PUBLIC COPY

identifying data deleted to prevent clearly unwarranted invasion of personal privacy

U.S. Department of Homeland Security
Citizenship and Immigration Services

D2

ADMINISTRATIVE APPEALS OFFICE
CIS, AAO, 20 Mass, 3/F
425 Eye Street, N.W.
Washington, DC 20536

[redacted]

File: SRC 02 162 54458 Office: TEXAS SERVICE CENTER Date: FEB 3 2004

IN RE: Petitioner:
Beneficiary: [redacted]

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 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.

If you believe the law was inappropriately applied or the analysis used in reaching the decision was inconsistent with the information provided or with precedent decisions, you may file a motion to reconsider. Such a motion must state the reasons for reconsideration and be supported by any pertinent precedent decisions. Any motion to reconsider must be filed within 30 days of the decision that the motion seeks to reconsider, as required under 8 C.F.R. § 103.5(a)(1)(i).

If you have new or additional information that you wish to have considered, you may file a motion to reopen. Such a motion must state the new facts to be proved at the reopened proceeding and be supported by affidavits or other documentary evidence. Any motion to reopen must be filed within 30 days of the decision that the motion seeks to reopen, except that failure to file before this period expires may be excused in the discretion of Citizenship and Immigration Services (CIS) where it is demonstrated that the delay was reasonable and beyond the control of the applicant or petitioner. *Id.*

Any motion must be filed with the office that originally decided your case along with a fee of $110 as required under 8 C.F.R. § 103.7.

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 computer consulting corporation that seeks to employ the beneficiary as an accountant. The petitioner, therefore, endeavors to classify the beneficiary as a nonimmigrant worker in a specialty occupation pursuant to section 101(a) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1101 (a)(15)(H)(i)(b).

The director denied the petition based on his finding that the evidence of record had not established that the beneficiary was qualified to serve in a specialty occupation. On appeal, counsel submits a brief and additional evidence.

Section 214(i)(2) of the Immigration and Nationality Act (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.

Before issuing its decision, the AAO reviewed the record in its entirety, including (1) the Form I-129 and supporting documentation; (2) the director's request for additional evidence; (3) original counsel's response to the director's request[1]; (4) the director's denial letter; and (5) the Form I-290B and the brief and additional evidence that accompanied it.[2]

The petitioner is seeking the beneficiary's services as an accountant. It relies upon a combination of foreign education and work experience to qualify the beneficiary for that position in accordance with 8 C.F.R. § 214.2(h)(4)(iii)(C). The record establishes that the beneficiary holds a Bachelor of Commerce degree from the Osmania University, India. With regard to relevant work experience, the record contains a letter from Capintels Trans Solutions Pvt. LTD, which outlines the beneficiary's duties there from August 1994 to January 2000.

To support its contention that the petitioner had attained the equivalent of a U.S. bachelor's degree required by the proffered accounting position, the petitioner's reply to the director's request for evidence included a document entitled "Evaluation of Education, Training, and Experience." In it, a professor of economics and finance at the Zicklin School of Business Administration, at Baruch College of the City University of New York, opined that (1) the beneficiary's foreign degree is equivalent to "the completion of three years of academic studies leading to a Bachelor of Business Administration Degree, with a concentration in accounting, from an accredited institution of higher learning in the United States"; (2) the beneficiary's work experience was equivalent to an additional year of U.S. college coursework; and (3) the combination of the beneficiary's formal education and "work experience and professional training" is "the equivalent of a Bachelor's of Business Administration Degree, with a concentration in Accounting, from an accredited institution of higher education in the United States." The professor's letter stated that he is an evaluator of "foreign credentials" with "authority to grant college level credit for Baruch College-CUNY based on a candidate's foreign educational credentials, training, and/or employment experience in the field of finance, and related areas, including such areas as accounting."

---

[1] The record indicates that the petitioner is now represented by counsel other than the one that had earlier represented it in these proceedings.

[2] The AAO also considered the information in the supplemental brief presented on behalf of the beneficiary by Richard A. Hujber, Esq., but found it unpersuasive.

The director declined to accord any evidentiary value to the professor's evaluation of work experience, citing the lack of independent evidence that the professor's educational institution "has a program for granting college credit for work experience."

In response to the denial, counsel now presents a document entitled, "Foreign Academic Credentials Equivalency Evaluation," issued by International Credentials Evaluation and Translation Services (ICETS). ICETS determined that the beneficiary's formal education and work experience "indicate that [she] satisfied similar requirements to the completion of a Bachelor's of Arts Degree in Accounting from an accredited institution of tertiary education in the United States."

As discussed below, the director's denial must stand, because the petitioner has failed to establish that the beneficiary is qualified to perform an occupation that requires at least a baccalaureate degree in a specific specialty.

The beneficiary does not qualify under 8 C.F.R. § 214.2(h)(4)(iii)(C)(*1*), (*2*), or (*3*). No state license, registration, or certification is relevant to the proffered position, and the evidence does not establish that the beneficiary holds either a baccalaureate degree from an accredited U.S. college or university, or a foreign degree determined to be, by itself, equivalent to a baccalaureate degree from a U.S. college or university.

