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U.S. Citizenship
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FILE: WAC 03 167 51946 Office: CALIFORNIA SERVICE CENTER

Date: NOV 02 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, 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 corporation engaged in providing specialty care services to approximately 97 residents with mental disabilities and retardation at its adult residential facilities. In order to employ the beneficiary as a social worker, the petitioner seeks to classify her 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 basis that the petitioner had failed to establish that the beneficiary is qualified to perform the services of a social worker, the pertinent specialty occupation, in accordance with the requirements of the regulations at 8 C.F.R. §§ 214.2(h)(4)(iii)(C) and (D).

The following paragraphs of his decision highlight the evidentiary deficiencies seen by the director:

The evidence submitted clearly indicates that the beneficiary does not possess a baccalaureate or an equivalent as required by the proffered position. The petitioner submitted an independent credentials evaluation of the beneficiary's education and work experience.

The evaluation of education, training and experience submitted by Global Education Group, Inc. [(GEGI)] was based on the beneficiary's degree and work experience. The evaluator concluded that the beneficiary's [sic] hold an equivalent to the U.S. degree of Bachelor of Arts in History with a minor in Foreign Languages (English). The petitioner submitted a certification of employment from the Department of Social Welfare and Development Services from San Jose, Occidental Mindoro, Philippines, stating that the beneficiary was employed in that office from the period of January 10, 1995 up to December 2, 2003 as a social worker. However, no evidence was submitted of the 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 the beneficiary's recognition of expertise in the specialty through progressively responsible positions directly related to the specialty. The beneficiary[']s degree is in History with a minor in Foreign Languages and does not have education or specialize[d] training as required by the specialty occupation.

On appeal, counsel contends that the beneficiary qualification requirements of 8 C.F.R. §§ 214.2(h)(4)(iii)(C) and (D) are satisfied by the GEGI evaluation report and the evidence of education and experience upon which it is based.

For the reason's discussed below, the AAO finds that director's decision to deny the petition was correct, as the petitioner has not established that the beneficiary possesses the qualifications to serve in the pertinent specialty occupation in accordance with 8 C.F.R. §§ 214.2(h)(4)(iii)(C) and (D). The AAO based its decision upon its consideration of the entire record of proceeding before it, which includes: (1) the petitioner's Form I-129 and the supporting documentation filed with it; (2) the director's request for additional evidence (RFE);

(3) the materials submitted in response to the RFE; (4) the director's denial letter; and (5) the Form I-290B, counsel's brief on appeal, and the documents submitted with the brief.

The evidence regarding the beneficiary's qualifications consists of copies of the following documentation: (1) a college diploma and related transcript indicating completion of a bachelor's degree in History with a minor in English at Divine Word College, San Jose, Occidental Mindoro, Philippines; (2) employment verification memoranda from three former employers; (3) and the GEGI evaluation.

Submissions from former employers of the beneficiary consist of three one-page "Certification" memoranda. One, dated March 13, 2002, from an "Officer-In-Charge PSWDO," states:

This is to certify that [the beneficiary] has been employed in the office of the Provincial Social Welfare Development from the period of September 1986 to December 1994 as Social Worker and has no pending administrative case and no outstanding obligation.

An April 15, 2003 Certification memorandum from a medical doctor serving as a rural health officer at Mamburao, Occidental Mindoro, Philippines, states:

This is to verify employment of [the beneficiary] as volunteer health worker of mentally handicapped child from August 15, 1992 to December 15, 1994, at Yapang Resettlement Area[,]Mamburao, Occidental Mindoro, Philippines.

An April 16, 2003 Certification memorandum from an officer-in-charge at the Department of Social Welfare and Development, San Jose, Occidental Mindoro, Region IV, Philippines, states:

This is to certify that [the beneficiary] was employed in this office from the period of Jan. 10, 1995 up to Dec. 2, 2002 as a social worker for the drug dependent teenage group ages 13-21 years of age.

