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**U.S. Citizenship
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Services**

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FILE: EAC 04 079 54341 Office: VERMONT SERVICE CENTER Date: **JUN 06 2006**

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:

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, Chief
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 preventative healthcare company that seeks to employ the beneficiary as a researcher. 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 on the ground that the beneficiary is not qualified to perform the proffered position and that the petitioner submitted an expired labor condition application (LCA).

The petitioner submits a timely appeal.

The AAO will first address the director's conclusion that the beneficiary is not qualified for the proposed position.

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) the 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) the Form I-290B and additional documents. The AAO reviewed the record in its entirety before issuing its decision.

The petitioner is seeking the beneficiary's services as a researcher. The petitioner asserts that the proposed position requires a bachelor's degree in agriculture or botany with comprehensive knowledge of botany, physiology, and post harvest technology of plant species.

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

On appeal, the petitioner states that the beneficiary completed a bachelor's degree in general agriculture at The University of the West Indies, and that 12 of the courses that he completed are relevant to the proposed position. The record contains a copy of the beneficiary's transcript. The record also contains a letter from The University of the West Indies indicating that the beneficiary completed his Master of Science Degree in Tropical Animal Science and Production. The letter further states that the beneficiary has experience working as a research assistant in the Department of Food Production and for the Caribbean Agricultural Research and Development Institute (CARDI), that he had exposure to courses in post graduate statistics and research methodology as components of his research project, and that the beneficiary conducted field studies on herbal products of Trinidad and Tobago that could be used by humans and livestock.

Upon review of the record, the petitioner has failed to establish that the beneficiary is qualified to perform the duties of the proffered position.

The petitioner's assertion that the beneficiary holds a baccalaureate degree in general agriculture at The University of the West Indies, and that the beneficiary completed 12 courses relating to the offered position is not convincing. The petitioner needs to do more than assert that 12 courses correspond to the proposed position, which requires extensive knowledge of the medicinal use of herbs for humans. The petitioner needs to provide a sufficient description of the coursework and show the nexus between the coursework and the offered position. Going on record without supporting documentary evidence is not sufficient for purposes of meeting the burden of proof in these proceedings. *Matter of Soffici*, 22 I&N Dec. 158, 165 (Comm. 1998) (citing *Matter of Treasure Craft of California*, 14 I&N Dec. 190 (Reg. Comm. 1972)). For this reason, the beneficiary's bachelor's degree is insufficient to establish the beneficiary's qualifications pursuant to the criterion at 8 C.F.R. §§ 214.2(h)(4)(iii)(C)(1), (2), or (3). The AAO notes that there is no credentials evaluation in the record equating the beneficiary's baccalaureate degree to a U.S. degree. 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 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.

None of the evidence in the record establishes the beneficiary's qualifications pursuant to 8 C.F.R. §§ 214.2(h)(4)(iii)(D)(1), (2), (3), or (4).

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;

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).

- (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 contains the beneficiary's transcripts, baccalaureate degree in general agriculture, and the letter from The University of the West Indies. Collectively, this evidence is insufficient to establish that the beneficiary holds a bachelor's degree related to the offered position. The AAO has already discussed the need to explain how the beneficiary's coursework corresponds to the proposed position. The letter from The University of the West Indies indicates that the beneficiary worked as a research assistant for CARDI; but it does not convey the length of time or the duties that he performed there. The letter also states that the beneficiary conducted field studies under the supervision of the senior lecturer in animal production and programme coordinator for the master of science in tropical animal science and production. Nonetheless, the letter does not describe the beneficiary's duties or the length of time the beneficiary spent conducting field studies. Thus, this evidence fails to establish that the beneficiary's holds the equivalent of a baccalaureate degree that is related to the proposed position of researcher, which in this case requires extensive knowledge of herbal medicine for human use. The AAO notes that no evidence in the record shows the beneficiary as having recognition of expertise by two recognized authorities.

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 AAO will now address the director's finding that the petitioner submitted an expired LCA.

The H-1B petition indicates that the petitioner seeks the beneficiary's services from May 30, 2003 to June 2004. The certified LCA contained in the record is valid from June 30, 2003 to July 30, 2004. The LCA therefore properly covered the requested period of employment. Nonetheless, the AAO found that the petitioner has not established that the beneficiary holds a baccalaureate degree that correlates to the offered position.

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.