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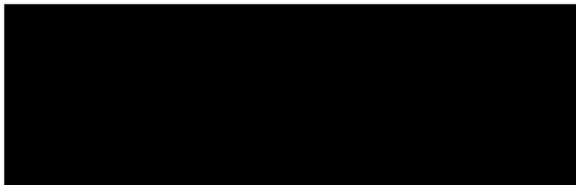
U.S. Department of Homeland Security  
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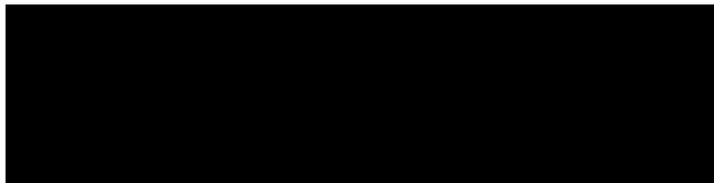
FILE: SRC 04 247 51446 Office: TEXAS SERVICE CENTER Date: **AUG 21 2007**

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:



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, revoked the previously approved nonimmigrant visa petition and the matter is now before the Administrative Appeals Office (AAO) on appeal. The director's revocation of the approved petition will be withdrawn and the matter will be remanded to the director for further consideration.

Established in 1999, the petitioner is in the business of wholesaling, distributing, and the importation and exportation of general merchandise. The petitioner has 4 employees and a gross annual income of \$871,258.97. Pursuant to a previously approved H-1B petition filed on behalf of the beneficiary, the petitioner has been employing the beneficiary as a market research analyst 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 revoked the petition based on her determination that the beneficiary was not qualified for the position offered.

The record includes: (1) the Form I-129 and supporting documents; (2) the director's notice of intent to revoke approval (NOIR); (3) counsel's response to the NOIR; (4) the director's decision revoking approval of the petition; and (5) the Form I-290B and brief in support of the appeal. The AAO reviewed the record in its entirety before issuing its decision.

On March 29, 2006, the director sent the petitioner a notice of intent to revoke the December 3, 2004 approval of the petition. The director revoked the I-129 petition on May 5, 2006, stating that the petitioner did not submit a response to the NOIR, and therefore, the director determined that the beneficiary was not eligible for the classification sought.

On appeal counsel disputes the director's findings and states on the Form I-290B that the basis for the revocation of the H-1B is incorrect because the response to the notice of intent to deny was submitted timely and U. S. Citizenship and Immigration Services (USCIS) had the evidence requested when the director revoked the beneficiary's H-1B visa. As evidence that the response to the NOIR was filed timely, counsel includes: an envelope from the Texas Service Center with a postmark date of May 9, 2006; a USPS Express Mail label for a package delivered to the Texas Service Center with an acceptance date of April 28, 2006 and the initials "J.A."; a USPS delivery confirmation dated May 1, 2006. The evidence of timely filing presented by the petitioner is credible.

As the director has not considered the evidence submitted in response to the NOIR, the petition will be remanded in order for the director to determine whether the beneficiary is qualified to perform the duties of a specialty occupation. The AAO notes additionally, that the beneficiary's qualifications have not been established by the evaluation of record.

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, so 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, she 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 under the fourth criterion that the petitioner seeks to establish 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 evidence does not establish that the beneficiary is qualified under 8 C.F.R. § 214.2(h)(4)(iii)(D)(1). Dr. [REDACTED] states in his evaluation that as the Academic Program Director, Graduate School of Business, at the Florida Metropolitan University, he has the authority to grant college level credit for training and/or work experience. [REDACTED] also states that Florida Metropolitan University is an accredited university that grants credit based on an individual's education and/or work experience. However, the record does not reflect that [REDACTED] has such authority. Furthermore, the record does not establish that the university has a program for granting college credit based on an individual's training and/or work experience. USCIS requires a letter from the dean or provost of the university establishing that the university has a program for granting credit based on an individual's training or work experience, and that the evaluating official has the authority to grant such credit.

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 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 the beneficiary does not hold a foreign degree and the evaluation submitted is an evaluation of her work experience and not of her education.

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. The regulation states that 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 occupation<sup>1</sup>;
- (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 does not establish that the beneficiary meets the qualification requirements of 8 C.F.R. § 214.2(h)(4)(iii)(D)(5). Although counsel provided letters from the beneficiary's previous employers, the letters provided do not mention 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. Furthermore, despite Dr. [REDACTED] claim that he is widely considered a "recognized authority" in the field of higher education, his opinion does not include the information required by 8 C.F.R. § 214.2(h)(4)(ii). See 8 C.F.R. § 214.2(h)(4)(ii). Therefore, the record of proceeding lacks documentation of the type specified at subsections (i) through (v) to establish that the alien has achieved the appropriate level of recognition in a pertinent specialty occupation.

For reasons stated in the preceding discussion, the AAO will withdraw the director's decision and remand the instant case to the director for further consideration including whether the documents submitted in response to

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<sup>1</sup> *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 NOIR overcome the director's concerns that the employment letters are fraudulent. The director should issue a new notice of intent to revoke, specifying all the grounds for revocation including the fact that the credentials evaluation is deficient, and affording the petitioner a 30-day period in which to submit evidence in rebuttal. The director shall then issue a new decision based on the evidence of record, as it relates to the statutory and regulatory requirements for H-1B nonimmigrant visa eligibility.

As always, the burden of proof in these proceedings rests solely with the petitioner. Section 291 of the Act, 8 U.S.C. § 1361.

**ORDER:** The director's May 5, 2006 revocation of the approved petition is withdrawn. The petition is remanded to the director for further consideration. The new decision, if adverse to the petitioner, shall be certified to the AAO for review.