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FILE: WAC 05 237 50539 Office: CALIFORNIA SERVICE CENTER Date: JUN 29 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 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, which is a subsidiary of St. [REDACTED] designs, manufactures, and sells medical devices such as pacemakers and defibrillators. It seeks to employ the beneficiary as a software engineer. 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 because the beneficiary is not qualified to perform the duties of a specialty occupation. On appeal, counsel submits a brief.

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, in part: (1) the Form I-129 and supporting documentation; (2) the director's request for additional evidence; (3) counsel'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.

The petitioner is seeking the beneficiary's services as a software engineer. The petitioner indicated that a qualified candidate for the job would possess a bachelor's degree in computer science, or a related field, or the equivalent thereof.

The director found that the beneficiary was not qualified for the proffered position because the beneficiary's education and employment experience did not qualify her for a software engineer position. On appeal, counsel states, in part, that the beneficiary is qualified for the position because she holds the equivalent of the required degree through the following:

- [S]atisfaction of the General Education requirements for a bachelor's degree through her undergraduate study in Taiwan and graduate study in the U.S.;
- [T]wo formal courses in Computer Science in Taiwan;
- [D]ocumented experience of just under six years in the field;
- [T]raining in the field; and
- [R]ecognition as a competent professional Software Engineer by a leading software company.

In its *Occupational Outlook Handbook*, 2006-07 edition, the Department of Labor finds that, for computer software engineer positions, most employers prefer to hire persons who have at least a bachelor's degree and broad knowledge of, and experience with, a variety of computer systems and technologies. Computer science or software engineering is the usual degree concentration for applications software engineers; computer science or computer information systems is the usual degree concentration for systems software engineers. 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 or higher in a computer-related field. The beneficiary holds a foreign Bachelor of Arts degree in journalism and a U.S. Master's degree in communication management. The beneficiary, however, does not hold a baccalaureate degree from an accredited U.S. college or university in a computer-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 computer-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 pertaining to the beneficiary's qualifications:

- U.S. Master of Arts degree in Communication Management and transcripts (reflecting no computer-related classes) for the beneficiary;
- Transcripts for the beneficiary's foreign Bachelor of Arts degree in journalism reflecting only the following two computer-related courses: Introduction to Computer Science and Electronic Data Processing;

- Letter, dated April 18, 2001, from a representative of the U.S. business [REDACTED] stating that the beneficiary worked as a full-time software engineer from July 2, 1999 to January 12, 2000, with the internal title of “Web Producer;”
- Certification, dated May 17, 2002, that the beneficiary is recognized by the Oracle Certification Program as an Oracle8i Certified Professional Database Administrator;
- Approval Notices granting the beneficiary H-1B classification, valid from May 21, 2000 to March 15, 2003, and from March 16, 2003 to March 16, 2006, for the petitioner Oracle Corp;
- Letter, dated November 22, 2005, from a representative of Oracle Corporation, stating that the beneficiary worked as a full-time software engineer with the role of “Web Master” from January 14, 2000 to October 13, 2003;
- Approval Notice granting the beneficiary H-1B classification, valid from August 13, 2004 to March 16, 2006, for the petitioner San Mateo Credit Union, and corresponding earning statements and W-2 forms;
- Letter, dated December 7, 2005, from a representative of the San Mateo Credit Union, stating that the beneficiary worked for the said business as a “Web Support Specialist” from June 14, 2004 to September 2, 2005; and
- Resume for the beneficiary.

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 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.

Although the director specifically requested an evaluation of the beneficiary's training and experience pursuant to 8 C.F.R. § 214.2(h)(4)(iii)(D)(1), (2), or (4), the petitioner did not submit the requested evidence. 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). 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)). Without documentary evidence to support the claim, the assertions of counsel will not satisfy the petitioner's burden of proof. The unsupported assertions of counsel do not constitute evidence. *Matter of Obaigbena*, 19 I&N Dec. 533, 534 (BIA 1988); *Matter of Laureano*, 19 I&N Dec. 1 (BIA 1983); *Matter of Ramirez-Sanchez*, 17 I&N Dec. 503, 506 (BIA 1980). The record does not contain evidence that the beneficiary is qualified for an H-1B nonimmigrant visa based on the requirements at 8 C.F.R. §§ 214.2(h)(4)(iii)(D)(1), (2), (3) or (4). Thus the petitioner must establish that the beneficiary is qualified to perform the services of a specialty occupation pursuant to 8 C.F.R. § 214.2(h)(4)(iii)(D)(5).

