



U.S. Citizenship
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Services

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[Redacted]

FILE: EAC 06 182 50395 Office: VERMONT SERVICE CENTER Date: **DEC 13 2007**

IN RE: Petitioner: [Redacted]
Beneficiary: [Redacted]

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:
[Redacted]

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 a construction business¹ that seeks to employ the beneficiary as a part-time construction manager. 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 determining that the record failed to establish that the beneficiary is qualified to perform the duties of a specialty occupation.

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 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 former counsel's response to the

¹ The website at http://www.manta.com/coms2/dnbcompany_6vx81r describes the petitioner's line of business as "Whole Custom Made Furniture Cabinetry and Decorative Home Furnishings."

director's request; (4) the director's denial letter; and (5) the Form I-290B, and new counsel's brief. The AAO reviewed the record in its entirety before issuing its decision.

The petitioner is seeking the beneficiary's services as a part-time construction manager. The petitioner indicated that the beneficiary is a qualified candidate for the job because he possesses the U.S. equivalent of a Bachelor of Science degree in construction management with a major in plumbing based on his several years of related employment experience.

The director found that the beneficiary was not qualified for the proffered position because the petitioner had not sufficiently demonstrated that the beneficiary's foreign credits and work experience are the equivalent of a related bachelor's degree. The director found that the evaluator did not indicate how many foreign credits the beneficiary had taken, what classes he had taken, or the duration of the beneficiary's studies. The director also found that the job descriptions in the foreign employment letters did not establish that the beneficiary was qualified for a construction management job. On appeal, counsel requests oral argument. Counsel also states, in part, that the petition was submitted based upon the beneficiary's progressively responsible work experience, and that in response to the director's RFE, the petitioner's former counsel specifically stated, "Please note the beneficiary did not attend university but rather qualifies based on his work experience. . . ." Counsel cites a court decision to state that the director improperly sought a determination based on "education plus experience." Counsel also states that absent justifiable cause to suspect the evaluation or evaluator is a fraud, the director must accept the evaluation because it is 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.

Counsel's request for oral argument is noted. The regulations, however, provide that the requesting party must explain in writing why oral argument is necessary. Furthermore, Citizenship and Immigration Services (CIS) has the sole authority to grant or deny a request for oral argument and will grant argument only in cases involving unique factors or issues of law that cannot be adequately addressed in writing. *See* 8 C.F.R. § 103.3(b). In this instance, counsel identified no unique factors or issues of law to be resolved. In fact, counsel set forth no specific reasons why oral argument should be held. Moreover, the written record of proceedings fully represents the facts and issues in this matter. Consequently, the request for oral argument is denied.

Upon review of the record, the petitioner has failed to establish that the beneficiary is qualified to perform an occupation that requires a baccalaureate degree in a construction-related field. The beneficiary does not hold a baccalaureate degree from an accredited U.S. college or university in a construction-related field of study, or a foreign degree determined to be equivalent to a baccalaureate degree from a U.S. college or university in a construction-related field of study. Therefore, the petitioner must demonstrate that the beneficiary meets the criterion at 8 C.F.R. § 214.2(h)(4)(iii)(C)(4).

The record contains the following documentation related to the beneficiary's qualifications:

- A credentials evaluation from AUAP Credential Evaluation Services concluding: “[T]he combination of prior studies and work experience gives the [beneficiary] the equivalency of a Bachelor of Science Degree (BS) in Construction Management Major Plumbing (BBA) from a regionally accredited institution of the United States of America.”;
- A Certificate of Schooling, dated February 25, 2006, certifying that the beneficiary was registered at the French institution “General and Technological Education College Felix Eboue” for three classes from 1986 through 1989;
- A Certificate of Professional Aptitude in Sanitary Installations, dated July 5, 1994, awarded to the beneficiary from the National Ministry of Education, Nice Academy, Department of the Maritime Alps;
- An Attestation of Employment, signed on May 22, 1995, from a representative of the French business S [REDACTED] d., certifying that the beneficiary was employed from June 14, 1992 through April 30, 1995, in the capacity of team foreman/site manager;
- An Attestation of Employment, signed on March 31, 2001, from [REDACTED] of the French business [REDACTED] i, asserting that the beneficiary was part of his personnel from May 1995 through June 1999, in the capacity of site foreman;
- An Attestation of Employment, signed on July 31, 2004, from a representative of the French business PROSERVICES, certifying that the beneficiary was employed from January 2002 until July 2004, in the capacity of technical director of the plumbing/heating/air-conditioning/swimming pools department; and
- An Attestation, signed by the manager of the French business AMR PLOMBERIE on March 16, 2006, certifying that the beneficiary has been employed since September 6, 2004, in the capacity of technical/purchasing manager.

