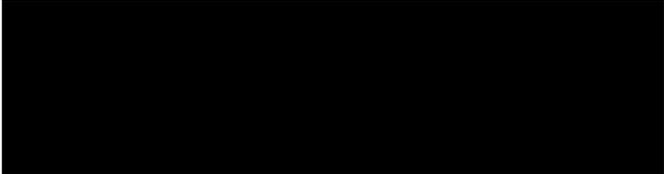


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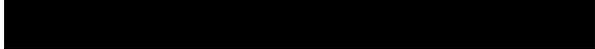
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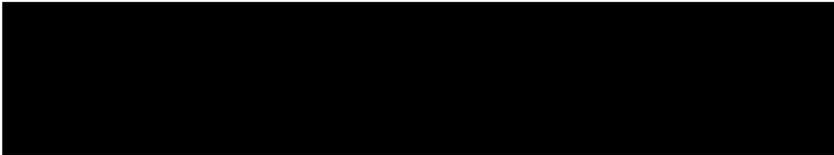
DZ

FILE: WAC 04 058 50064 Office: CALIFORNIA SERVICE CENTER Date: **AUG 14 2007**

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 Administrative Appeals Office (AAO) remanded a subsequent appeal to the director for entry of a new decision. The director has denied the petition and certified his decision to the AAO for review. The director's decision will be withdrawn. The petition will be approved.

The petitioner is travel service that seeks to employ the beneficiary as a systems analyst. The petitioner, therefore, seeks 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 record of proceeding before the AAO contains (1) the Form I-129 and supporting documentation, initially submitted on December 23, 2003; (2) the director's March 9, 2004 request for additional evidence; (3) the petitioner's May 27, 2004 response to the director's request; (4) the director's July 11, 2004 denial letter; (5) the Form I-290B and supporting documentation, dated August 6, 2004; (6) the AAO's March 27, 2006 remand of the petition to the director; (7) the director's December 7, 2006 request for additional evidence; (8) the petitioner's February 23, 2007 response to the director's request; and (9) the director's March 20, 2007 notice of certification. The AAO reviewed the record in its entirety before issuing its decision.

In its March 27, 2006 decision, the AAO determined that, although the proposed position qualifies for classification as a specialty occupation, the record as then constituted did not establish that the beneficiary is qualified to perform the duties of the specialty occupation. Accordingly, the AAO remanded the matter to the director for his determination of whether the beneficiary is qualified to perform the duties of the specialty occupation, with certification to the AAO should his decision be adverse to the petitioner.

In his December 7, 2006 request for additional evidence, the director afforded the petitioner 84 days to submit evidence regarding the beneficiary's qualifications to perform the duties of the specialty occupation. In response, the petitioner submitted an evaluation of credentials, dated January 31, 2007, from [REDACTED] the Lead Faculty of Management Information Systems and Business Administration at the University of Phoenix's College of Undergraduate Business and Management. Although [REDACTED] found the combination of the beneficiary's foreign education and experience equivalent to a bachelor's degree in computer information systems from an accredited institution of higher education in the United States, the director found the evaluation deficient. Accordingly, the director determined that the petitioner had failed to demonstrate that the beneficiary qualifies to perform the duties of the specialty occupation, and certified his decision to the AAO for review.

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 petitioner seeks to establish that the beneficiary is qualified under 8 C.F.R. § 214.2(h)(4)(iii)(C)(4). Accordingly, the AAO turns to the governing regulation at 8 C.F.R. § 214.2(h)(4)(iii)(D). 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 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.

At issue in this case is whether [REDACTED] evaluation satisfies 8 C.F.R. § 214.2(h)(4)(iii)(D)(1). In finding the evaluation deficient, the director stated that [REDACTED] had made only general statements regarding his qualifications to comment on the beneficiary's work experience; that [REDACTED] is not a college registrar or Dean of Admissions, which would make his statements more credible, that the evidence submitted by [REDACTED] did not clearly establish that the University of Phoenix has a program for granting college-level credit for training and/or employment experience with copies of pages from the institution's college catalog; and that the petitioner had submitted no supporting evidence of the beneficiary's work experience. Finally, the director stated that CIS could not accept [REDACTED] evaluation because foreign education evaluators are not qualified to make assessments of foreign employment experience and that foreign educational credentials evaluators are not considered "recognized authorities" for the purpose of qualifying aliens under recognition of expertise.

The AAO disagrees with the director's analysis, and will address the director's final conclusions first. The fact that CIS does not recognize foreign educational credentials evaluators as "recognized authorities" when determining "recognition of expertise" is irrelevant. As noted previously, the regulation at issue here is 8 C.F.R. § 214.2(h)(4)(iii)(D)(1). Whether an individual is a "recognized authority" is relevant when considering an alien's credentials under 8 C.F.R. § 214.2(h)(4)(iii)(D)(5).

While the director is correct that a foreign credentials service may evaluate educational credentials only,¹ that rule is not relevant here. [REDACTED] evaluation is not from a credentials evaluation service but from the University of Phoenix.

The director's statement that the petitioner had submitted no supporting evidence of the beneficiary's work experience is incorrect. In its May 27, 2004 response to the director's request for evidence, the petitioner submitted a letter, with a certified English translation, from the Propos System Corporation, stating that the beneficiary had worked for this company from January 1, 1989 until August 31, 2003. This letter also provided an overview of the duties she had performed. The petitioner also submitted copies, with certified English translations, of several of the beneficiary's income tax returns she filed with the Government of Taiwan. The AAO has no reason to doubt the authenticity of any of these documents.

The AAO now turns to an analysis of [REDACTED] evaluation. [REDACTED] states the following:

On the basis of the concentrated nature of her work experience and training in Computer Information Systems, I hereby affirm that [the beneficiary's] academic and experiential qualifications are comparable to Bachelor's-level training in Computer Information Systems and related areas . . .

[I]t is my judgment that [the beneficiary] has attained the equivalent of a *Bachelor of Science degree in Computer Information Systems* from an accredited institution of higher education in the United States [emphasis in original].

The petitioner also submits a contemporaneous letter, dated January 10, 2007, from [REDACTED] Ph.D., College Chair of the University of Phoenix's Jersey City Campus. [REDACTED] states that the University of Phoenix has a program, entitled the Prior Learning Assessment, which acknowledges college credit based upon the work experience of students and applicants. According to [REDACTED] the Prior Learning Assessment process determines whether learning received outside the traditional learning classroom is equivalent to academic curriculum and eligible for college credit. He also states that within [REDACTED] capacity as a faculty member and Area Chair falls the review of the credentials of existing and prospective faculty and students in the fields of business administration, marketing, management information systems, computer science, and other related areas. He also states that Dr. Jelen has proven to be a reliable evaluator for the Prior Learning Assessment.

Accordingly, the AAO finds that the petitioner has established that [REDACTED] has the authority to grant college-level credit for training and/or experience in the specialty, and that the University of Phoenix has a program for granting such credit based on an individual's training and/or work experience. As such, it finds further that the beneficiary is qualified to perform the duties of the specialty occupation under the criteria set forth at 8 C.F.R. § 214.2(h)(4)(iii)(D)(I). Accordingly, the director's decision will be withdrawn and the petition approved.

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 sustained that burden.

ORDER: The director's March 20, 2007 decision is withdrawn. The petition is approved.

¹ See 8 C.F.R. § 14.2(h)(4)(iii)(D)(3)