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FILE: SRC 04 249 51148 Office: TEXAS SERVICE CENTER Date: JUL 17 2006

IN RE: Petitioner:
Beneficiary:



PETITION: Petition for a Nonimmigrant Worker Pursuant to Section 101(a)(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, Chief
Administrative Appeals Office

DISCUSSION: The service center director 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 cement pipelining business that seeks to employ the beneficiary as an operations manager 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 because the petitioner failed to establish that the beneficiary is qualified to perform the duties of a specialty occupation. On appeal, the petitioner submits additional evidence.

To determine 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.

The director found that the beneficiary did not hold a degree related to engineering management or its equivalent as required by the proposed position. Based on the director's decision, the AAO concludes that the proposed position is that of an engineering manager. On appeal, the petitioner does not indicate any disagreement with the director's analysis of the nature of the degree (or equivalent) required to perform the duties of the proposed position.

To determine what academic background prepares individuals to seek employment as engineering managers, the AAO turns to the Department of Labor's *Occupational Outlook Handbook (Handbook)*, on which it routinely relies for information on occupations and their requirements. In pertinent part, the *Handbook's* description of the training required for engineering managers states:

Strong technical knowledge is essential for engineering and natural sciences managers, who must understand and guide the work of their subordinates and explain the work in nontechnical terms to senior management and potential customers. Therefore, these management positions usually require work experience and formal education as an engineer, scientist, or mathematician.

Most engineering managers begin their careers as engineers, after completing a bachelor's degree in the field. To advance to higher level positions, engineers generally must assume management responsibility. To fill management positions, employers seek engineers who possess administrative and communication skills in addition to technical knowledge in their specialty. Many engineers gain these skills by obtaining a master's degree in engineering management or a master's degree in business administration (MBA). Employers often pay for such training. In large firms, some courses required in these degree programs may be offered onsite. Typically, engineers who prefer to manage in technical areas pursue a master's degree in engineering management, while those interested in nontechnical management earn an MBA.

As the petitioner seeks to employ the beneficiary as an engineering manager, it must establish that the beneficiary holds a bachelor's degree or its equivalent in engineering or a related field.

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 (RFE); (3) the petitioner's response to the RFE; (4) the director's denial letter; and (5) Form I-290B and supporting documentation. The AAO reviewed the record in its entirety before issuing its decision.

At the time of filing, the petitioner submitted an evaluation of the beneficiary's academic and employment experience from [REDACTED], that concluded that the beneficiary's previous employment was the equivalent of a U.S. bachelor's degree in engineering management. The director determined, however, that the beneficiary's work experience was not the equivalent of a U.S. bachelor's degree in engineering management.

The AAO now turns to the record to determine whether or not the submitted documents establish that the beneficiary is qualified to perform the duties of the proposed engineering management position. Discussion of 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;
- (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.

None of the first three criteria apply to the beneficiary. The beneficiary does not possess a U.S. bachelor's degree in engineering or a foreign academic degree. Nor does the proposed position require a license or certification. The petitioner must, therefore, demonstrate that the beneficiary's combined education, training, and employment experience establish his eligibility to perform the duties of a specialty occupation under the fourth and final criterion at 8 C.F.R. § 214.2(h)(4)(iii)(C).

For the purposes of 8 C.F.R. § 214.2(h)(4)(iii)(C)(4), equivalence to a U.S. bachelor's 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 bachelor's 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 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 AAO does not accept the portion of the [REDACTED] evaluation that analyzes the beneficiary's work experience. [REDACTED] is an academic credentials evaluation business. Therefore, its evaluation is a reliable assessment only of the beneficiary's educational credentials. The petitioner has not established that the evaluator is an official who has authority to grant college-level credit for training and/or work experience in engineering at an accredited college or university which has a program for granting such credit based on an individual's training and/or work experience. The evaluator's resume does not establish that he has authority to grant college-level credit in engineering or a related field, as required under 8 C.F.R. 214.2(h)(4)(iii)(D)(1). The AAO reviewed the letter submitted by the director of admissions for Pace University in New York, attesting to the university's use of [REDACTED] evaluations. However, it responds to neither of the deficiencies the AAO has identified regarding the evaluation. It does not indicate that the evaluator is a [REDACTED] official with the authority to award college-level credit for experience and that [REDACTED] has a program for awarding such credit. The AAO may, in its discretion, use as advisory opinion statements submitted as expert testimony. However, where an opinion is not in accord with other information or is in any way questionable, the AAO is not required to accept or may give less weight to that evidence. *Matter of Caron International*, 19 I&N Dec. 791 (Comm. 1988).

