

identifying data deleted to
prevent clearly unwarranted
disclosure of information



U.S. Citizenship
and Immigration
Services

PUBLIC COPY

D2



FILE: WAC 04 062 52101 Office: CALIFORNIA SERVICE CENTER Date: SEP 19 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:



INSTRUCTIONS:

This is the decision of the Administrative Appeals Office in your case. All materials 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 service center director denied the nonimmigrant visa petition. The matter is now on appeal before the Administrative Appeals Office (AAO). The appeal will be dismissed. The petition will be denied.

The petitioner is a manufacturer of printed circuit boards. It seeks to employ the beneficiary as a chemical engineer and to classify him 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 ground that the record failed to establish that the beneficiary is qualified to perform services in a specialty occupation and thereby eligible for H-1B classification.

Section 214(i)(1) of the Act, 8 U.S.C. § 1184(i)(1), defines the term "specialty occupation" as an occupation that requires:

- (A) theoretical and practical application of a body of highly specialized knowledge, and
- (B) attainment of a bachelor's or higher degree in the specific specialty (or its equivalent) as a minimum for entry into the occupation in the United States.

Section 214(i)(2) of the Act, 8 U.S.C. § 1184(i)(2), provides that an alien must have the following credentials to be qualified to perform the services of a specialty occupation:

- (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.

As further explained in 8 C.F.R. § 214.2(h)(4)(iii)(C), an alien must meet one of the following criteria to qualify to perform the services of 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.

For the purpose of deciding whether the beneficiary is qualified under 8 C.F.R. § 214.2(h)(4)(iii)(C)(4), 8 C.F.R. § 214.2(h)(4)(iii)(D) provides that the determination shall be based on 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;
- (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 [CIS] 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. For purposes of determining equivalency to a baccalaureate degree in the specialty, three years of specialized training and/or work experience must be demonstrated for each year of college-level training the alien lacks. For equivalence to an advanced (or Masters) degree, the alien must have a baccalaureate degree followed by at least five years of experience in the specialty 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 ¹ in the same specialty occupation; (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.

The record of proceeding before the AAO contains: (1) Form I-129 and supporting documentation; (2) the director's request for evidence (RFE); (3) the petitioner's response to the RFE; (4) the notice of decision; and (5) Form I-290B, an appeal brief, and supporting materials. The AAO reviewed the record in its entirety before issuing its decision.

The petitioner is a manufacturer of printed circuit boards, in operation since 1987, which seeks to hire the beneficiary as a chemical engineer. In a letter accompanying Form I-129 the petitioner indicated that the beneficiary is qualified for the position by virtue of a diploma in chemical engineering in April 1998 from K.J. Polytechnic Bharuch in Gujarat, India, and experience as a chemical engineer with an Indian petrochemicals company from October 1998 through December 2003. In response to the RFE the petitioner submitted a "professional work experience evaluation report" authored by an assistant professor in the Department of Civil and Environmental Engineering at Florida International University (FIU) who, based on documentation of the beneficiary's academic coursework and work experience in the field of chemical engineering, concluded that the beneficiary's education and work experience are equivalent to a bachelor of science in chemical engineering from an accredited U.S. college or university.

In his decision the director found that the beneficiary did not qualify to perform the services of the specialty occupation under 8 C.F.R. § 214.2(h)(4)(iii)(C)(1) because he does not have a U.S. baccalaureate or higher degree, or under 8 C.F.R. § 214.2(h)(4)(iii)(C)(2) because he does not hold a foreign degree determined to be equivalent to a U.S. baccalaureate or higher degree, or under 8 C.F.R. § 214.2(h)(4)(iii)(C)(3) because he does not have an unrestricted state license to practice the specialty occupation. The director also determined that the beneficiary did not qualify to perform the services of the specialty occupation under 8 C.F.R. § 214.2(h)(4)(iii)(C)(4) because the record failed to establish that he had a combination of education, specialized training and progressively responsible work experience equivalent to a U.S. baccalaureate or higher degree in the specialty occupation. The evaluation report submitted in response to the RFE was not an evaluation of the beneficiary's foreign education alone, as required to be considered as evidence of the beneficiary's U.S. degree equivalency under 8 C.F.R. § 214.2(h)(4)(iii)(D)(3). Rather, it was an evaluation of the beneficiary's academic record and work experience, which must therefore have been authored by an official with authority to grant college-level credit for training and/or experience in areas related to the specialty in order to be considered as evidence of the beneficiary's U.S. degree equivalency under 8 C.F.R. § 214.2(h)(4)(iii)(D)(1). The director found that the

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).

record failed to show that the evaluator was actually employed by FIU, that he was authorized by the university to grant college-level credit for training and/or experience in the field of chemical engineering, or that FIU is an accredited academic institution. In the director's view, the petitioner also failed to show that the beneficiary has recognition of expertise in the specialty through progressively responsible work experience. For all of these reasons the director concluded that the beneficiary is ineligible for H-1B classification.

