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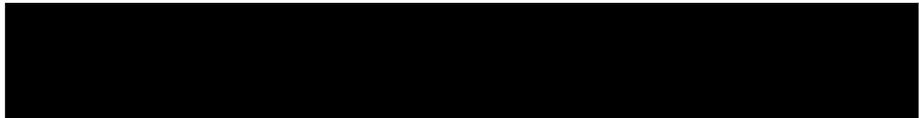
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JUL 09 2007



FILE: WAC 04 082 50719 Office: CALIFORNIA SERVICE CENTER Date: JUL 0 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.

*James Blazinger, for*

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 decision of the director will be affirmed and the petition will be denied.

The petitioner is a health care facility for the elderly that seeks to employ the beneficiary as a market research specialist. 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 January 30, 2004; (2) the director's February 5, 2004 request for additional evidence; (3) the petitioner's April 26, 2004 response to the director's request; (4) the director's May 6, 2004 denial letter; (5) the Form I-290B and supporting documentation, dated June 2, 2004; (6) the AAO's October 26, 2005 remand of the petition to the director; (7) the director's January 31, 2006 request for additional evidence; (8) the petitioner's March 27, 2006 response to the director's request; and (9) the director's May 19, 2006 notice of certification. The AAO reviewed the record in its entirety before issuing its decision.

In its October 26, 2005 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 the January 31, 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: (1) a letter from the Office of Provost, dated January 2, 2001, confirming that Seattle Pacific University faculty have the authority to grant college level credit for training and experience; (2) a master list of Seattle Pacific University Faculty, including [REDACTED]; (3) a copy of the Seattle Pacific University catalogue; (4) an evaluation of credentials, dated February 19, 2004, from [REDACTED], Associate Professor of Marketing, Associate Dean and Director of Graduate Program, School of Business and Economics at Seattle Pacific University; (5) a letter from [REDACTED] University Registrar, confirming that Seattle Pacific University faculty have the authority to grant college level credit for training and experience; and, (7) two letters of employment on behalf of the beneficiary.

Although [REDACTED] found the combination of the beneficiary's foreign education and experience equivalent to a bachelor's degree and master's degree in business administration specializing in marketing 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)(I). In finding the evaluation deficient, the director stated that the evidence submitted did not clearly establish that Seattle Pacific University has a program for granting college-level credit for training and/or employment experience, and did not clearly indicate in the institution's college catalog that the University offers this program; and that the petitioner had submitted vague supporting evidence of the beneficiary's work experience.

The AAO agrees with the director's analysis, and will address the director's conclusions. The AAO turns to an analysis of [REDACTED]'s evaluation. [REDACTED] states the following:

In my opinion, her record of academic and professional work experience in the marketing area included theoretical and practical knowledge in marketing functionally equivalent to a U.S. bachelor's and a master's degree in business administration specializing in marketing. [emphasis in original].

The petitioner also submits a contemporaneous letter, dated September 27, 2005, from [REDACTED] University Registrar, stating that the faculty of Seattle Pacific University have "the authority to grant college credit for training and experience both in the areas of training and more generally in general education and university degree requirements for our academic program." According to [REDACTED], the "faculty make decisions of course equivalency and college level experience," however, it's a "function of admission, advising, major acceptance, placement, degree completion and graduate school recommendations."

In addition, the petitioner submits a letter, dated January 2, 2001, from the Office of the Provost of Seattle Pacific University. The associate provost's letter attested that the SPU faculty has "the authority to grant college level credit for training and experience, both in their areas of training and more generally in those foundational areas of university education commonly considered 'general education,' 'distribution requirements,' or 'related instruction in communication, computation, and human relations.'" The memorandum also stated, in part:

Seattle Pacific University faculty generally and often use this experience in the course of advising advanced transfer students, in assessing the credentials of students from other universities and from other nations, and in the development of university policy in the areas of general education and educational equivalencies.

The University regards faculty members as appropriate evaluators of academic and professional credentials for the purposes of admissions, advising, placement in degree programs, substitution of courses, judgments on petitions, assessments of internships, and other routine university evaluations...

The evidence does not establish that, as required by 8 C.F.R. § 214.2(h)(4)(iii)(D)(I), SPU has a program for granting college credit for any work experience other than that gained in its intern programs, or placement of degrees or courses within the University. The AAO does not consider an internship program to qualify as a program for granting college credit based upon an individual's training and/or work experience.

Although the assistant provost's letter opens with a declaration that SPU faculty has "the authority to grant college level credit for training and experience," the letter's explanatory language, quoted above, qualifies that authority in terms that fail to establish that the SPU is "a college or university which has a program for granting such credit based on an individual's training and/or work experience." The assistant provost's descriptions of faculty use of work-evaluation authority does not clearly indicate that faculty members ever convert non-SPU-internship work experience into SPU college credits. Counsel has not remedied this deficiency, for the exhibit now presented on this issue concludes not confirmatory evidence from SPU but, rather, only evidence about gaining college credit via faculty-approved internships worked in conjunction with related SPU course work (not the case here) or success at certain specific types of examination. Therefore, on the basis of the totality of evidence of record, the petitioner has failed to establish that [REDACTED]'s evaluation is acceptable under 8 C.F.R. § 214.2(h)(4)(iii)(D)(I).

In addition, the petitioner submitted the University's catalogue, however, it did not indicate that it has a program for granting college-level credit based on training and/or experience. Instead, it appears that the catalogue only allows for equivalency exams or special credit programs, or experience derived from internship programs which do not satisfy this requirement. Furthermore, the catalogue does not indicate the total amount of college credit the Registrar or evaluator may grant for training or experience as part of the program.

Accordingly, the AAO finds that the petitioner has not established that [REDACTED] has the authority to grant college-level credit for training and/or experience in the specialty, and that Seattle Pacific University does not have 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 not 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 affirmed and the petitioner will be denied

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 met this burden.

**ORDER:** The director's decision is affirmed and the petition is denied.