The record does not establish the beneficiary's qualifications to perform the duties of the proposed position under any of the first four criteria at 8 C.F.R. § 214.2(h)(4)(iii)(D). Accordingly, the AAO now turns to an evaluation of the beneficiary's background under the fifth criterion – a determination by CIS that the equivalent of a 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 evaluate 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. To establish equivalence to a master's degree, the beneficiary must have a baccalaureate degree followed by at least five years of experience in the specialty. The record must also establish that the beneficiary's training and/or work

experience included the theoretical and practical application of the specialized knowledge required by the specialty occupation, that this experience was gained while working with peers, supervisors, or subordinates who have degrees or the equivalent in the specialty occupation and that the beneficiary's expertise in the specialty has been recognized, as evidenced by one of the following:

- (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 AAO has considered the evidence of record related to the beneficiary's prior work experience, and whether it has included the theoretical and practical application of specialized knowledge required by the specialty. Evidence of the beneficiary's work experience consists of his resume and employment verification letters from three employers in England: 1) ██████████, the managing director of ██████████ a pipe lining manufacturer, 2) ██████████ operations director for ██████████ a civil engineering contractor, and 3) ██████████ president of ██████████. In response to the RFE, the petitioner supplemented the three letters submitted at the time of filing with additional correspondence from two of the same individuals. All three authors have worked with the beneficiary on various projects and know the beneficiary's work well. They all assert that the beneficiary's work experience is equal to at least the equivalent of a bachelor's degree in engineering or a related field. The letters generally describe the beneficiary's duties in these positions and indicate that the jobs the beneficiary has held have included increasing responsibility. They do not, however, prove that the beneficiary's duties required the theoretical and practical application of specialized knowledge required by the proposed position. The letters offer only an overall description of the beneficiary's duties, not a specific discussion of the beneficiary's day-to-day tasks. Neither do they establish that the beneficiary's experience was gained while working with peers, supervisors, or subordinates who have degrees or their equivalent in engineering a related field. Although the supplemental letter written by ██████████ indicates that this was the case, it is not supported by any documentation to identify these individuals, their positions, or the degrees they hold. Going on record without supporting documentary evidence is not sufficient for purposes of meeting the burden of proof in

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).

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)).

The record does include documentation indicating that the beneficiary's expertise in engineering management has been formally recognized by a British professional association. The supplemental letter from [REDACTED] states that the beneficiary holds a "black card" manager certification from the Construction Skill Certification Scheme (CSCS). The record includes documentation that the beneficiary holds the claimed certification and evidence regarding CSCS certification requirements.

On appeal, counsel contends that the beneficiary's CSCS certification is proof that the beneficiary has the equivalent of "post bachelor study." The AAO notes that the petitioner has submitted Internet materials that indicate that the CSCS certificate issued to the beneficiary establishes he has an occupational skill level that could equate to "post graduate qualification." However, the same materials also specifically state that "vocational and academic qualifications are different in terms of measuring knowledge and skills" and that there is no "exact correlation" between a particular academic qualification and a vocational qualification. Further, the bachelor's degree referenced in these materials is a foreign degree, not a U.S. bachelor's degree or one documented to be its equivalent, as required to establish the beneficiary's qualifications.

Accordingly, the petitioner has not established that the beneficiary has acquired the equivalent of a bachelor's degree in engineering through a combination of education, specialized training, and/or work experience, as required to satisfy the requirements of the fifth criterion at 8 C.F.R. § 214.2(h)(4)(iii)(D).

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.