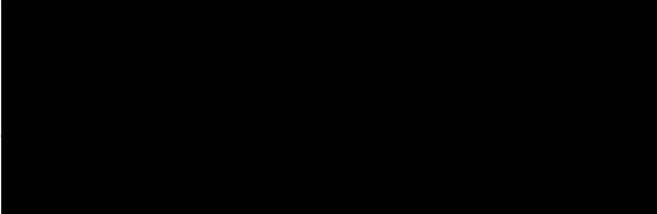


U.S. Citizenship
and Immigration
Services

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FEB 08 2005



FILE: WAC 03 211 53427 Office: CALIFORNIA 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:

SELF-REPRESENTED

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 topographic mapping company that seeks to employ the beneficiary as a photogrammetrist. 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 duties of a specialty occupation. On appeal, the petitioner 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 and supporting documentation.

The petitioner is seeking the beneficiary's services as a photogrammetrist. According to the evidence in the record, the beneficiary would perform duties that entail stereo compilation of planimetric, topographic, and soft copy photogrammetry maps. The beneficiary will also train staff. The petitioner stated that "there is no formal degree or major field of study in photogrammetry"; it would be "unrealistic to require a degree for this position"; and the American Society for Photogrammetry and Remote Sensing (ASPRS) has set standards for certification of photogrammetrists.

The director found the beneficiary's educational background, a diploma in mechanical engineering from an institution in India, not equivalent to a baccalaureate degree. The director based his conclusion on the submitted educational evaluation which determined that the beneficiary possesses the equivalent to 30 semester units of undergraduate coursework at a regionally accredited college or university in the United States. The director indicated that the submitted employment letters failed to establish that the beneficiary has a combination of education and work experience equivalent to the completion of a baccalaureate degree.

On appeal, the petitioner describes the contents of submitted employment letters, and states that the beneficiary is qualified for the proffered position.

Upon review of the record, the petitioner has failed to establish that the beneficiary is qualified to perform the duties of a specialty occupation.

The beneficiary does not hold a baccalaureate degree from an accredited U.S. college or university in any field of study. Nor does the beneficiary 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. Thus, the petitioner must 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.

The second criterion under 8 C.F.R. § 214.2(h)(4)(iii)(D) indicates that the petitioner may establish that the beneficiary is qualified for the specialty occupation based on 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. The evidentiary record contains documentary evidence about ASPRS and its certification process. The document indicates that ASPRS certification is official recognition by one's colleagues and peers that the person has demonstrated professional integrity and competence in their field, and that the ASPRS voluntary certification program is considered "specialty certification." No evidence in the record establishes that the beneficiary possesses ASPRS certification.

There is no evidence to establish 8 C.F.R. §§ 214.2(h)(4)(iii)(D)(1), (3), or (4). Thus, CIS must determine the beneficiary's qualifications pursuant to 8 C.F.R. § 214.2(h)(4)(iii)(D)(5).

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,

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).

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 ASPRS document states that educational degrees in engineering, or in the natural or physical sciences may substitute for actual job experience required for certification. Taken collectively, the beneficiary's diploma, employment letters, and training certificates do not establish equivalence to a baccalaureate degree in engineering, or in the natural or physical sciences.

The beneficiary's training certificates included five weeks of training in SSK Stereo compilation, two months of training in basic composite technology, apprenticeship training in mechanical engineering, and five days of supervisory development training. This is not equivalent to a baccalaureate degree in engineering, or in the natural or physical sciences.

The AAO must next consider 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 various employment verification letters. The employment letters from Tangerine Geoscience, Kampsax India Limited, EDM Formatics Private Ltd., and Pushpak Industrial Services merely provide the beneficiary's job title and dates of employment. Consequently, they cannot establish whether the beneficiary's duties included the theoretical and practical application of specialized knowledge required by the specialty or whether 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. Only the letter from 3DI Systems (India) Pvt. Ltd. described the beneficiary's job duties, and as described by the employer, the duties seem to include the theoretical and practical application of specialized knowledge required by the specialty. Nevertheless, the employer did not 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 submitted letter from the president of Virginia Mapping Incorporated indicated that the president is a certified photogrammetrist and a professional land surveyer. ASPRS certification indicates that a person is considered by his or her colleagues and peers as demonstrating professional integrity and competence in the field; however, this does not mean that a person is considered a "recognized authority." As such, there is insufficient evidence to establish the president of Virginia Mapping Incorporated as a "recognized authority."

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.

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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.