When Citizenship and Immigration Services (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 occupation¹;
- (ii) Membership in a recognized foreign or United States association or society in the specialty occupation;

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).

- (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 a certificate, dated May 17, 2002, recognizing the beneficiary as an Oracle8i Certified Professional Database Administrator by the Oracle Certification Program. This documentation does not establish equivalence to a baccalaureate degree in a computer-related field. The computer training certificate does not indicate the length of training. In addition, the petitioner did not submit any independent evidence to illustrate how this training certificate relates to the completion of a baccalaureate degree in a computer-related field. 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)). The petitioner has not submitted any independent evidence to illustrate how the beneficiary's educational background and training relate to the completion of a baccalaureate degree or higher in a computer-related field. See *Matter of Soffici*, 22 I&N Dec. at 165.

The record also contains three employment letters indicating that the beneficiary worked as a "Web Producer," a "Web Master," and a "Web Support Specialist" from July 2, 1999 to January 12, 2000, from January 14, 2000 to October 13, 2003, and from June 14, 2004 to September 2, 2005, respectively. The AAO must determine whether the beneficiary's prior work experience included the theoretical and practical application of specialized knowledge required by the specialty. As described by each employer, the beneficiary's duties did not appear to involve the theoretical and practical application of a specialty occupation. The beneficiary's prior employer, Knighttridder.com, indicated that the beneficiary worked as a web producer for approximately six months utilizing a number of software programs and demonstrating in-depth knowledge and experience with several software programs; however, the employer does not further describe the beneficiary's daily duties involved in using the software or discuss how the beneficiary's work experience corresponded to specific coursework in a four-year bachelor's degree program in computer science, software engineering, or a related field. The beneficiary's prior employer, Oracle Corporation, (Oracle) indicated that the beneficiary worked as a web master of the Oracle University website for three years and ten months and contributed to key projects, provided technical support for the website, and contributed to the design of the web system. Oracle noted that the beneficiary utilized and had mastered several particular software programs; however the employer does not address how utilizing the particular programs equaled attendance and completion of courses at the university level resulting in the equivalent of a bachelor's degree in computer science, software engineering, or a related field. The beneficiary's prior employer, San Mateo Credit Union indicated only that the beneficiary was employed as a web support specialist for approximately one year and three months and does not describe any of the beneficiary's particular skills or duties involved in her position as a web support specialist. The letters submitted by the beneficiary's prior

employers do not describe her daily duties in detail and are insufficient to demonstrate that the beneficiary's work experience included the theoretical and practical application of the specialized knowledge required of an individual who through study has attained a bachelor's degree in computer science or software engineering, or a related field. Furthermore, none of the employers indicates that the beneficiary's work experience was gained while working with peers, supervisors, or subordinates who have a bachelor's degree or its equivalent in the specialty occupation. The petitioner has not established the first prong of 8 C.F.R. § 214.2(h)(4)(iii)(D)(5). For this reason, the AAO determines that the petitioner has not established that the beneficiary is qualified to perform the duties of the specialty occupation.

The second prong of 8 C.F.R. § 214.2(h)(4)(iii)(D)(5) requires that the petitioner document recognition of the beneficiary's expertise in the specialty, as evidenced by one of the following: recognition of expertise in the specialty occupation by at least two recognized authorities in the same specialty occupation; membership in a recognized foreign or U.S. association or society in the specialty occupation; published material by or about the alien in professional publications, trade journals, books or major newspapers; licensure or registration to practice the specialty in a foreign country; or achievements which a recognized authority has determined to be significant contributions to the field of the specialty occupation. Counsel relies on and contends that the letter submitted by Oracle constitutes recognition of the beneficiary as a competent professional software engineer by a leading software company. However, Oracle does not expound upon the beneficiary's competence while employed at its company and does not explain how the beneficiary's competence equals knowledge obtained through additional years of university-level study in the field of computer software engineering or computer science. Moreover, the Oracle letter does not include information regarding the author of the letter and the author's qualifications as an expert and further does not state that the beneficiary's work experience is the equivalent of university-level curriculum in a specialty occupation field. None of the letters submitted by the beneficiary's prior employers is sufficiently detailed to substantiate that the beneficiary has expertise in the specialty occupation or constitute significant contributions to the field of the specialty occupation. The petitioner has not satisfied the second prong of the criterion at 8 C.F.R. § 214.2(h)(4)(iii)(D)(5). For this additional reason, the petition will be denied.

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).

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.