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U.S. Citizenship and Immigration Services

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[redacted]

FILE: SRC 02 162 54357 Office: TEXAS SERVICE CENTER Date: FEB 3 2004

IN RE: Petitioner: [redacted]
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:

[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, Director
Administrative Appeals Office

DISCUSSION: The service center director 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 corporation that provides technical support services to the energy industry. The petitioner 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), so that it may employ the beneficiary as a project engineer.

The director denied the petition because he found that the beneficiary is not qualified to perform the duties of a specialty occupation. On appeal, counsel submits a brief and a previously submitted educational evaluation of the beneficiary's work experience.

The record of proceeding before the AAO contains: (1) the petitioner's Form I-129 and supporting documentation; (2) the director's request for additional evidence (RFE); (3) the petitioner's response to the RFE, with attachments; (4) the director's denial letter; and (5) the Form I-290B, with counsel's brief and the original of the educational equivalency evaluation, which had been submitted with the response to the RFE.

The petitioner provides skilled persons to work in clients' oil and gas exploration and production enterprises and related activities. Here the petitioner is seeking to employ the beneficiary to provide services as a project engineer to BJ Process and Pipeline Services Company (hereinafter refereed to as the client) "to oversee the pre-commissioning and commissioning of oil and gas pipelines for [the client] in Houston, Texas; Coden, Alabama; Port Manatee, Florida[;] Casper and Cheyenne, Wyoming[;] and Denver, Colorado."

The petitioner provided three items of documentary evidence as to the beneficiary's qualifications: the beneficiary's nine-page "Curriculum Vitae" (resume); (2) a one-page August 8, 2002 letter from the client, which briefly recounts the beneficiary's work experience with the client; and (3) an evaluation of the educational equivalent of the beneficiary's work experience, provided in a "Determination of Expertise" letter by the professor who is the head of the Industrial Engineering Department at the University of Tennessee. On the basis of the work experience described in the beneficiary's resume, the professor concluded that the beneficiary has attained the equivalent of a U.S. bachelor's of science degree in engineering.

The director discounted these documents in finding that the evidence of record was insufficient to establish that the beneficiary was qualified to serve in the specialty occupation.

On appeal, counsel asserts that, contrary to the director's decision, the evidence of record establishes that the beneficiary is qualified to serve in the proffered position's specialty occupation. Counsel contends that the client's letter and the educational evaluation complied with the RFE, and counsel attributes the denial to what he sees as the director's "apparent assumption throughout the petition process (evident by the tone and content of [Citizenship and Immigration Services (CIS)] communications to us) that the information provided by the petitioner, the beneficiary, and our law firm all constituted misrepresentations."

On the Form I-290B, counsel asserts that the director "inappropriately disregarded evidence and intimated that all evidence submitted amounted to nothing more than misrepresentations." There counsel also asserts that the director "should recognize the certifications made under penalty of law by the petitioner and the attorney that information submitted with the petition was truthful."

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;
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> (*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.

Sections 1, 2, and 3 of 8 C.F.R. § 214.2(h)(4)(iii) are not at issue: there is no evidence of a U.S. degree; a foreign degree held out as equivalent to a U.S. baccalaureate degree or higher; or any State license, registration, or certification.

Counsel does, however, raise the issue of whether the beneficiary qualifies under 8 C.F.R. § 214.2(h)(4)(iii)(C)(4), that is, by "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 "recognition of expertise in the specialty through progressively responsible positions directly related to the specialty." 8 C.F.R. § 214.2(h)(4)(iii)(D) sets the standards for determining whether a beneficiary qualifies under 8 C.F.R. § 214.2(h)(4)(iii)(C)(4). It states:

> [E]quivalence to completion of a United States baccalaureate or higher degree shall mean achievement of a level of knowledge, competence, and practice in the specialty occupation that has been determined to be equal to that of an individual who has a baccalaureate or higher degree in the specialty and shall be 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. For purposes of determining equivalency to a baccalaureate degree in the specialty, 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 occupation;[1]

(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

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[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).

> (v) Achievements which a recognized authority has determined to be significant contributions to the field of the specialty occupation.

