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U.S. Citizenship
and Immigration
Services

D2

[redacted]

FILE: WAC 02 253 52405 Office: CALIFORNIA SERVICE CENTER Date: FEB 3 2004

IN RE: Petitioner: [redacted]
Beneficiary:

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

ON BEHALF OF PETITIONER:

SELF-REPRESENTED

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 director of the service center initially approved the nonimmigrant visa petition. After further review, however, the director found that the beneficiary was not eligible for the benefit sought and he properly served the petitioner with a Notice of Intent to Revoke. The director ultimately revoked his approval of the petition and the matter is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed. The petition will be revoked.

The petitioner researches and develops energy converters and solar electric generators. It had succeeded in its endeavor to classify the beneficiary as a nonimmigrant worker in a specialty occupation, computer aided design specialist, 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 revoked approval of the petition because he found that the approval "violated 8 C.F.R. [§] 214.2(h) and/or involved gross error," in that: (1) the beneficiary does not qualify to serve in a specialty occupation in accordance with 8 C.F.R. § 214.2(h)(4)(iii)(C); and (2) the position for which the petition had been approved is not a specialty occupation within the meaning of 8 C.F.R. § 214.2(h)(4)(iii)(A).

Revocation of an approved nonimmigrant visa petition is governed by the regulation at 8 C.F.R. § 214.2(h)(11), which, in pertinent parts, provides that the director may revoke approval of a petition on certain specified grounds, after giving the petitioner notice of the grounds of the intended revocation and 30 days to respond with whatever rebuttal evidence the petitioner may wish to submit.

On January 22, 2003, the director issued notice of his intent to revoke on the same regulatory grounds as he later cited in the revocation, namely, "that approval of the petition violated 8 C.F.R. 214.2(h) and/or involved gross error." Thus, the notice identified one of the grounds which Citizenship and Immigration Services (CIS) has established for revocation of an approved petition: the regulation at 8 C.F.R. § 214.2(h)(11)(iii)(A)(5) provides for revocation upon a finding that "the approval of the petition violated paragraph (h) of this section [that is, the CIS regulations on temporary employees at 8 C.F.R. § 214.2(h)] or involved gross error."

The notice of the director's intent to revoke referenced an October 28, 2002 interview of the beneficiary at the consular section of the American Consulate in Sofia, Bulgaria, in connection with the approved petition. The notice indicated that, on the basis of the interview, the Consulate returned the approved petition to CIS with a recommendation for revocation.

The notice also noted that, according to the approved petition, the beneficiary would be working for the petitioner as a computer aided design specialist.

The notice identified the beneficiary's current place of employment as a construction firm. It also stated, "Although [the beneficiary's] has [a] degree in Information Technology, her grade average at the university was below average and her study did not focus upon computer programming topics." The notice also stated:

> During the Course of the interview, an embassy computer specialist asked [the beneficiary] questions relating to computer programming. It emerged that [the beneficiary] has little computer knowledge and is primarily responsible only for data entry at her current job.

According to the notice, the consular officer "does not believe that [the beneficiary] possesses the work or educational background necessary to qualify for the position," and the same officer "believes that the petition has been submitted for the sole purpose of facilitating [the beneficiary's] entrance in the U.S." The notice also stated that the consular officer "suspects that the proffered job may not exist, because the petition comes from a company whose manager and partner recently expressed an interest in obtaining a visa for a nanny."

The notice also alerted the petitioner that the director intended to revoke the approved petition in accordance with 8 C.F.R. § 214.2(h)(11)(iii) because the approved petition "violated 8 C.F.R. [§] 214.2(h) and/or involved gross error." The director specified that: (1) the beneficiary was not qualified to serve in a specialty occupation in accordance with 8 C.F.R. § 214.2(h)(4)(iii)(C); and (2) the position in which the beneficiary was to serve did not meet any of the criteria for a specialty occupation at 8 C.F.R. § 214.2(h)(4)(iii)(A).

The petitioner filed its response on February 21, 2003 through its general managing partner.

