

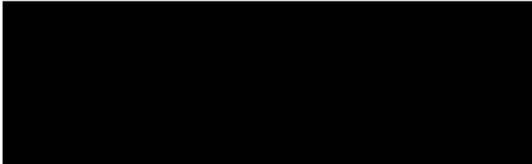
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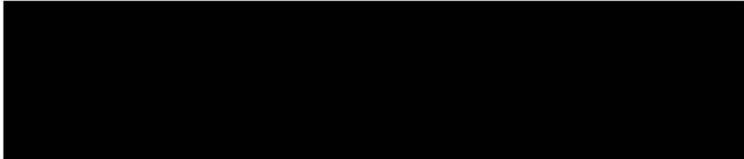


FILE: LIN 04 257 51385 Office: NEBRASKA SERVICE CENTER Date: **SEP 18 2006**

IN RE: Petitioner: [Redacted]
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:



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.

A handwritten signature in ink, appearing to read "Robert P. Wiemann".

Robert P. Wiemann, Chief
Administrative Appeals Office

DISCUSSION: The 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 software consulting company that seeks to employ the beneficiary as a programmer analyst. 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 on the basis of his determination that the petitioner had failed to establish that the beneficiary qualifies to perform the duties of 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 additional evidence; (3) the petitioner's response to the director's request; (4) the director's denial letter; and (5) the Form I-290B and supporting documentation. The AAO reviewed the record in its entirety before issuing its decision.

In order to demonstrate that the petitioner qualifies to perform the duties of a specialty occupation, the petitioner submitted copies of training certificates, letters from previous employers, a copy of the beneficiary's degree, an evaluation of education and experience prepared by Silvergate Evaluations, Inc., and copies of transcripts.

In his February 7, 2005 request for additional evidence, the director requested additional evidence to demonstrate that the beneficiary is qualified to perform the duties of a specialty occupation. First, the director notified the petitioner that he found the Silvergate evaluation unacceptable, as it was based on education, training, and experience.¹ Using bold typeface, the director stated that "the employment affidavits demonstrating the beneficiary's work experience were insufficiently detailed." As such, the director found, it was "unclear how the evaluator determined that the beneficiary completed sufficient qualifying work experience that can be considered equivalent to bachelor's-level training." The director also noted that the evaluator had not clearly explained the significance of the training certificates.

As the director did not accept the Silvergate evaluation, as then presently constituted, he informed the petitioner that he would have to make the final determination regarding the beneficiary's qualifications. He therefore notified the petitioner which documents he would need in order to undertake that analysis.

Specifically, the director requested original affidavits from the beneficiary's previous employers, which specifically described the beneficiary's abilities in factual terms, and set forth the affiant's expertise and the manner in which the affiant acquired the information about the beneficiary. The affidavits were to be prepared on letterhead, include the employer's address and phone number, be dated, be signed by a representative of the company such as a supervisor, and include the following information: the period of the beneficiary's employment; position titles held by the beneficiary; duties performed by the beneficiary; and discuss whether the beneficiary's experience was gained while working with peers, supervisors, or subordinates who held a degree or its equivalent in the specialty occupation.

¹ The director did, however, accept the portion of the Silvergate evaluation regarding the beneficiary's foreign education.

Regarding the training certificates, the director requested a separate evaluation for any courses that the beneficiary completed. The evaluations were to identify the number of college credits that the work to obtain each certificate would fulfill toward completion of a bachelor's degree.

In his April 29, 2005 response to the director's request, counsel elected not to submit any of the requested evidence. Rather, he resubmitted another copy of the Silvergate evaluation (which the director had stated was unacceptable) and additional copies of the same letters, education documents, and training certificates that the petitioner had submitted initially. Most of counsel's response was dedicated to a demonstration that the proposed position qualifies for classification as a specialty occupation. However, none of the evidence submitted by the director was submitted.

Accordingly, the director denied the petition on June 6, 2005. Specifically, the director stated the following:

The Service requested detailed work experience affidavits and evidence that the beneficiary is qualified to perform in the specialty with specialized training and/or progressively responsible work experience. In response, the petitioner submitted correspondence, a credentials evaluation, education documents, and copies of previously submitted computer training certificates and employment affidavits.

The transcripts indicate that the beneficiary completed several courses in computers and electronics. However, the Service is not persuaded that this limited coursework can be considered equivalent to an academic minor or major in computer science or information systems. . . .

[T]he petitioner submitted several employment affidavits to demonstrate that the beneficiary has performed work experience in the field . . . The Service notified the petitioner of the shortcomings of the affidavits and requested detailed employment affidavits. However, the petitioner submitted copies of the same affidavits. In the absence of detailed employment affidavits that clearly describe the beneficiary's duties, the Service is unable to establish that the beneficiary has completed sufficient qualifying work experience that can be considered equivalent to baccalaureate-level training.

[T]he record contains numerous training certificates . . . It is noted that the credentials evaluation considered this training together with the beneficiary's work experience. However, the evaluator failed to specifically address each training program and equate its content in terms of bachelor's-level education from an accredited U.S. institution.

The director also found that the Silvergate evaluation was of "limited weight and reliability" because of the insufficiently detailed employment affidavits and the lack of indication that the training certificates are equivalent to bachelor's degree-level training.

Accordingly, the director found that the petitioner had failed to establish that the beneficiary is qualified to perform the duties of a specialty occupation.

On appeal, counsel contends that the director's denial was baseless, arbitrary and capricious, and that the beneficiary is well-qualified for the position.