When determining a beneficiary's qualifications under 8 C.F.R. § 214.2(h)(4)(iii)(C)(4), the AAO relies upon the five criteria specified at 8 C.F.R. § 214.2(h)(4)(iii)(D). A beneficiary who does not have a degree in the specific specialty may still qualify for an H-1B nonimmigrant visa based on:

- (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.

Counsel's statement that the petition is based solely upon the beneficiary's progressively responsible work experience, is noted. The record, however, contains no credentials evaluation based solely on the beneficiary's work experience. Rather, the credentials evaluation listed above is based, in part, on the beneficiary's prior studies at the French institution "General and Technological Education College Felix Eboue." Specifically, the evaluator from AUAP concludes that the beneficiary's foreign education and related employment experience are the U.S. equivalent of a bachelor's degree in construction management with a major in plumbing. He, however, has not presented a sufficient factual basis to support his conclusions regarding this equivalency. The evidence of record does not contain transcripts for the beneficiary's education. Moreover, although the evaluator states that, as a member of the PLA jury of St. Augustin University in Florida, he is 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, the record contains no corroborating evidence in support of his claim, such as a letter from the university dean or provost. The record contains no explanation for these deficiencies. Thus, the evaluator's conclusion that the beneficiary's foreign education combined with his related work experience are the U.S. equivalent of a bachelor's degree in construction management with a major in plumbing carries no weight in these proceedings. 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 other information or is in any way questionable, the AAO is not required to accept or may give less weight to that evidence. *Matter of Caron International*, 19 I&N Dec. 791 (Comm. 1988).

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; 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 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.

The record contains the above listed employment certificates, indicating that the beneficiary has construction-related work experience. The record also contains evidence of technical training. The record, however, contains insufficient evidence that this documentation is equivalent to a baccalaureate degree in a construction-related field.

Upon review, the record does not contain evidence that the beneficiary's prior work experience included the theoretical and practical application of specialized knowledge required by the specialty. The record does not contain evidence that the beneficiary's duties for his prior employers involve the theoretical and practical application of a body of highly specialized knowledge relating to the occupation of construction management. The employment certificates do not contain a description of the beneficiary's duties and thus do not demonstrate that the beneficiary's past work experience included the theoretical and practical application of a body of highly specialized knowledge. Further, the foreign employers do not indicate that the beneficiary's work experience was gained while working with peers, supervisors, or subordinates who have a degree or its equivalent in the specialty occupation. The record also contains no evidence of the recognition of expertise required by 8 C.F.R. § 214.2(h)(4)(iii)(D)(5).

Likewise, the training certificates submitted are insufficient to establish that the beneficiary's technical training is comparable to academic courses taken at a four-year university that are a realistic prerequisite to attaining a bachelor's degree in a specific specialty in construction or a related field. The record does not contain sufficient information regarding the training to evaluate it as more than vocational coursework that results in technical skill.

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).

In short, the record provides no basis for disturbing the director's decision. The petitioner failed to establish that the beneficiary is qualified to perform services in a specialty occupation according to the standards of 8 C.F.R. §§ 214.2(h)(4)(iii)(C) and (D).

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.

Beyond the decision of the director, the petitioner has also failed to establish that the proffered position is a specialty occupation. Although the petitioner's president asserts in his May 16, 2006 letter that the proposed duties entail "overseeing construction sites/homes from start to finish," the record contains no evidence that the petitioner is engaged in constructing homes from start to finish. Thus, the nature of the proffered position is unclear. 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)). Accordingly, the petitioner has not established that the proposed position qualifies as a specialty occupation under any of the criteria at 8 C.F.R. § 214.2(h)(4)(iii)(A) or that the beneficiary would be coming temporarily to the United States to perform the duties of a specialty occupation pursuant to 8 C.F.R. § 214.2(h)(1)(B)(1). For this additional reason, the petition may not be approved.

An application or petition that fails to comply with the technical requirements of the law may be denied by the AAO even if the Service Center does not identify all of the grounds for denial in the initial decision. See *Spencer Enterprises, Inc. v. United States*, 229 F. Supp. 2d 1025, 1043 (E.D. Cal. 2001), *aff'd*, 345 F.3d 683 (9th Cir. 2003); see also *Dor v. INS*, 891 F.2d 997, 1002 n. 9 (2d Cir. 1989) (noting that the AAO reviews appeals on a *de novo* basis).

The petition will be denied and the appeal dismissed for the above stated reasons, with each considered as an independent and alternative basis for the decision. In visa petition proceedings, the burden of proving eligibility for the benefit sought remains entirely with the petitioner. Section 291 of the Act, 8 U.S.C. § 1361. Here, that burden has not been met.

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.