With regard to whether the position in which the beneficiary was to serve is a specialty occupation, the response described the petitioner as a business that "has been engaged in Applied Research and Product Development of Energy Converters" since 1994, and the response also stated that the petitioner is in an "advanced phase of Prototype Development and Testing of a Thermal - Solar Electric Generator." According to the response, the petitioner had expanded to nine employees by December 2002, of whom three hold Ph.D. degrees, one holds an M.S. degree, and one holds a B.S. degree. As a person who has "full Authority, Personal Knowledge, and Experience to make decisions for [the petitioner]" and who was involved in developing and recruiting for the position for which the petition was filed, the managing general partner stated, "The requirement for this position is, [a] minimum of [a] B.S. in Computer Science Engineering."

With regard to the beneficiary's qualifications, the petitioner asserted that the beneficiary has a degree in computer systems engineering, from completion of a five-year curriculum at Technical University, in Sophia, Bulgaria. The petitioner also stated that the beneficiary has "completed postgraduate studies, has successfully defended a Thesis Work, and has been conferred a Degree of Magister of Computer Systems and Information Technologies." The reply also expressed the petitioner's satisfaction that the beneficiary is qualified for the position designated in the petition. The reply also stated the determination of the petitioner's managing general partner that the beneficiary holds the equivalent of an "M.S. in Computer Science <u>Engineering</u>." (Emphasis in the original.) The reply also referenced and attached an e-mail from a person identified by the petitioner as a professor in the Computer Science Department at the University of Chicago, which states:

> After reviewing the transcript you sent, I think the conferred degree is not equivalent to B.S. in Computer Science; I would place the degree closer to M.S. in Electrical Engineering (EE) or in CSE (Computer Science Engineering). I think, that will be the equivalence, which will be possible to certify.

On May 20, 2003, the director issued his decision revoking the approved petition.

In the decision, the director determined that the information submitted in the petitioner's response did not satisfy any of the specialty occupation requirements of 8 C.F.R. § 214.2(h)(4)(iii)(A). The director also determined that the petitioner did not submit sufficient evidence that the beneficiary was qualified to serve in a specialty occupation, and, in this regard, the director expressly discounted the opinion of the petitioner's managing general partner about the beneficiary's educational qualifications.

On June 19, 2003, the petitioner's managing general partner filed this appeal, which contends that the director's determinations on both the specialty occupation and the beneficiary's qualifications lack a valid evidentiary foundation. In this vein, the petition contends that that the revocation of the petition was not only arbitrary, capricious, and contrary to the evidence, but also violated "several Federal statutes and most notably: 18 U.S.C., chapter 13, art. 241[conspiracy against civil rights], and 242 [deprivation of rights under color of law]." The petitioner also asserts that "it is clearly obvious" that the director ignored and disregarded the petitioner's response to the notice of intent to revoke the approved petition. Furthermore, the petitioner maintains that the director joined the aforementioned consular official "in his obstructionist delaying tactics, and, simply, repeat [that consular official's] – [sic] unfounded, baseless, arbitrary and capricious; [sic] **contrary to facts and evidence - -** statements and allegations." (Boldface in the original.)

With regard to the specialty occupation issue, the appeal presents no new information except for its statement that the proprietary product upon which the petitioner is working involves "very High and Advanced Technology content."

The appeal contests the director's findings on the beneficiary's qualifications in two ways. First, it insists that the beneficiary's qualification to serve in a specialty occupation was established by what the petitioner characterizes as "four independent determinations of the beneficiary's qualifications." These include the three credentials previously cited in the petitioner's response to the director's notice of intent to revoke, namely: (1) the "Diploma – Computer Systems Engineer, on a five years['] curriculum," from the Technical University, Sophia; (2) the "Diploma – Degree of Magister, Computer Systems and Information Technologies," from the Technical University, Sophia; and (3) the determination of the petitioner's managing general partner that the beneficiary holds the equivalent of an M.S. in computer science engineering. The fourth piece of credential information on which the petitioner relies is a new submission, namely, a June 5, 2003 letter from an evaluation officer of the University of Toronto Comparative Education Service (UTCES).