On appeal counsel contends that evaluation report from the FIU professor meets all of the regulatory requirements of 8 C.F.R. § 214.2(h)(4)(iii)(D)(I) and should be considered as credible evidence of the beneficiary's U.S. degree equivalency in the field of chemical engineering, thereby qualifying him to perform the services of the specialty occupation. Additional documentation has been submitted showing that FIU is an accredited institution and that [REDACTED] the author of the evaluation report, is employed by FIU as a professor in the Department of Civil and Environmental Engineering. However, none of the documentation establishes that [REDACTED] has the authority to grant college-level credit for training and/or experience in chemical engineering, or that FIU has a program for granting such credit. The only information provided on this matter is in a letter from FIU's Associate Dean of Engineering, Dr. [REDACTED] which states that FIU "grants credit based on an individual's education, training and/or work experience." The regulation requires that the institution have a program for granting credit based on an individual's training and/or work experience, without regard to prior education. As indicated in Dr. [REDACTED] letter, FIU does not have such a program.² [REDACTED] letter also states that [REDACTED] is a professor in the Department of Civil and Environmental Engineering "with authority to review, evaluate and recognize foreign transfers and work experience for credit granting purposes." The letter does not state that Dr. Nunoo is authorized to award any credit in the Department of Chemical Engineering, however, so he would not be competent to assess the adequacy of the beneficiary's work experience in the field of chemical engineering and to render a credible evaluation for CIS that the beneficiary's work experience included the theoretical and practical application of a body of highly specialized knowledge in the field of chemical engineering.

For the reasons discussed above, the documentation of record fails to meet the evidentiary requirements of 8 C.F.R. § 214.2(h)(4)(iii)(D)(I). It does not establish that Dr. Nunoo has the authority to grant college-level credit for training and/or experience in the beneficiary's specialty of chemical engineering, or that FIU has a program for granting college-level credit for training and/or experience.

Nor does the record establish that the beneficiary has the equivalent of a U.S. degree in chemical engineering through a combination of education, specialized training, and/or work experience in the specialty occupation or related areas, and recognition of expertise therein, as required to meet the alternative qualifying criteria of the regulation at 8 C.F.R. § 214.2(h)(4)(iii)(D)(5). The record indicates that the beneficiary earned a diploma in chemical engineering at K.J. Polytechnic in Bharuch, India, based on a series of courses and examinations completed between April 1996 and April 1998. According to the credentials evaluation report from Dr. Nunoo, the beneficiary's coursework in India is the equivalent of three years of undergraduate study in chemical engineering at a U.S. college or university. The record contains two letters from an Indian petrochemical company, dated October 1998 and December 2003,

² The FIU website at www.fiu.edu, accessed on September 13, 2005, indicates that FIU has a program of accepting transfer credits for academic courses completed at other universities or colleges, but does not indicate that the university has a program for granting credit based on work experience or training.

indicating that the beneficiary worked for the company throughout that time as a chemical engineer. That time period would equal approximately one and three-quarters years of college-level training in chemical engineering (in determining equivalency to a baccalaureate degree in the specialty the regulation provides that three years of specialized experience equal one year of college education), and the work experience – as reflected in the duties of the position – may be viewed as including the theoretical and practical application of specialized knowledge required by the specialty occupation. There is no evidence in the record, however, that the beneficiary's experience was gained while working with peers, supervisors, or subordinates who have a degree or its equivalent in the specialty occupation, or that the beneficiary has documented recognition of expertise in the specialty, as required under the regulation. Accordingly, the beneficiary's work experience cannot be counted for the purpose of determining degree equivalency under 8 C.F.R. § 214.2(h)(4)(iii)(D)(5). The AAO concludes, therefore, that the beneficiary's education and work experience combined is not equivalent to a U.S. degree in chemical engineering or a related specialty.

For the reasons discussed above, the petitioner has failed to establish that the beneficiary is qualified to perform the services of the specialty occupation.

The petitioner bears the burden of proof in these proceedings. *See* section 291 of the Act, 8 U.S.C. § 1361. The petitioner has not sustained that burden. Accordingly, the AAO will not disturb the director's decision denying the petition.

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