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**U.S. Citizenship
and Immigration
Services**

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FILE: SRC 05 243 50880 Office: TEXAS SERVICE CENTER Date: **AUG 21 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:

SELF-REPRESENTED

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.

A handwritten signature in black ink, appearing to read "Robert P. Wiemann".

Robert P. Wiemann, Chief
Administrative Appeals Office

DISCUSSION: The Director, Texas 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 courier service company that seeks to employ the beneficiary as a graphic 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 due to the petitioner's failure to establish beneficiary's qualifications to perform the duties of a specialty occupation. On appeal, the petitioner contends that the director erred in denying the petition, and that as this is an extension of a visa previously granted to the beneficiary, the beneficiary is qualified to perform the duties of a specialty occupation.

The record of proceeding before the AAO contains (1) the Form I-129 and supporting documentation; (2) the director's request for additional evidence (RFE); (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.

On January 25, 2006, the director sent the petitioner a notice of request for additional evidence. Among other things, the notice requested the following:

Also, please submit evidence that the beneficiary holds at least a baccalaureate degree required by the specialty occupation. A copy of her resume states that she has a Bachelor of Graphic Design and a degree in computer graphics/commercial art technology. Please submit copies of her diplomas. You may also submit copies of any relevant transcripts, but only if they clearly state a degree was granted. Furthermore, a letter submitted in support of this petition states that a credential evaluation was included with the petition. No such evaluation was found in the file. Please resubmit the evaluation.

In response, the petitioner submitted a credentials evaluation from the Foundation for International Services (FIS) indicating that the beneficiary has the equivalent of three years of university level credit in graphic design from a community college in the United States. FIS also concluded that the beneficiary has 6 ½ years of experience in the field, and that in combination with her academic experience has the equivalent of a baccalaureate degree in graphic design from an accredited college in the United States. The petitioner submitted certificates of work experience and the beneficiary's resume. The petitioner did not submit the certificate or transcripts of the beneficiary's post secondary education from the Taller Cinco Centro de Diseño as requested by the director.

On July 13, 2006, the director denied the I-129 petition. The director stated that the petitioner did not submit a certificate or transcript from Taller Cinco Centro de Diseño in its response to the RFE. The director found that the employment support letters, combined with the post secondary schooling, proof of which was not submitted, do not demonstrate the equivalence of a university level education. The director determined that the beneficiary was not eligible for the classification sought.

On appeal, the petitioner disputes the director's findings and states the following in a letter dated August 1, 2006:

According to the denial letter for the petition and case in reference indicates that the sole reason why this case was not adjudicated is because the evaluation of the academic and professional evaluation of the beneficiary issued by the foundation for International Services did not conclude that the beneficiary had a baccalaureate of higher degree. Nevertheless it seams [sic] that the officer did not fully read the document since it is clear that the evaluation concludes that the beneficiary indeed has a bachelors [sic] degree in graphic design 'as a result of her educational background and employment experiences (3 years of experience = 1 year of university-level credit) and educational background the equivalent of an individual with a bachelor's degree in graphic design form [sic] an accredited college or university in the United States.

The petitioner has misunderstood the director's decision. The petition was not denied because of a misreading of the evaluation provided by the petitioner. In fact, in both the director's RFE and decision, the director noted the absence of a diploma, certificate, or transcript upon which the evaluation of the beneficiary's education was based. In the absence of any evidence documenting the beneficiary's education, the director concluded that the beneficiary does not have the equivalent of a degree in graphic design. The purpose of the request for evidence is to elicit further information that clarifies whether eligibility for the benefit sought has been established, as of the time the petition is filed. *See* 8 C.F.R. §§ 103.2(b)(8) and (12). The failure to submit requested evidence that precludes a material line of inquiry shall be grounds for denying the petition. 8 C.F.R. § 103.2(b)(14). Therefore, as noted *supra*, the director denied the petition on the basis that the beneficiary does not qualify to perform the duties of a specialty occupation.

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.

In making its determination as to whether the beneficiary qualifies to perform the duties of a specialty occupation, the AAO turns to the criteria at 8 C.F.R. § 214.2(h)(4)(iii)(C), as described above. The beneficiary did not earn a degree from a United States institution of higher education; therefore, she does not qualify under the first criterion.

Nor does the beneficiary qualify under the second criterion, which requires a demonstration that the beneficiary's foreign degree has been determined to be equivalent to a United States baccalaureate or higher degree required by the specialty occupation from an accredited college or university.

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; therefore, he does not qualify to perform the duties of a specialty occupation 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.

Thus, it is the fourth criterion under which the petitioner seeks to classify the beneficiary's eligibility to perform the duties of a specialty occupation. 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.

