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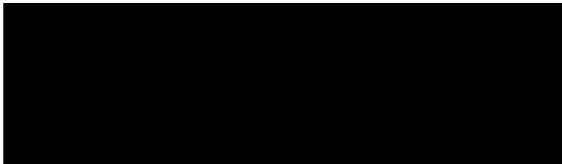
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IN RE: Petitioner:
Beneficiary:



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 Administrative Appeals Office (AAO) withdrew the director's previous decision and remanded the proceeding for the entry of a new decision to be based upon the director's further consideration of the beneficiary's qualifications to serve in the proffered position, which the AAO determined to be a specialty occupation. The matter is now before the AAO upon the director's certification of his new decision, pursuant to the AAO's order to certify that decision if adverse to the petitioner.

The petitioner is the North American office of Nord-Pas de Calais Development, a non-profit organization headquartered in France. It seeks to employ the beneficiary as a chief executive officer. On remand, the director denied the petition because the record did not establish that the beneficiary was qualified to perform the duties of the proffered position, previously determined to be a specialty occupation.

The administrative record includes the following records of proceeding: (1) the Form I-129 and supporting documentation; (2) the director's March 8, 2002 request for evidence; (3) counsel's response to the director's request; (4) the director's June 3, 2002 denial of the petition; (5) the Form I-290B, with counsel's brief; (6) the AAO decision remanding the petition to the director; (7) the director's December 11, 2003 request for evidence; (8) the director's March 17, 2004 denial, certified to the AAO; and (9) counsel's letter of April 15, 2004 which she characterizes as a motion to reopen. The AAO has reviewed these records in their entirety.

The AAO has considered counsel's letter of April 15, 2003 but finds counsel's assertion of not having received a request for evidence unpersuasive.¹ The director's letter of December 11, 2003 constituted a request for evidence in the nature of an educational evaluation of the beneficiary's qualifications, and it bears counsel's address as it appears on the only Form G-28 that counsel submitted into the record of proceeding. Furthermore, the record does not contain any notification to Citizenship and Immigration Services (CIS), prior to or contemporaneous with the December 2003 request for evidence, of a change of counsel's address. Also, the language of the CIS on-line printouts provided by counsel neither states nor indicates that the CIS Internet site publishes every CIS action taken in processing a petitioner's case.

The AAO now turns to the only issue before it -- whether the beneficiary is qualified to perform the duties of the proffered position. In determining whether an alien is qualified to perform the duties of a specialty occupation, CIS looks to the petitioner to establish that the beneficiary meets one of the requirements set forth at Section 214(i)(2) of the Act, 8 U.S.C. § 1184(i)(2) -- full state licensure to practice in the occupation, if such licensure is required; completion of a degree in the specific specialty; or 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.

Further discussion as to how an alien qualifies to perform services in a specialty occupation is found at 8 C.F.R. § 214.2(h)(4)(iii)(C), and requires the individual to:

- (1) Hold a United States baccalaureate or higher degree required by the specialty occupation from an accredited college or university;

¹ The AAO considered the letter because it was filed within the time that 8 C.F.R. § 103.4(a)(2) affords a petitioner to file a brief with the office to which a decision is certified -- here, the AAO.

- (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.

In his denial, the director found that the record failed to establish that the beneficiary held a U.S. degree or a foreign degree determined to be the equivalent of a U.S. degree in a field required by the specialty or that his education, training and/or experience was the equivalent of such a degree. In its own review of the record before it, the AAO finds that, while the beneficiary does not possess a U.S. degree in a specialty required by the proffered position, the petitioner has submitted evidence to establish that he meets the requirements at 8 C.F.R. § 214.2(h)(4)(iii)(C) -- holds a foreign degree determined to be equivalent to a U.S. degree required by the proffered position. The petitioner, in its letter of support, described the beneficiary as "extremely well-qualified" for its position, noting his management history, his knowledge of business and commercial concepts, and his experience in serving as a liaison between the petitioner's headquarters and other agencies. In support of these statements, it provided copies of the beneficiary's degree from his secondary school in France, his degree from a French management and business school, and a certificate noting his successful completion of an examination in business English. However, these documents cannot establish that the beneficiary holds a foreign degree that is the equivalent of a U.S. degree required by the proffered position.