The criteria at 8 C.F.R. § 214.2(h)(4)(iii)(D)(2), (3) and (4) are not at issue. There is no evidence of: college-level equivalency examinations or special credit programs; an evaluation by a reliable credentials evaluation service which specializes in evaluating foreign educational credentials; or certification or registration from a nationally-recognized professional association or society which recognizes a certain level of competence in a specific specialty.

This means that the AAO still must apply the standards of 8 C.F.R § 214.2(h)(4)(iii)(D)(1) and (5) to the evidence of record.

With regard to 8 C.F.R § 214.2(h)(4)(iii)(D)(1), the question is whether the "Determination of Expertise" letter from the head of the University of Tennessee's Department of Industrial Engineering suffices as 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."

Citizenship and Immigration Services (CIS) may, in its discretion, use as advisory opinions statements submitted as expert testimony. However, where an opinion is not in accord with other information or is in any way questionable, CIS is not required to accept or may give less weight to that evidence. *Matter of Caron International*, 19 I&N Dec. 791 (Comm. 1988).

Several aspects of the professor's determination render it unpersuasive and insufficient to meet the evidentiary standard of 8 C.F.R § 214.2(h)(4)(iii)(D)(1).

First, the record did not satisfactorily establish that, at the time of his opinion, the professor was a person authorized by an accredited college or university to assess and award college-level credit on its behalf on the basis of a person's training and work experience. The AAO notes that the professor seeks to establish his expertise in this area by referring to his ability to confer academic credit for training and work-experience:

> [I] am qualified to comment on the work experience of this candidate because of the positions I hold, and have held at the University of Oklahoma and the University of Tennessee. Because of the positions I hold at the above-mentioned universities, I have the authority to evaluate foreign educational credentials, experience, training and/or courses taken at other U.S. or international universities, and to determine whether credit will be awarded to a student by the University. At the above-mentioned institutions, I have served as an Assistant Professor, Associate Professor, and Professor of Industrial Engineering. I am presently the department head of Industrial Engineering at the University of Tennessee.

The AAO also notes that the professor closes his letter with the statement, "Because of the positions I hold at the above-mentioned universities, I have the authority to evaluate whether the school is to grant college level credit for experience, training, and/or courses taken at other U[.]S.[.] or international universities."

The AAO will not accept a faculty member's opinion as to the college-credit equivalent of a particular person's work experience unless independent evidence, such as a letter from the appropriate dean or provost,

establishes that a specific college or university authorizes the proposed expert to grant academic credit for that institution on the basis of work experience. The AAO is not asserting misrepresentation, nor is it questioning the professor's veracity. Rather, this is a matter of an insufficient evidentiary foundation, specifically, a lack of evidence from the cited universities that they agree with the professor's perception of his authority. In this regard, the AAO also notes that the professor opined in an area outside his particular field. He specializes not in petroleum or gas engineering, but in a separate and distinct engineering branch, industrial engineering. The contrast between industrial engineering and petroleum or gas engineering is obvious in this excerpt from the treatment of industrial engineers at page 113 of the 2002-2003 edition of Department of Labor's *Occupational Outlook Handbook*:

> Industrial engineers determine the most effective ways for an organization to use the basic factors of production—people, machines, materials, information, and energy—to make a product or to provide a service. They are the bridge between management goals and operational performance. They are more concerned with increasing productivity through the management of people, methods of business organization, and technology than are engineers in other specialties, who generally work more with products or processes. Although most industrial engineers work in manufacturing industries, they also work in consulting services, healthcare, and communications.
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> To solve organizational, production, and related problems most efficiently, industrial engineers carefully study the product and its requirements, use mathematical methods such as operations research to meet those requirements, and design manufacturing and information systems. They develop management control systems to aid in financial planning and cost analysis, design production planning and control systems to coordinate activities and ensure product quality, and design or improve systems for the physical distribution of goods and services. Industrial engineers determine which plant location has the best combination of raw materials availability, transportation facilities, and costs. Industrial engineers use computers for simulations and to control various activities and devices, such as assembly lines and robots. They also develop wage and salary administration systems and job evaluation programs. Many industrial engineers move into management positions because the work is closely related.