The beneficiary does not qualify under 8 C.F.R. § 214.2(h)(4)(iii)(D)(1), as the evaluation submitted by the petitioner did not state that [REDACTED], Assistant Director of Evaluations for the Foundation for International Services Inc., has the authority to grant college-level credit for experience in graphic design at an accredited college or university which has a program for granting such credit based on the beneficiary's work experience. Citizenship and Immigration Services (CIS) uses an evaluation by a credentials evaluation

organization of a person's foreign education as an advisory opinion only. However, this evaluation is based upon the beneficiary's education and work experience. A credentials evaluation service may not evaluate an alien's work experience or training; it can only evaluate educational credentials. See 8 C.F.R. § 214.2(h)(4)(iii)(D)(3). Thus, the evaluation carries no weight in these proceedings. *Matter of Sea, Inc.*, 19 I&N Dec. 817 (Comm. 1988).

No evidence has been submitted to establish, nor has the petitioner 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 satisfy 8 C.F.R. § 214.2(h)(4)(iii)(D)(3). As was the case under 8 C.F.R. § 214.2(h)(4)(iii)(C)(2), the beneficiary is unqualified under this criterion because according to the FIS evaluation, the beneficiary holds the equivalent of three years of lower division university-level credit in graphic design from an accredited community college in the United States and not a bachelor's degree.

No evidence has been submitted to establish, nor has the petitioner 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 that 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; 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:

- (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

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).

- (v) Achievements which a recognized authority has determined to be significant contributions to the field of the specialty occupation.

As previously indicated, the petitioner has submitted an FIS evaluation of the beneficiary's education and work experience, dated September 3, 2002. The evaluator concludes that, based upon the certificate from Taller Cinco Centro de Diseño in Bogota, Colombia, the beneficiary holds the equivalent of three years of lower division university-level credit in graphic design from an accredited community college in the United States. As noted by the director, the evaluation did not attach the beneficiary's certificate or transcripts from this institution. Thus, this education will not be considered. Going on record without supporting documentary evidence is not sufficient for purposes 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)). Further, the AAO notes that the equivalent of three years of university level credit from an accredited community college is contradictory as community colleges generally stop at a two-year associate's degree. Citizenship and Immigration Services (CIS) uses an evaluation by a credentials evaluation organization of a person's foreign education as an advisory opinion only. Where an evaluation is not in accord with previous equivalencies or is in any way questionable, it may be discounted or given less weight. *Matter of Sea, Inc.*, 19 I&N Dec. 817 (Comm. 1988).

The AAO now turns to the beneficiary's prior work experience, and whether it included the theoretical and practical application of specialized knowledge required by the specialty. The only information in the record regarding the beneficiary's previous work history are the letters provided by Adprocines Ltda., Taller 7 Creativo, L.D. Films, and Graffiti, and the photocopies of the beneficiary's designs. None of these letters provides sufficient information about the job duties performed by the beneficiary to allow the AAO to conclude that the experience included the theoretical and practical application of specialized knowledge in graphic design. Moreover, none of the letters established that this experience was gained while working with peers, supervisors, or subordinates with degrees in the specialty, or that the beneficiary has recognition of expertise in the field. This evidence does not establish that the beneficiary has the equivalent of a degree in graphic design from an accredited university in the United States.

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).

Thus, the beneficiary does not qualify to perform the duties of a specialty occupation.

The AAO notes the petitioner's August 1, 2006 letter stating that

this is an extension of a previous visa granted with the same documents and evaluation which indicates that the previous immigration officer concluded that the beneficiary does have the equivalency of a bachelors degree based on the provided documentation for the visa petition and therefore Mrs. Cristina Lara does qualify to obtain the requested H-1B visa.

The prior approvals do not preclude CIS from denying an extension of the original visa based on a reassessment of the petitioner's qualifications. *Texas A&M Univ. v. Upchurch*, 99 Fed. Appx. 556, 2004 WL 1240482 (5th Cir. 2004). As stated previously, the evidence in the record does not support a finding that the beneficiary is qualified for the proffered position. The service center director's decision to approve the initial petition has no bearing on the AAO's decision in this matter, as service center directors' decisions are not

binding on this office. *Louisiana Philharmonic Orchestra v. INS*, 2000 WL 282785 (E.D. La.), *aff'd* 248 F.3d 1139 (5th Cir. 2001), *cert. denied*, 122 S.Ct. 51 (2001). The AAO does note, however, that if the facts in the record relating to the initial petition were similar to the facts in this record, the service center director's approval of the petition would constitute material error. The AAO is not required to approve a petition where eligibility has not been demonstrated, merely because of another approval that may have been erroneous. *See, e.g., Matter of Church Scientology International*, 19 I&N Dec. 593, 597 (Comm. 1988).

The petitioner has not established that the beneficiary is qualified to perform the duties of a specialty occupation. Accordingly, the AAO will not disturb the director's denial of the petition

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.