As previously noted by the AAO in its decision of October 20, 2003, the record contains no documentation to establish that the beneficiary's education is the equivalent of a U.S. baccalaureate or higher degree from an accredited college or university in the United States. While the AAO does not question that the beneficiary holds the degrees documented in the record, it has no basis on which to conclude that these degrees meet the requirements at 8 C.F.R. § 214.2(h)(4)(iii)(C)(2). The AAO notes that the translations of the beneficiary's diplomas provided by the French Consulate in Chicago and the letter submitted by the U.S. Consul in northern France state that the beneficiary's management and business degree is the equivalent of an MBA. However, such evaluations, as they are not provided by a recognized credentials evaluation service, cannot serve as evidence that the beneficiary's holds the equivalent of a MBA awarded by a U.S. university. Accordingly, the AAO must conclude that the petitioner has not established that the beneficiary qualifies to perform the duties of its proffered position under the second criterion.

As the record does not establish the beneficiary holds a U.S. or foreign degree in a specialty related to the proffered position and there is no licensing or certification requirements associated with the proffered position, the AAO will consider whether the petitioner has established that the beneficiary is qualified to perform the duties of its position pursuant to the requirements of the fourth criterion -- has the education, specialized training and/or

experience that is the equivalent of a U.S. baccalaureate or higher degree, as well as progressively responsible experience that is directly related to the proffered position.

For the purposes of 8 C.F.R. § 214.2(h)(4)(iii)(C)(4), equivalence to a U.S. baccalaureate or higher degree shall mean the 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, and shall be determined by one or more of the following requirements at 8 C.F.R. § 214.2(h)(4)(iii)(D):

- (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;
- (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 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 the AAO finds the record to contain no evidence responding to the first four criteria noted above, it turns to its own review of the beneficiary's qualifications as authorized by 8 C.F.R. § 214.2(h)(4)(iii)(D)(5). When evaluating a beneficiary's qualifications under the fifth criterion, CIS considers three years of specialized training and/or work experience to be the equivalent of one year of college-level training. In addition to documenting that the length of the beneficiary's training and/or work experience is the equivalent of four years of college-level training, the petitioner must also establish that the beneficiary's training and/or work experience has included the theoretical and practical application of the specialized knowledge required by the specialty occupation, and that the experience was gained while working with peers, supervisors, or subordinates who have degrees or the equivalent in the specialty occupation. The petitioner must also document recognition of the beneficiary's expertise in the specialty, as evidenced by one of the following:

recognition of expertise in the specialty occupation by at least two recognized authorities in the same specialty occupation; membership in a recognized foreign or U.S. association or society in the specialty occupation; published material by or about the alien in professional publications, trade journals, books or major newspapers; licensure or registration to practice the specialty in a foreign country; or achievements which a recognized authority has determined to be significant contributions to the field of the specialty occupation.

However, a review of the record finds no documentation, beyond the diplomas and certificate already discussed, which addresses the beneficiary's previous training and employment. While the AAO notes that several of the letters submitted in support of the instant petition refer to the beneficiary's business background, his professional experience and personal knowledge of business practices, none provide any detail that expands on these statements. As a result, the AAO lacks the information necessary to determine whether the length and nature of the beneficiary's work experience might qualify him to perform the duties of the proffered position. Accordingly, it concludes that the petitioner has failed to establish that the beneficiary qualifies to perform the duties of a specialty occupation under any of the criteria at 8 C.F.R. § 214.2(h)(4)(iii)(C).

For the reasons related in the preceding discussion, the AAO affirms the director's denial of the petition. The AAO also notes that the petitioner's failure to respond to the director's December 11, 2003 request for evidence is, in itself, a basis for the denial of this petition. Failure to submit requested evidence that precludes a material line of inquiry shall be grounds for denying the petition. 8 C.F.R. § 103.2(b)(14).

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 director's decision of March 17, 2003 is affirmed. The petition is denied.