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U.S. Citizenship
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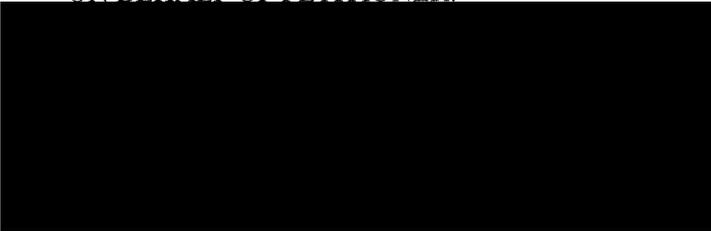
FILE: SRC 05 190 51706 Office: TEXAS SERVICE CENTER Date:

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 denied the nonimmigrant visa petition and the matter is now before the Administrative Appeals Office (AAO) on appeal. The director's decision will be withdrawn and the matter remanded to the director for entry of a new decision consistent with this opinion.

The petitioner is an elevator manufacturer with 12,000 employees and \$2 billion in gross annual revenue that seeks to employ the beneficiary as its chief executive officer. 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 basis of her determination that the petitioner had failed to establish that the proposed position qualifies for classification as a specialty occupation under the criteria set forth at 8 C.F.R. § 214.2(h)(4)(iii)(A).

The record of proceeding before the AAO contains (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 supporting documentation. The AAO reviewed the record in its entirety before issuing its decision.

Section 214(i)(1) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1184(i)(1) defines the term "specialty occupation" as one that requires:

- (A) theoretical and practical application of a body of highly specialized knowledge, and
- (B) attainment of a bachelor's or higher degree in the specific specialty (or its equivalent) as a minimum for entry into the occupation in the United States.

The term "specialty occupation" is further defined at 8 C.F.R. § 214.2(h)(4)(ii) as:

An occupation which requires theoretical and practical application of a body of highly specialized knowledge in fields of human endeavor including, but not limited to, architecture, engineering, mathematics, physical sciences, social sciences, medicine and health, education, business specialties, accounting, law, theology, and the arts, and which requires the attainment of a bachelor's degree or higher in a specific specialty, or its equivalent, as a minimum for entry into the occupation in the United States.

Pursuant to 8 C.F.R. § 214.2(h)(4)(iii)(A), to qualify as a specialty occupation, the position must meet one of the following criteria:

- (1) A baccalaureate or higher degree or its equivalent is normally the minimum requirement for entry into the particular position;
- (2) The degree requirement is common to the industry in parallel positions among similar organizations or, in the alternative, an employer may show that its particular position is so complex or unique that it can be performed only by an individual with a degree;
- (3) The employer normally requires a degree or its equivalent for the position; or

- (4) The nature of the specific duties is so specialized and complex that knowledge required to perform the duties is usually associated with the attainment of a baccalaureate or higher degree.

Citizenship and Immigration Services (CIS) interprets the term "degree" in the above criteria to mean not just any baccalaureate or higher degree, but one in a specific specialty that is directly related to the proposed position.

As noted previously, the petitioner is an elevator manufacturer with 12,000 employees and \$2 billion in gross annual revenue. It has six manufacturing plants in North and South America and over 200 branch and service locations. As chief executive officer, the beneficiary would be responsible for the overall management and direction of this company.

As noted previously, the director denied the petition on the basis of her determination that the proposed position does not qualify for classification as a specialty occupation. On appeal, newly-retained counsel contends that the director denied the petition in error. Counsel contends that the proposed position qualifies for classification as a specialty occupation under the fourth criterion of 8 C.F.R. § 214.2(h)(4)(iii)(A), that the nature of the specific duties is so specialized and complex that knowledge required to perform the duties is usually associated with the attainment of a baccalaureate or higher degree.

According to the petitioner's June 20, 2005 letter of support, the beneficiary would be responsible for the overall management and direction of the company. The petitioner stated, in relevant part, the following:

[The beneficiary] would be the senior most executive responsible for the overall management and direction of the company. He will be responsible for ensuring continued and increased profitability through effective management of personnel and through the development and implementation of strategic business plans. [The beneficiary] would be responsible for planning, directing[,] and coordinating operational activities through the management of subordinate executives and managers. [The beneficiary] will be responsible for managing the strategic goals and objectives of the organization and to report to and advise the Board of Directors. [The beneficiary's] role will be to provide direction and leadership toward the achievement of the organization's philosophy, mission, strategy, and annual goals and objectives.

[The beneficiary] will oversee the design, marketing, promotion, delivery[,] and quality of all company products and services, as well as safety programs and business ethics. He will be responsible for the management of finances, taxes, risks[,] and facilities and [will] be required to recommend yearly budgets for Board approval. [The beneficiary] will be responsible for prudently managing the organization's resources within budget guidelines. He is also responsible for ensuring corporate compliance with all current laws and regulations. He will manage the human resources of the organization according to authorized personnel policies and procedures conforming to current laws and regulations. [The beneficiary] will provide strategic guidance to managers to improve their marketing and management abilities. He will also assure that the organization and its mission, products[,] and services are being presented in a strong and positive image to relevant stakeholders and the public.

The petitioner has submitted a detailed description of the duties of the proposed position in relation to the petitioner's business that establishes that the duties of the position are so specialized and complex that the knowledge required to perform them is usually associated with the attainment of a baccalaureate or higher degree. It has submitted evidence regarding the scale and scope of its business operations, as well as information establishing where the beneficiary would fit into those operations.