Counsel dedicates the majority of his appellate brief to the question of whether the proposed position qualifies for classification as a specialty occupation. However, this is not the issue before the AAO. The sole issue on appeal is whether the petitioner has demonstrated that the beneficiary is qualified to perform the duties of a specialty occupation.

As a preliminary matter, the AAO notes that counsel submits no new evidence on appeal. Rather, he submits copies of the same training certificates, evaluation, affidavits, and education materials whose deficiencies the director discussed twice.

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.

In making its determination as to whether the beneficiary qualifies to perform the duties of a specialty occupation, the AAO turns to the criteria at 8 C.F.R. § 214.2(h)(4)(iii)(C), as described above, which requires a demonstration that the beneficiary holds a United States baccalaureate or higher degree required by the specialty occupation from an accredited college or university.

The first criterion requires a showing that the beneficiary earned a baccalaureate or higher degree from a United States institution of higher education. The beneficiary earned his degree abroad, so he does not qualify under this criterion.

Nor does the beneficiary qualify under the second criterion, which requires a demonstration that the beneficiary's foreign degree has been determined to be equivalent to a United States baccalaureate or higher degree required by the specialty occupation from an accredited college or university. According to the Silvergate evaluation, the beneficiary's foreign degree is equivalent to a bachelor's degree in production engineering, which is not the degree normally required for entry into this field.

The record does not demonstrate, nor has the petitioner contended, that the beneficiary holds an unrestricted state license, registration or certification to practice the specialty occupation, so he does not qualify under the third criterion, either.

The fourth criterion, set forth at 8 C.F.R. § 214.2(h)(4)(iii)(C)(4), requires a showing that the beneficiary's education, specialized training, and/or progressively responsible experience is equivalent to the completion of a United States baccalaureate or higher degree in the specialty occupation, and that the beneficiary also has recognition of that expertise in the specialty through progressively responsible positions directly related to the specialty.

Thus, it is the fourth criterion under which the petitioner must classify the beneficiary's combination of education and work experience. Pursuant to 8 C.F.R. § 214.2(h)(4)(iii)(D), equating a beneficiary's credentials to a United States baccalaureate or higher degree is 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.

The beneficiary does not qualify under 8 C.F.R. § 214.2(h)(4)(iii)(D)(1), as there has been no demonstration that the Silvergate evaluator possesses the authority to grant college-level credit for training and/or experience in accounting at an accredited college or university which has a program for granting such credit based on an individual's training and/or work experience in computer science or a related field. Although the evaluator states that "I have the authority to grant college level credit for experience, training, and/or courses taken at other U.S. or international universities," no evidence to support his assertion was presented. Simply going on record without supporting documentary evidence is not sufficient for purposes of meeting the burden of proof in these proceedings. *Matter of Soffici*, 22 I&N Dec. 158, 165 (Comm. 1998) (citing *Matter of Treasure Craft of California*, 14 I&N Dec. 190 (Reg. Comm. 1972)).

No evidence has been submitted to establish, nor has counsel contended, that the beneficiary satisfies 8 C.F.R. § 214.2(h)(4)(iii)(D)(2), which requires that the beneficiary submit 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).

Nor does the beneficiary satisfy 8 C.F.R. § 214.2(h)(4)(iii)(D)(3). As was the case under 8 C.F.R. § 214.2(h)(4)(iii)(C)(2), the beneficiary is unqualified under this criterion because, according to the Silvergate evaluation, the beneficiary's foreign degree is equivalent to a bachelor's degree in production engineering, which is not the degree normally required for entry into this field.

No evidence has been submitted to establish, nor has counsel contended, that the beneficiary satisfies 8 C.F.R. § 214.2(h)(4)(iii)(D)(4), which requires that the beneficiary submit 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.

The AAO next turns to the fifth criterion. 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 occupation²;
- (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.

² *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).

The evidence of record traces the beneficiary's work history from February 1999 through March 2004. The AAO's next line of inquiry is therefore to determine whether at least six years³ of this work experience included the theoretical and practical application of specialized knowledge required by the specialty, whether it was gained while working with peers, supervisors, or subordinates who held a bachelor's degree or its equivalent in the specialty, and whether the beneficiary achieved recognition of expertise in the field as evidenced by at least one of the five types of documentation delineated in sections (i), (ii), (iii), (iv), or (v) of 8 C.F.R. § 214.2(h)(4)(iii)(D)(5).

As the record only traces the beneficiary's work history from February 1999 through March 2004, six years of employment cannot be shown. Accordingly, the beneficiary does not qualify under any of the criteria set forth at 8 C.F.R. §§ 214.2(h)(4)(iii)(D)(1)(2)(3)(4), or (5), and therefore by extension does not qualify under 8 C.F.R. § 214.2(h)(4)(iii)(C)(4).

Moreover, the AAO notes that the employment affidavits submitted by counsel do not establish that the beneficiary's previous work experiences included the theoretical and practical application of specialty knowledge required by accountants, that it was gained while working with peers, supervisors, or subordinates who held degrees, or that she achieved recognition of expertise in a computer-related field as described at section (v) of 8 C.F.R. § 214.2(h)(iv)(D)(5).

Therefore, the petitioner has not demonstrated that the beneficiary qualifies to perform the duties of a specialty occupation. Accordingly, the AAO will 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.

³ The AAO will recognize two years of university-level study in general coursework taken while the beneficiary earned his degree in production engineering.