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FILE: SRC 04 251 52393 Office: TEXAS SERVICE CENTER Date: NOV 22 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 an import and distribution company that seeks to employ the beneficiary as an industrial designer. 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 because the beneficiary is not qualified to perform the proffered position. Counsel submitted a timely appeal.

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, the brief, and additional and previously submitted 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.

The record reflects that the beneficiary completed studies in the normal specialty of fine arts at Hainan University, China; and in finance at the International Economics Institute's graduate program at Fu Dan University, China. The evidence of record shows that the beneficiary does not hold a U.S. baccalaureate or

higher degree or a foreign degree determined to be equivalent to a U.S. baccalaureate or higher degree that is required by the specialty occupation, an industrial designer, from an accredited college or university. The offered position does not require state license, registration, or certification.

Thus, the AAO will determine whether the petitioner establishes the beneficiary's qualifications under 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 is 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 director found that the beneficiary is not qualified for the proffered position of industrial designer because the beneficiary's education, experience, and training are not equivalent to a U.S. baccalaureate degree.

On appeal, counsel submits an educational evaluation from Professor [REDACTED] letter from [REDACTED] the beneficiary's diploma, certificate, academic transcripts, and their translations; certificates of employment; recommendation letters; certificates of diplomas relating to the signatories of the employment and recommendation letters; and translations of the submitted documents.

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

To establish the beneficiary's qualifications pursuant to 8 C.F.R. § 214.2(h)(4)(iii)(D)(1), the petitioner must submit an evaluation from an official who has authority to grant college-level credit for training and/or experience in the specialty of industrial design 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 record of proceeding contains an educational evaluation from Professor [REDACTED] who is employed at University of Massachusetts Dartmouth's College of Visual and Performing Arts. This evaluation states that based on the beneficiary's formal education, work experience, and training, she holds the educational equivalent of a bachelor of fine arts degree, with a concentration in design, from an accredited institution of higher education in the United States. The letter from [REDACTED] the Professor and Chair of the Department of Design at the university, states that Professor [REDACTED] reviews the academic and professional credentials of foreign applicants, students, and prospective faculty for the College of Visual and Performing Arts and that he reviews credentials in the fields of fine arts, graphic design, electronic imaging, and other design related areas. [REDACTED] states that Professor [REDACTED] is experienced in evaluating relevant work experience of foreign students to determine their academic equivalence, and authorize that credit be awarded by the university. [REDACTED] states that the university has a division that awards credit based on work experience, and that Professor [REDACTED] evaluates such credentials and determines whether the university is to award credit based upon students' professional experience. The AAO finds that the letter from [REDACTED] does not evince that University of Massachusetts Dartmouth College of Design has a program for granting credit based on an individual's training and/or work experience.¹ Thus, the petitioner fails to establish the beneficiary's qualifications under the regulation at 8 C.F.R. § 214.2(h)(4)(iii)(D)(1).

There is no evidence in the record to establish the beneficiary's qualifications pursuant to 8 C.F.R. §§ 214.2(h)(4)(iii)(D)(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, which in this case is an industrial designer; 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:

¹ The university website at www.umassd.edu/crc/explerjump.cfm indicates that the university has an internship program to grant credit based on experiential learning. An internship program whereunder a student earns credits under the supervision of the university is not a program for granting credit based on work experience within the meaning of the regulations.

- (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.

Upon a review of the record, the combination of the beneficiary's education, work experience, and training is insufficient to establish the equivalent of a bachelor's degree in a field relating to the proposed position.

The evaluation from Professor [REDACTED] does not state how many credit hours of equivalent education the beneficiary has.

The record contains the beneficiary's transcripts, her diploma with a major in the normal specialty of fine arts from Hainan University in China, her certificate of graduation in the specialty of finance from International Economics Institute of Fu Dan University, her employment letters, and the translation of each of these documents into the English language. The letter from Morningside Evaluations and Consulting states that [REDACTED] has attained the equivalent of an associate's degree in fine arts and an associate's degree in business administration. This evaluation does not establish that the beneficiary has the equivalent of a bachelor's degree in industrial design. The letter from Professor [REDACTED] states that the beneficiary's formal education reflects that she "satisfied substantially similar requirements to the completion of coursework from an accredited institution of higher education in the United States." Professor [REDACTED] does not state how many credit hours of equivalent education the beneficiary has. Consequently, although the beneficiary completed university-level coursework, the AAO cannot determine from the evaluation the college-level training that the beneficiary lacks. Further, the record does not reflect that Professor [REDACTED] represents a reliable credentials evaluation service which specializes in evaluating foreign educational credentials as required by 8 C.F.R. § 214.2(h)(4)(iii)(D)(3).

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).

The employment letter dated July 19, 2001 from Zhongshan Beyond Telecom Leather Cases Co., Ltd. states: the beneficiary was employed there from June 1996 to July 2001 as a product designer; she researched and developed styles and packages for products and designed elegant bags and cases; and worked with senior staff who held bachelor's or higher degrees. The record contains evidence of the educational qualifications of the staff with Zhongshan Beyond Telecom Leather Cases Co., Ltd. The letter dated May 21, 2004 from the Foreign Trade (Group) Advertisement Company of Hainan Province verifies that the beneficiary was employed with its design department for industrial products and packages from September 1992 to May 1996, and that after one year of internship training she worked as a designer of industrial products and packages. This letter does not indicate 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. None of the evidence in the record establishes that the beneficiary has recognition of expertise in the specialty by two recognized authorities. Thus, 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.

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