Accordingly, the AAO agrees with counsel that the proposed position qualifies for classification as a specialty occupation under the fourth criterion. It finds that the record in this particular proceeding establishes that the duties of the proposed position are so specialized and complex that the knowledge required to perform them is usually associated with the attainment of a baccalaureate or higher degree.

However, the AAO may not approve the petition at this time, as the record of proceeding as presently constituted does not establish that the beneficiary qualifies to perform the duties of this specialty occupation. Pursuant to 8 C.F.R. § 214.2(h)(4)(iii)(C), in order 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 first criterion requires a showing that the beneficiary earned a baccalaureate or higher degree from a United States institution of higher education. Such is the not the case here, so he does not qualify under this criterion.

The second criterion requires a showing that the beneficiary earned a foreign degree determined to be equivalent to a United States baccalaureate or higher degree. Since the beneficiary does not possess a college degree, he does not qualify under the second criterion, either.

The record does not demonstrate, nor has the petitioner contended, that the beneficiary holds an unrestricted state license, registration or certification to practice the specialty occupation, so he does not qualify under the third criterion.

The fourth criterion, set forth at 8 C.F.R. § 214.2(h)(4)(iii)(C)(4), requires a showing that the beneficiary's education, specialized training, and/or progressively responsible experience is equivalent to the completion of a United States baccalaureate or higher degree in the specialty occupation, and that the beneficiary also has recognition of that expertise in the specialty through progressively responsible positions directly related to the specialty.

It is this fourth criterion under which the petitioner must classify the beneficiary's work experience.

Pursuant to 8 C.F.R. § 214.2(h)(4)(iii)(D), equating a beneficiary's credentials to a United States baccalaureate or higher degree under this criterion 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;
- (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 beneficiary does not qualify under the first criterion of 8 C.F.R. § 214.2(h)(4)(iii)(D). The record contains an evaluation from Globe Language Services, Inc. (Globe), dated June 6, 2005, which states that the beneficiary's work experience is equivalent to a bachelor's degree in business administration from a regionally accredited institution of higher education in the United States. However, the Globe evaluation is defective for two reasons.

First, the Globe evaluation is defective because a credentials evaluation service may evaluate educational credentials only. 8 C.F.R. § 214.2(h)(4)(iii)(D)(3). Further, there has been no showing that the evaluator, George R. Fletcher, has the authority to grant college-level credit for training and/or experience at an accredited college or university which has a program for granting such credit based on an individual's training and/or work experience, as required by the regulation at 8 C.F.R. § 214.2(h)(4)(iii)(D)(1). Therefore, the beneficiary does not qualify under the first criterion.

No evidence has been submitted to establish, nor has counsel contended, that the beneficiary satisfies 8 C.F.R. § 214.2(h)(4)(iii)(D)(2), which requires that the beneficiary submit 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).

Nor does the beneficiary qualify under the third criterion, as the record does not establish foreign educational credentials that could be the subject of such an evaluation.

No evidence has been submitted to establish, nor has counsel contended, that the beneficiary satisfies 8 C.F.R. § 214.2(h)(4)(iii)(D)(4), which requires that the beneficiary submit 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.

The AAO next turns to the fifth criterion. 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 (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 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 record traces the beneficiary's work experience from 1968 onward, for a period of 37 years (the petition was filed in June 2005). The AAO's next line of inquiry is therefore to determine whether this work experience included the theoretical and practical application of specialized knowledge required by the specialty occupation, whether it was gained while working with peers, supervisors, or subordinates who held a degree or its equivalent in hospitality management, and whether the beneficiary achieved recognition of expertise in the specialty evidenced by at least one of the five types of documentation delineated in sections (i), (ii), (iii), (iv), or (v) of 8 C.F.R. § 214.2(h)(4)(iii)(D)(5).

The AAO finds that the record demonstrates that at least 12 years of the beneficiary's work experience included the theoretical and practical application of specialized knowledge required by 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).

However, there is no evidence in the record to demonstrate that at least 12 years of this experience was gained while working with peers, supervisors, or subordinates who held a degree or its equivalent in the field, and whether the beneficiary achieved recognition of expertise in the specialty evidenced by at least one of the five types of documentation delineated in sections (i), (ii), (iii), (iv), or (v) of 8 C.F.R. § 214.2(h)(4)(iii)(D)(5). As such, the beneficiary does not qualify under any of the criteria set forth at 8 C.F.R. §§ 214.2(h)(4)(iii)(D)(1)(2)(3)(4), or (5), and therefore by extension does not qualify under 8 C.F.R. § 214.2(h)(4)(iii)(C)(4).

Therefore, the AAO is unable to find the beneficiary qualified to perform the duties of the specialty occupation at this time. However, the director did not address this issue. Thus, the director's decision will be withdrawn and the matter remanded for the entry of a new decision. The director may afford the petitioner reasonable time to provide evidence pertinent to the issue of whether the beneficiary is qualified to perform the duties of this specialty occupation. The director shall then render a new decision based on the evidence of record as it relates to the regulatory requirements for eligibility. As always, the burden of proving eligibility for the benefit sought rests solely with the petitioner. Section 291 of the Act, 8 U.S.C. § 1361.

ORDER: The director's August 31, 2005 decision is withdrawn. The petition is remanded to the director for entry of a new decision, which, if adverse to the petitioner, is to be certified to the AAO for review.