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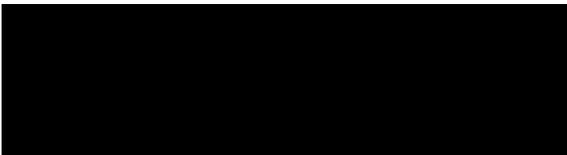
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FILE: WAC 06 070 53277 Office: CALIFORNIA SERVICE CENTER Date: **NOV 06 2007**

IN RE: Petitioner: 
Beneficiary:

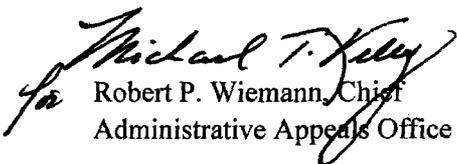
PETITION: Petition for a Nonimmigrant Worker Pursuant to Section 101(a)(15)(H)(i)(b) of the
Immigration and Nationality Act, 8 U.S.C. § 1101(a)(15)(H)(i)(b)

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 is a vocational nursing school that seeks to employ the beneficiary as a full-time accountant. 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 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 evidence (RFE); (3) counsel's responses to the director's request; (4) the director's notice of intent to deny letter; (5) the director's denial letter; and (6) the Form I-290B, with counsel's brief. The AAO reviewed the record in its entirety before reaching its decision.

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 petitioner is seeking the beneficiary's services as a full-time accountant. The petitioner indicated that the beneficiary is a qualified candidate for the job because she possesses a foreign Bachelor of Arts degree and a foreign master's degree in business administration.

The director found that the beneficiary was not qualified for the proffered position because the evidence of record does not demonstrate that she holds the U.S. equivalent of a bachelor's degree in accounting. On appeal, counsel states, in part, that the beneficiary is qualified for the position because she holds the U.S. equivalent of a bachelor's degree in accounting. Counsel also states that the credentials evaluation 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 that has a program for granting such credit based on an individual's training and/or work experience. As supporting documentation, counsel resubmits the credentials evaluation on Mercy College letterhead.

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 an accounting-related field. The beneficiary holds a foreign Bachelor of Arts degree with the focus of her studies in Korean language and literature. She also holds a foreign master's degree in advertising and public relations. The beneficiary, however, does not hold a baccalaureate degree from an accredited U.S. college or university in an accounting-related field of study, or a foreign degree determined to be equivalent to a baccalaureate degree from a U.S. college or university in an accounting-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:

- A credentials evaluation from Morningside Evaluations and Consulting, dated May 9, 2005, concluding that, based on academic qualifications alone, the beneficiary holds the U.S. equivalent of a master's degree in business administration, and, based on academic qualifications and professional experience, a Bachelor of Arts degree in accounting;
- A credentials evaluation from Mercy College, dated June 1, 2006, from the same evaluator who prepared the May 9, 2005 evaluation, concluding that, based on academic qualifications alone, the beneficiary holds the U.S. equivalent of a master's degree in business administration, and, based on academic qualifications and professional experience, a Bachelor of Arts degree in accounting;
- A transcript and "Certificate" certifying that on February 18, 2005, the beneficiary graduated with a Master of Business Administration degree with a major in advertising and public relations from a Korean university;
- A transcript and "Certificate of Graduation" certifying that on February 20, 1997, the beneficiary graduated with a Bachelor of Arts degree from the Korean Language and Literature school/department of a Korean university;

- An "Employment Certificate," dated April 7, 2005, certifying that the beneficiary has worked from May 6, 2003 to the present for the Korean business MK Husdaq Co., Ltd., as an account manager;
- A "Certificate of Employment," dated March 30, 2005, certifying that the beneficiary worked from February 22, 2002 to July 31, 2002 for the Korean business Baeoom.com Inc. as an account manager;
- A "Proof of Employment," dated March 31, 2005, certifying that the beneficiary worked from December 1, 1998 to February 25, 2002 for the Korean business Digital Chosun Inc. as an associate accountant; and
- A 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 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.

While the AAO will accept the evaluator's opinion regarding the beneficiary's foreign bachelor's degree and foreign master's degree as the U.S. equivalent of a master's degree in business administration, the record does not include evidence in support of the evaluator's conclusion that, based on the beneficiary's academic qualifications and professional experience, she holds the U.S. equivalent of a bachelor's degree in accounting. The evaluator's 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, is noted. However, it appears that the evaluator relied upon the beneficiary's own resume for a description of the duties she performed for the foreign employers, as the certificates of employment contain no comprehensive description of the beneficiary's duties. As the assertions on the beneficiary's resume regarding her duties are uncorroborated, the evaluator's conclusion regarding the equivalency of the beneficiary's academic qualifications and professional experience carries no weight in these proceedings. The evaluator has not presented a sufficient factual basis to support his conclusion. 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 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).

Moreover, Professor ██████ the evaluator from Morningside Evaluations and Consulting, does not state that he has the authority to grant college-level credit in accounting based on experience; he states that he has the authority to grant college-level credit for training, and/or courses taken at other U.S. or international universities. In addition, although the Chairperson, Division of Business and Accounting at Mercy College states in his March 3, 2004 letter that Professor ██████ has the authority to grant credit at Mercy College based on the students' professional experience, he does not state that Professor ██████ is authorized to grant credit in accounting. For these additional reasons, the evaluator's conclusion regarding the equivalency of the beneficiary's academic qualifications and professional experience carries no weight in these proceedings. Again, 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 occupation¹;

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).

- (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 three employment certificates indicating that the beneficiary has worked as an account manager and an associate accountant. As discussed above, however, none of the employment certificates contains a description of the beneficiary's duties. Upon review, the record contains insufficient evidence that the beneficiary's academic qualifications and work experience are equivalent to a baccalaureate degree in accounting. The record does not evidence that the beneficiary's prior work experience included the theoretical and practical application of specialized knowledge required by the specialty. Nor does the record contain evidence that the beneficiary's duties for her prior employers involved the theoretical and practical application of an accountant. 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).

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 AAO does not find that the proffered position is a specialty occupation. A review of the Department of Labor's *Occupational Outlook Handbook (Handbook)* finds that not all accounting employment is performed by degreed accountants. Its discussion of the occupation of accountants clearly indicates that accounting positions may be filled by individuals holding associate degrees or certificates, or who have acquired their accounting expertise through experience. Further proof of the range of academic backgrounds that may prepare an individual for accounting employment is provided by the credentialing practices of the Accreditation Council for Accountancy and Taxation (ACAT), an independent accrediting and monitoring organization affiliated with the National Society of Accountants. The ACAT does not require a degree in accounting or a related specialty to issue a credential as an Accredited Business Accountant®/Accredited Business Advisor® (ABA). Eligibility for the eight-hour comprehensive examination for the ABA credential requires only three years of "verifiable experience in accounting,

taxation, financial services, or other fields requiring a practical and theoretical knowledge of the subject matter covered on the ACAT Comprehensive Examination.” Up to two of the required years of work experience may be satisfied through college credit.² 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.

² Information provided by the ACAT website (<http://www.acatcredentials.org/index.html>). The *Handbook* identifies the ACAT website as one of several “Sources of Additional Information” at the end of its discussion of the occupation of accountants.