The GEGI evaluation has two components - an Educational Evaluation Report and a Work Experience Evaluation Report - which will be separately discussed below.

The only other evidence of the beneficiary's qualifications is her resume. The accuracy of the resume's details about the beneficiary's work experience has not been endorsed or corroborated by her former employers.

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:

- (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.

The degree referenced by section 214(i)(1)(B) of the Act, 8 U.S.C. § 1184(i)(1)(B), means one in a specific specialty that is characterized by a body of highly specialized knowledge that must be theoretically and practically applied in performing the duties of the proffered position.

Therefore, to qualify an alien for classification as an H-1B nonimmigrant worker under the Act, the petitioner must establish that the beneficiary has completed a degree in the specialty that the occupation requires, and that, if he or she does not possess the required degree, the petitioner must demonstrate that the alien has [1] experience in the specialty equivalent to the completion of such degree, and [2] recognition of expertise in the specialty through progressively responsible positions relating to the specialty.

In implementing section 214(i)(2) of the Act, 8 U.S.C. § 1184(i)(2), the regulation at 8 C.F.R. § 214.2(h)(4)(iii)(C) states that an alien must meet one of the following criteria in order to qualify to perform services in 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.

The beneficiary does not meet either of the criteria at 8 C.F.R. §§ 214.2(h)(4)(iii)(C)(1) and (3), as there is no evidence of a U.S. accredited college or university baccalaureate or higher degree required by the social worker specialty-occupation, or of an unrestricted state license, registration or certification which authorizes her to fully practice and be immediately engaged as a social worker in the state of intended employment.

The evidence of record does not qualify the beneficiary to serve in the pertinent specialty occupation under the criterion at 8 C.F.R. § 214.2(h)(4)(iii)(C)(2) for an alien holding a foreign degree determined to be

equivalent to a U.S. accredited college or university baccalaureate or higher degree required by the pertinent specialty occupation. The AAO recognizes that, pursuant 8 C.F.R. § 214.2(h)(4)(iii)(D)(3) on establishing degree equivalency by a foreign-credentials evaluation service's evaluation of education, the GEGI Educational Evaluation Report establishes that the beneficiary holds the equivalent of at least a U.S. baccalaureate degree in History, with a minor in Foreign Languages (English). However, the Educational Evaluation Report neither asserts nor establishes that the beneficiary has attained college-level educational credentials beyond History and English. The Social Worker sections in the 2002-2003 edition of the Department of Labor's *Occupational Outlook Handbook (Handbook)*, submitted by the petitioner into the record, and in the 2006-2007 *Handbook* indicate that a baccalaureate degree in History with a minor in English is not a degree required by the specialty. Both editions state that a bachelor's degree in social work is the most common minimum requirement for social worker positions, but that "majors in psychology, sociology, and related fields" may qualify a person "for some entry-level jobs, especially in small community agencies." Further, both editions of the *Handbook* report a master's degree in social work as commonly required in health and in clinical-work settings. The 2002-2003 *Handbook* states, "A master's degree in social work (MSW) is necessary for positions in health and mental health settings and is typically required for certification for clinical work." The 2006-2007 *Handbook* states, "A master's degree in social work (MSW) is typically required for positions in health settings and is required for clinical work as well." In this regard, the AAO notes that there is no correlation evident in the record between the beneficiary's degree and associated transcript of coursework, on one hand, and the 29-bullet duty descriptions at pages 6 and 7 of the brief on appeal, which relate a heavy concentration of health and mental-health related work.

Counsel's reference to a 1995 unpublished decision from an unofficial source, the *Immigration Reporter*, is not persuasive. While 8 C.F.R. § 103.3(c) provides that CIS precedent decisions are binding on all CIS employees in the administration of the Act, unpublished decisions are not similarly binding. Furthermore, each nonimmigrant petition is a separate proceeding with a separate record. *See* 8 C.F.R. § 103.8(d). In making a determination of statutory eligibility, CIS is limited to the information contained in the record of proceeding, *see* 8 C.F.R. § 103.2(b)(16)(ii), and the record presently before the AAO does not establish that the beneficiary's U.S.-equivalent degree in History with a minor in English is a degree required for the performance of the specialty occupation described in the record.

