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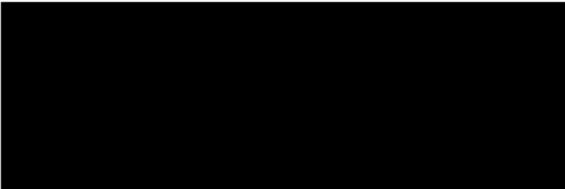


FILE: LIN 04 221 51926 Office: NEBRASKA SERVICE CENTER Date: **APR 12 2006**

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, 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 provides translation and localization services. It seeks to employ the beneficiary as a Japanese desktop publisher. 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, finding that the beneficiary is not qualified to perform the proffered position. On appeal, counsel submits a brief and additional evidence.

The record of proceeding before the AAO contains, in part: (1) the Form I-129 and supporting documentation; (2) the director's denial letter; and (3) the Form I-290B and additional documents. The AAO reviewed the record in its entirety before issuing its decision.

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.

To meet the criterion at 8 C.F.R. § 214.2(h)(4)(iii)(C)(4), the regulation at 8 C.F.R. § 214.2(h)(4)(iii)(D) states that equating the beneficiary's credentials to a U.S. 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 petitioner is seeking the beneficiary's services as a Japanese desktop publisher. The 2006-2007 edition of the Department of Labor's *Occupational Outlook Handbook* (the *Handbook*) indicates that this occupation resembles the position of graphic designer as that occupation is depicted in the *Handbook*, and that a bachelor's degree in graphic design is appropriate for this occupation.

The director found that the beneficiary is not qualified for the proffered position because the beneficiary's education, experience, and training are not equivalent to a baccalaureate degree in a field that is directly related to the proposed position.

On appeal, counsel refers to a letter from the petitioner, a letter from Professor [REDACTED] of Utah Valley State College, and information about Dr [REDACTED] to establish the beneficiary's qualifications for the proposed position.

Upon review of the record, the petitioner has not established that the beneficiary is qualified to perform the proffered position.

The beneficiary does not satisfy the baccalaureate degree requirement under 8 C.F.R. § 214.2(h)(4)(iii)(C)(1), (2) or (3). The petitioner must therefore 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 U.S. 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.

To establish the beneficiary's qualifications for the proposed position, the record contains educational evaluations from Professor ██████████ who is employed by the University of Massachusetts Dartmouth as a professor of fine arts; Dr. ██████████ who is employed by Duquesne University as an associate professor; and a letter from Professor ██████████ who is a professor with Utah Valley State College. The petitioner also submits a letter of recommendation from ██████████ Assistant Graphic Design Professor at Utah Valley State College. The AAO finds that this evidence is not persuasive in establishing the beneficiary's qualifications as none of these evaluators state that they are officials who have authority to grant credit for training and/or experience from a university that has a program for granting credit. Further, there is no independent evidence in the record corroborating that the evaluators qualify as officials according to 8 C.F.R. § 214.2(h)(4)(iii)(D)(1).

No evidence satisfies the criteria under 8 C.F.R. §§ 214.2(h)(4)(iii)(D)(2), (3), or (4). The AAO notes that under 8 C.F.R. § 214.2(h)(4)(iii)(D)(3), the evaluation of a credentials evaluation service must be based solely on the beneficiary's education, which does not include work experience.

Based on the evidence in the record, the AAO finds that the beneficiary completed academic coursework in Japan and the United States. The submitted educational evaluations do not state that the beneficiary's formal education

is the equivalent to a baccalaureate degree in graphic design or a related discipline. The record contains the beneficiary's transcripts and associate degrees.

The AAO now considers the beneficiary's qualifications pursuant to 8 C.F.R. § 214.2(h)(4)(iii)(D)(5). Under this criterion, three years of specialized training and/or work experience must be demonstrated for each year of college-level training the alien lacks. The beneficiary has an associate's degree in applied science with a computer graphics application. Thus, the beneficiary would have to have completed six years of qualifying work experience. 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, 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 beneficiary has been employed with the petitioner for three months; with Utah Valley State College on a part-time basis for four months; with Matsuda Design Company from October 1, 1998 to April 2001; and with Serata Corporation from April 1, 1994 to April 20, 1995. Except for the letter from Serata Corporation, which relates to experience as an interior designer, the submitted letters from prior employers and a colleague indicate that the beneficiary's work experience included the theoretical and practical application of specialized knowledge required by the specialty occupation, which in this case is graphic design. However, the alien's experience must have been gained while working with peers, supervisors, or subordinates who have a degree or its equivalent in the specialty occupation, and the alien must have recognition of expertise in the specialty by at least two recognized authorities in the same specialty occupation. While with Matsuda Design Company, the evidence

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).

does not indicate that the beneficiary's experience was gained while working with colleagues who have a baccalaureate degree or its equivalent in graphic design or a related field. The record does not show the beneficiary as having recognition of expertise by two recognized authorities in the same specialty occupation, which in this case is graphic design. Although the beneficiary has recognition of expertise in the specialty (graphic design) from Professor ██████████ who has been widely published in the computer field, the record does not indicate that Professor ██████████ Professor ██████████ or Professor ██████████ are recognized authorities as the record does not contain their resumes or other qualifying information establishing them as experts in the field. While the petitioner submitted a letter from the American Institute of Graphic Arts, the letter does not establish that the beneficiary is a member, and thus the petitioner has not alternatively established the beneficiary's membership in a professional association in the field. For these reasons, the petitioner fails to establish the beneficiary's qualifications pursuant to 8 C.F.R. § 214.2(h)(4)(iii)(D)(5).

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.

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.