Therefore, the petitioner must demonstrate that the beneficiary meets the criterion at 8 C.F.R. § 214.2(h)(4)(iii)(C)(*4*).

Pursuant to 8 C.F.R. § 214.2(h)(4)(iii)(D), equating the beneficiary's credentials to a United States baccalaureate or higher degree 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; or

(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.

The AAO first considered whether the Zicklin School of Business professor's Evaluation of Education, Training, and Experience qualified the beneficiary under 8 C.F.R. § 214.2(h)(4)(iii)(D)(*1*). This document merits no evidentiary weight because the record contains no independent evidence that (1) the professor's educational institution authorized him to grant college credit on the basis of training and/or work experience, and (2) his educational institution has a program for granting such credit.

The criterion at 8 C.F.R. § 214.2(h)(4)(iii)(D)(*2*) does not come into play, as there is no evidence of college-level equivalency examinations or special credit programs.

The AAO reviewed the ICETS evaluation to see whether it is sufficient to equate the beneficiary's credentials to a U.S. bachelor's degree or higher under 8 C.F.R. § 214.2(h)(4)(iii)(D)(*3*). Pursuant to the explicit terms of this regulatory provision, CIS will accept only so much of a credentials evaluation service's opinion that is based on an alien's educational credentials, not his or her work experience or training. *Matter of Sea, Inc.*, 19 I&N Dec. 817 (Comm. 1988). Accordingly, the AAO accepts only that part the ICETS conclusion that is based on evaluation of the beneficiary's formal education, namely, that the Osmania University degree is equivalent to "three years of academic study towards a Bachelor of Arts Degree in Accounting from an accredited institution of tertiary education in the United States."

As there is no evidence of certification or registration from a nationally-recognized professional association or society for any specialty, 8 C.F.R. § 214.2(h)(4)(iii)(D)(*4*) is not a concern.

The remaining question, then, is whether there is sufficient evidence for the AAO to determine, under the auspices of 8 C.F.R. § 214.2(h)(4)(iii)(D)(*5*), that (1) the necessary degree equivalency has been acquired through a combination of education, specialized training, and/or work experience, and (2) the alien has achieved recognition of expertise in the specialty occupation as a result of such training and experience. (In light of the evidentiary analysis discussed above, the AAO approached the question with the determination that the petitioner had established that the beneficiary has attained the equivalent of three years of study towards a U.S. bachelor's degree in accounting.)

For CIS determinations of an alien's qualifications pursuant to it, 8 C.F.R. § 214.2(h)(4)(iii)(D)(*5*) expressly requires that three years of specialized training and/or work experience must be demonstrated for each year of college-level training the alien lacks. Furthermore, the evidence must clearly demonstrate 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[3];

(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

---

[3] *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).

determined to be significant contributions to the field of the specialty occupation.

The primary evidence on the beneficiary's work experience is the Capintels Trans Solutions letter. This letter states that the beneficiary "worked in our organization as Accountant since August 1994 to January 2000." According to the letter, the beneficiary's duties included: (1) "Maintenance of Payroll of the employees, including maintaining the employees['] latest information using the Microsoft Access database"; (2) maintenance of employees' health insurance and other insurance benefits; (3) being "involved in preparing financial statements"; (4) being in charge of accounts payable and receivable; and (5) being "involved in preparing taxation records which includes dealing with different clients as well as Government Departments related to income tax and sales tax and also related to the employees['] tax payments." The former employer also notes that the beneficiary has undergone training in Quick Book and Quicken; has employed her "excellent" knowledge of Microsoft packages; and "was actively involved in office administration" during her tenure.

The AAO's first comment is that the general terms in which the letter describes the beneficiary's duties do not clearly demonstrate that those duties included the theoretical and practical application of specialized knowledge required by the accountant occupation. For instance, the letter does not convey any details about the extent to which the beneficiary was "involved in" preparing financial statements and taxation records.

Next, the AAO notes that the evidence of record does not clearly demonstrate that the beneficiary gained her work experience with peers, supervisors, or subordinates who have a degree or its equivalent in the specialty occupation. The Capintels Trans Solutions letter contains no such information. The AAO does not accept any of the Zicklen School of Business professor's description of the beneficiary's work experience that exceeds what has been documented in the record. Furthermore, because there is no independent documentation to support this statement, the AAO does not accept the professor's conclusion that the beneficiary's work experience with Capintels Trans Solutions consisted of "work experience and training in positions of progressively increasing responsibility and practical application of specialized knowledge under superiors, together with peers, with baccalaureate-level training in accounting, business administration, and related areas."

Finally, the record contains no recognition of expertise documentation similar to the types listed at 8 C.F.R. § 214.2(h)(4)(iii)(D)(5)(*i*) through (*v*).

As related in the discussion above, the record establishes no more than that the beneficiary has attained the equivalent of three years of U.S. college courses in accounting. Therefore, 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.

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.