Even if the record had independently documented the professor's authority, the AAO would accord his opinion no substantial weight in this proceeding. This is because the professor based his evaluation on mostly uncorroborated assertions in the beneficiary's resume. As the professor stated, "[The beneficiary's] professional experience was evaluated based upon a resume prepared by [the beneficiary], and presented to me as accurately reflective of [the beneficiary's] experience." Here, the AAO is making an objective assessment not that the resume misrepresents facts, but that the factual foundation of the professor's opinion should include the employers' information on the positions in which they employed the beneficiary. The only letter submitted from the beneficiary's former employers covers a relatively short span (November 1998 to August 8, 2002) of the beneficiary's approximately 26 years of work experience.

The final issue is whether the record contains evidence sufficient for CIS to determine, in accordance with 8 C.F.R. § 214.2(h)(4)(iii)(D)(5), 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 of record is materially deficient in this regard. The petitioner has not established the evidentiary foundation necessary for CIS to determine that the beneficiary's work experience is equivalent to a bachelor's degree in engineering.

First, the record lacks documentary evidence that meets this regulatory provision's requirement that the evidence has "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." Independent documentation of the beneficiary's work experience is provided by only one of the 13 employers listed on the resume. Only the client submitted a letter about the beneficiary's employment, and that letter only covers the period from November 1998 to August 8, 2002. Furthermore, it described the beneficiary's work in terms too general for CIS to assess the extent to which it required the theoretical and practical application of highly specialized engineering knowledge:

> Job Duties: management of precommissioning, compilation of procedures for the offshore works, responsib[ility] for review of Pipeline Pre-commissioning, responsib[ility] for equipment and personnel mobilizations and coordination offshore, responsib[ility] for overseeing Contractor's operations, client liaison, procurement, Hazop participation, QA Audits of suppliers.

By itself, the beneficiary's resume does not clearly demonstrate the extent to which his work experience included the theoretical and practical application of highly specialized engineering knowledge. The job descriptions are too general to illuminate the range of engineering knowledge that the beneficiary had to apply. The same holds for the Form I-129's summary of the beneficiary's present occupation and prior work experience:

> Project Engineer for [the client] offshore U.S. and in Mexico. More than 25 years of experience in engineering positions involving oil and gas pipelines.

Second, documentary evidence in the record did not clearly demonstrate that, in the language of 8 C.F.R. § 214.2(h)(4)(iii)(D)(5), "the alien's experience was gained while working with peers, supervisors, or subordinates who have a degree or its equivalent in the specialty occupation." Even the one employer's letter falls below this threshold, as it states the beneficiary's project engineer and project coordinator duties in general terms which shed little light upon the work environment, the beneficiary's interaction with others, and the engineering degrees or degree-equivalents which his superiors, peers, and subordinates may have had.

Finally, the record does not satisfy the requirement for at least one type of documentation described at 8 C.F.R. § 214.2(h)(4)(iii)(D)(5)(i)-(v), or at least one type of similar documentation.

The AAO has considered all of counsel's contentions. One which deserves comment is the assertion that the beneficiary's qualification to serve in the proffered position is established by the fact that he has been previously employed as a project engineer by the client, described as "a large, world wide energy services company" who is willing to employ him now in a similar position. The AAO does not dispute the accuracy of counsel's statement that BJ Services has employed the beneficiary as a project engineer in the past and is willing to hire him again in a similar position. Furthermore, all aspects of the beneficiary's work history are

relevant in this proceeding. However, an employer's previous employment of an individual and willingness to rehire him, even in a specialty occupation position, does not establish that the person has, in terms of 8 C.F.R § 214.2(h)(4)(iii)(C)(4), "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 "recognition of expertise in the specialty through progressively responsible positions directly related to the specialty by training, and/or progressively responsible positions directly related to the specialty."

It is not the intent of this decision to question the integrity of counsel, the petitioner, or the beneficiary, directly, indirectly, or by implication. The decision is just the AAO's objective application of the relevant regulations to the evidence in the record.

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. Accordingly, the appeal will be dismissed.

ORDER: The appeal is dismissed. The petition is denied.