This leads the AAO to evaluate the evidence of record under the criterion at 8 C.F.R. § 214.2(h)(4)(iii)(C)(4) for a determination as to whether the beneficiary has "[1] 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 . . . [2] recognition of expertise in the specialty through progressively responsible positions directly related to the specialty." In order to equate a beneficiary's credentials to a U.S. baccalaureate or higher degree under 8 C.F.R. § 214.2(h)(4)(iii)(C)(4), the provisions at 8 C.F.R. § 214.2(h)(4)(iii)(D) require 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;¹
- (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 discounts the opinion of the GEGI Work Experience Evaluation Report that the beneficiary's "over nine years of work experience in the social work field" elevates her baccalaureate degree to the equivalent of a "U.S. Bachelor's degree in Social Work (four year degree)." The regulation at 8 C.F.R. § 214.2(h)(4)(iii)(D)(1) requires that the person issuing an evaluation of work experience be "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." The evidence of record indicates that at the time she rendered her opinion the evaluator was not an official of an accredited U.S. college or university who was authorized to grant college-level credit at such an institution for work experience. Pursuant to 8 C.F.R. § 214.2(h)(4)(iii)(D)(3), CIS does not accept a credentials evaluation service's opinion with regard to educational equivalency of training or work experience.

As results of recognized college-level equivalency examinations or special credit programs have not been submitted in support of the petition, the criterion 8 C.F.R. § 214.2(h)(4)(iii)(D)(2) is not relevant.

The criterion at 8 C.F.R. § 214.2(h)(4)(iii)(D)(4) is not relevant because the record contains no evidence of certification or registration from a nationally-recognized social worker association or society that grants certification or registration to social workers who have achieved a certain level of competence in the specialty.

According to 8 C.F.R. § 214.2(h)(4)(iii)(D)(5), to merit a CIS determination that training or work experience is equivalent to U.S. baccalaureate coursework in a specific specialty, for each year of college-level training the alien lacks:

¹ The petitioner should note that, in accordance with this provision, the AAO will accept a credentials evaluation service's evaluation of *education only*, not experience.

[I]t must be clearly demonstrated [1] that the alien's training and/or work experience included the theoretical and practical application of specialized knowledge required by the specialty occupation; [2] 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 [3] 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 occupation²;
- (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.

Due to their skeletal nature, the two documents from the beneficiary's former employers do not merit weight under any criterion of 8 C.F.R. §§ 214.2(h)(4)(iii)(C) and (D). Neither document provides details about specific work that the beneficiary performed; the extent, if any, that she applied theoretical and practical application of specialized knowledge required by the social worker specialty occupation; the educational qualifications of her peers, subordinates, and supervisors; or recognition of expertise as outlined in the regulation.

The beneficiary's resume is not persuasive. It represents a claim by the petitioner, rather than evidence to support that claim. Its evidentiary weight does not exceed the cumulative weight of whatever corroborative information that the former employers have provided. Here the employer's Certifications contain only generalized descriptions of the beneficiary's work – "employed in the office of the Provincial Social Welfare Development," "volunteer health worker of mentally handicapped child," and "social worker for the drug dependent teenage group ages 13-21 years of age." The Certifications do not corroborate the details of work described in the resume, and they do not establish that the beneficiary was at any time engaged in the

² *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).

theoretical and practical application of highly specialized social worker knowledge that would be attained only by at least a bachelor's degree or its equivalent in social work or a related field. Simply going on record without supporting documentary evidence is not sufficient for the purpose 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)).

As the petitioner has not established that the beneficiary is qualified to serve in the pertinent specialty occupation of social worker in accordance with the requirements at of 8 C.F.R. §§ 214.2(h)(4)(iii)(C) and (D), the director's decision will not be disturbed.

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. Accordingly, the appeal will be dismissed.

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