The appeal also contests the credibility of the information from the Sophia consular office. Besides characterizing the information from the consular office as "hallucinatory conjectures," the appeal states that neither the involved consular officer nor his computer specialist have the authority to make educational equivalency determinations.

The AAO's first concern on this appeal was whether the director observed the relevant procedural requirements of 8 C.F.R. § 214.2(h)(11). The evidence of record establishes that the director's actions did comport with the pertinent procedural requirements. In particular, the AAO notes that the director: based his notice of intent to revoke and his subsequent decision to revoke upon a ground that CIS has specified for revocation of an approved nonimmigrant petition; gave the petitioner adequate notice of his intent to revoke; allotted the petitioner sufficient time to respond to the notice of intent; and appears to have considered the evidence that the petitioner offered in rebuttal.

After the procedural review, the AAO reviewed the evidence of record in its entirety to determine whether it met the regulatory criteria upon which the director based his revocation decision.

Upon review of the entire record, the AAO has determined that the evidence of record established a sufficient basis for the director's revocation of the approved petition because the approval violated the CIS regulations on temporary employees at 8 C.F.R. § 214.2(h), and, in light given the lack of supporting evidence, involved gross error.

Along with all of the petitioner's other issues, the AAO has considered the petitioner's contentions against the credibility of consular information provided in the notice of the director's intent. The fact most important to the appeal is that, even if all the consular information in the notice were discounted, the evidence in the record is not sufficient to establish that the petition was properly approved. Nevertheless, the AAO has accorded no weight to the consular officer's speculations about the petitioner's motivations and about whether the proffered position actually exists. The notice of revocation contains insufficient evidence to support these conjectures. The notice also lacks sufficient evidence to establish that the beneficiary's grades were below average, as the basis for that conclusion was not cited. Likewise, in the absence of details about the qualifications of the consular office's computer specialist and about the substance of his conversations, the AAO discounted the conclusions of the computer specialist and the consular office about the extent of the beneficiary's computer knowledge. In addition, the AAO However, the citation of the consular office information in the director's notice of intention to revoke the approved petition was sufficient to put the petitioner on notice that the approval of the petition was questionable and that the petitioner had the burden to establish that there was a proper factual basis for the petition. This burden the petitioner did not sustain.

It should also be noted that the AAO considered but accorded no weight to the petitioner's descriptions of its contacts with the consular official and CIS, as they have no substantive bearing on the issues at hand.

The specialty occupation issue will be discussed first.

Section 214(i)(b) of the Act, 8 U.S.C. § 1184 (i)(b) defines the term "specialty occupation" as an occupation that requires:

(A) theoretical and practical application of a body of highly specialized knowledge, and

(B) attainment of a bachelor's or higher degree in the specific specialty (or its equivalent) as a minimum for entry into the occupation in the United States.

Pursuant to 8 C.F.R. § 214.2(h)(4)(iii)(A), to qualify as a specialty occupation, the position must meet one of the following criteria:

(1) A baccalaureate or higher degree or its equivalent is normally the minimum requirement for entry into the particular position;

(2) The degree requirement is common to the industry in parallel positions among similar organizations or, in the alternative, an employer may show that its particular position is so complex or unique that it can be performed only by an individual with a degree;

(3) The employer normally requires a degree or its equivalent for the position; or

(4) The nature of the specific duties is so specialized and complex that knowledge required to perform the duties is usually associated with the attainment of a baccalaureate or higher degree.

