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U.S. Department of Homeland Security

Citizenship and Immigration Services

ADMINISTRATIVE APPEALS OFFICE
CIS, AAO, 20 Mass, 3/F
425 I Eye Street, NW
Washington, D.C. 20536

[redacted]

FILE: SRC 02 162 53846 Office: TEXAS SERVICE CENTER Date: JAN 20 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 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 nonimmigrant visa petition was denied by the Director, Texas Service Center, and the matter is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed.

The petitioner is a corporation that provides technical support services to the energy industry. It currently employs 21 people and has a gross annual income of $489,157. It seeks to temporarily employ the beneficiary as project engineer for a period of three years. The director determined that the petitioner had not established that the beneficiary is qualified for the proffered specialty occupation.

Counsel appeals and submits a brief.

The appeal proceedings hinge on four documents.

The first document is the Form I-129 itself. The "Alien's present occupation and summary of prior work experience" section of the form states:

> Senior Project Engineer for BJ Process and Pipeline Services. 32 years of experience as a Project Engineer, Project Manager, and related positions in [the] pipeline industry, with 25 years specializing in pre-commissioning of pipelines.

The second document is a detailed, five-page resume submitted by the beneficiary. Its most pertinent parts cited "night classes in Mechanical Engineering at Doncaster Technical College" and summarized the beneficiary's work experience as follows:

> Thirty-two years within the Pipeline Industry. The first seven years were construction related on large diameter feeder main pipelines. The last twenty-five years have been specifically in the specialist field of pre-commissioning operations, pigging, cleaning, gauging, filling, hydrotesting, dewatering and drying.

The "Career History" section of the resume devotes over three pages to describing the beneficiary's positions with twelve different companies from 1966 to 2001.

The third document is an August 7, 2002 "Determination of Expertise" by an engineering professor who is also head of the industrial engineering department at his university. On the basis of the work experience described on the beneficiary's

resume, the document concludes that the beneficiary has attained the equivalent of a U.S. bachelor of science degree in engineering.

The fourth document is an August 8, 2002 letter from one of the employers listed in the beneficiary's resume. The letter confirms the resume information about the beneficiary's employment as Senior Project Engineer for BJ Process and Pipeline Services from August 2000 to August 2001, and from February 1999 to November 1999.

Counsel asserts that, contrary to the director's decision, the evidence of record established that the beneficiary is qualified to serve in the proffered position's specialty occupation. Counsel attributes the denial to what he sees as the director's erroneous disregard of evidence that established the beneficiary's qualifications.

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."

It is clear that the director found little evidentiary value in either the Determination of Expertise or the resume upon which it was to a large extent based. The denial states, in part:

> The only evidence to establish the beneficiary's work experience is a letter dated August 8, 2002 from BJ Process and Pipeline Services, which lists employment from 2/99 through 8/01. The Service cannot agree with the conclusions reached in the evaluation with the evidence that has been submitted with the petition. It must be noted that the resume submitted does not establish verifiable work experience and cannot be accepted as evidence of prior work experience . . . .

Counsel asserts, in part, that his firm is "extremely concerned" by the director's "apparent assumption throughout the petition process (evident by the tone and content of [the director's] communications to us) that the information provided by the petitioner, the beneficiary, and our law firm all constituted misrepresentations."

Pursuant to 8 C.F.R. § 214.2(h)(4)(iii)(C), to qualify to perform services in a specialty occupation, the 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.

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;
> >
> > (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.

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 engineering professor's "Determination of Expertise" letter 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 a 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.

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 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 12 employers. Furthermore, of the beneficiary's 32 years of work experience, one company's letter covers only the periods of February to November 1999, and August 2000 to August 2001. 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: Planning, engineering, supervision of project personnel, liaison with client representatives during the pre-commissioning[,] i.e.[,] filling, h[y]drotesting, dewatering, caliper survey and vacuum drying of 500 km of 48" pipeline, compilation of procedures, supervision of project personnel.

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 statement of the beneficiary's work experience as:

> Senior Project Engineer for BJ Process and Pipeline Services. 32 years of experience as Project Engineer, Project Manager, and related positions in pipeline industry, with 25 years specializing in pre-commissioning of 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 senior project engineer and senior project coordinator duties in general terms which shed little light upon the work environment and the beneficiary's interaction with others.

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 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 employed as a project engineer by "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.