The director correctly determined that the evidence submitted by the petitioner satisfied none of the specialty occupation criteria of 8 C.F.R. § 214.2(h)(4)(iii)(A). The Form I-129 contains no description of the proposed

duties, and no documents were submitted with the form to remedy this shortfall. The subsequent information and documentation submitted on appeal and earlier in response to the director's notice of his revocation intent do not provide a meaningful description of the beneficiary's tasks. It should be noted that the petitioner's general descriptions of its business and its projects were insufficient to convey a meaningful understanding of the beneficiary's duties. This also holds for the managing general partner's vouching for the position as one that required at least a bachelor's of science in computer science engineering. It follows that there is insufficient information for CIS to properly determine that the proffered position met any of the criteria at 8 C.F.R. § 214.2(h)(4)(iii)(A)(*1*), (*2*), or (*4*). A detailed description of the specific duties was essential for analysis of the merits of the petition under those sections. Furthermore, as the petitioner presented no evidence about any hiring history related to the proffered position, the criterion at 8 C.F.R. § 214.2(h)(4)(iii)(A)(*3*) could not be satisfied. Accordingly, the director correctly determined that approval of the petition must be revoked on specialty occupation grounds.

The director also correctly determined that the evidence submitted by the petitioner satisfied none of the beneficiary qualification criteria of 8 C.F.R. § 214.2(h)(4)(iii)(C).

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 criteria at 8 C.F.R. § 214.2(h)(4)(iii)(C) (*1*), and (*3*) need not be discussed: the petitioner presented no evidence about them at any stage of the proceeding. Likewise, the (C)(*4*) criterion does not merit discussion, as the petitioner presented no significant evidence regarding the beneficiary's training, work experience, or professional recognition.

On review of the entire record, the AAO determined that the director was correct in finding that the beneficiary did not meet the criterion of 8 C.F.R. § 214.2(h)(4)(iii)(C) (*2*) - holding a foreign degree determined to be equivalent to a U. S. baccalaureate or higher degree required by the specialty occupation. Each item of the educational evidence will now be discussed.

The e-mail from the University of Chicago professor has no evidentiary value. Neither it nor any independent documentary evidence established the professor's expertise or authority to render academic-equivalency

evaluations. Even if the professor's credentials had been properly established, the e-mail would not be persuasive. It does not append or adequately describe the transcript upon which it is based, and it does not offer a conclusive opinion.

There is no evidentiary value to the petitioner's assertions that the beneficiary has completed postgraduate studies, has completed a thesis, and has been awarded the degree of magister of computer systems. The record contains no independent evidence to corroborate the assertion. Simply going on record without supporting documentary evidence is not sufficient for the purpose of meeting the burden of proof in these proceedings. *Matter of Treasure Craft of California*, 14 I&N Dec. 190 (Reg. Comm. 1972). Furthermore, the record provides no educational evaluation by which CIS could gauge the U.S. equivalency of these additional educational efforts.

The AAO accords no weight to the managing general partner's evaluation of the beneficiary's credentials. The evidence in the record does not qualify him as an authority in this area.

As the five-year diploma from the Technical University has no evidentiary value absent a valid determination of its U.S. equivalency, the UTCES letter is critical. However, that letter fails to qualify as a valid educational evaluation for several reasons. First, neither the letter itself nor any other documentation in the record establishes that UTCES is a foreign-degree evaluations firm or that its evaluator is authorized to grant college credit. Second, the worth of the letter's opinion cannot be evaluated, because the letter was submitted without the Bulgarian documents and the English translations upon which the opinion was based. Because CIS cannot evaluate the authenticity, content, and accuracy of the documents upon which the UTCES evaluator based his opinion, it cannot accept his conclusions. Third, the UTCES evaluator did not reach a firm conclusion: he acknowledged "certain difficulties in determining the exact level of the [beneficiary's] Diploma," and only opined as to the educational level to which the diploma "could be equivalent." Fourth, the letter does not qualify as an equivalency evaluation within the meaning of 8 C.F.R. § 214.2(h)(4)(iii)(C)(*2*), because it did not opine that the beneficiary's education was the equivalent of a U.S. degree. In fact, UTCES, a Canadian institution, based its opinion on comparisons with "North American Universities," none of which may be U.S. institutions.

In summary: the director's decision to revoke the approved petition was a correct application of the relevant CIS regulations to the evidence of record with regard to the nature of the proffered position and the qualifications of the beneficiary. Accordingly, the decision to revoke the petition will not be disturbed.

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's approval is revoked.