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U.S. Citizenship
and Immigration
Services

DL

FILE: EAC 03 168 50139

Office: VERMONT SERVICE CENTER

Date: **AUG 10 2005**

IN RE: Petitioner:
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:

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 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 nursing home/continuing care retirement home that seeks to employ the beneficiary as a certified nurse aide. 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 because the beneficiary is not qualified to perform the proffered position. On appeal, counsel states that the beneficiary is qualified for the proffered position.

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;
- (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 record of proceeding before the AAO contains, in part: (1) 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) Form I-290B and counsel's brief. The AAO reviewed the record in its entirety before issuing its decision.

The petitioner is seeking the beneficiary's services as a certified nurse aide. The director concluded that the submitted educational evaluation failed to demonstrate the equivalency of the beneficiary's educational credentials to a baccalaureate degree.

Counsel asserts that the educational evaluation from the Camden County Special Projects Coordinator establishes that passing the certified nurses aide examination within New Jersey is the equivalent of a baccalaureate degree; and that the Camden County Special Projects Coordinator is qualified to evaluate the beneficiary's credentials. Counsel states that the beneficiary holds proper licensure for the proposed position.

Upon review of the record, the petitioner has failed to establish that the beneficiary qualifies to perform the proposed position.

The beneficiary does not hold a U.S. baccalaureate required by the specialty occupation from an accredited college or university or a foreign degree determined to be equivalent to a baccalaureate degree required by the specialty occupation. The petitioner must therefore 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.

No evidence establishes the criteria under 8 C.F.R. §§ 214.2(h)(4)(iii)(D)(1), (2), (3), or (4). Counsel relies on an educational evaluator employed by Camden County Health Services Center to establish the beneficiary's qualifications. However, the regulation at 8 C.F.R. § 214.2(h)(4)(iii)(D)(1) requires that the educational evaluator be 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. Because Camden County Health Services Center is not a university and the educational evaluator is not an official as described in the regulation at 8 C.F.R. § 214.2(h)(4)(iii)(D)(1), the petitioner fails to satisfy this criterion. Camden County Health Services Center is not a credentials evaluation service specializing in evaluating foreign educational credentials. Thus, the petitioner cannot satisfy 8 C.F.R. § 214.2(h)(4)(iii)(D)(3). Furthermore, a credentials evaluation service must base its evaluation on educational credentials; it cannot base it on work experience. The evaluation from Camden County Health Services Center, therefore, is not persuasive in establishing the beneficiary's qualifications.

The petitioner fails to satisfy the criterion at 8 C.F.R. § 214.2(h)(4)(iii)(D)(4). The beneficiary holds a license to provide services as a nurse aide at a long-term care facility in New Jersey. This license is from the New Jersey Department of Health and Senior Services, a governmental agency; thus, it is not certification or registration from a nationally-recognized professional association or society, which is the requirement under 8 C.F.R. § 214.2(h)(4)(iii)(D)(4).

We now will address the beneficiary's qualifications under 8 C.F.R. § 214.2(h)(4)(iii)(D)(5). When CIS determines an alien's qualifications under this criterion, 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 occupation¹;
- (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;

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).

- (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.

Upon a review of the record, no documentary evidence establishes that the beneficiary's training and work experience is equivalent to a bachelor's degree in a specific specialty; that the training and work experience included the theoretical and practical application of specialized knowledge; that the experience was gained while working with peers, supervisors, or subordinates who have a degree or its equivalent; and that the beneficiary has recognition of expertise in the specialty. For these reasons, the petitioner fails to establish the beneficiary's qualifications pursuant to 8 C.F.R. § 214.2(h)(4)(iii)(D)(5).

As related in the discussion above, 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 on this ground.

Beyond the decision of the director, the proposed position does not qualify as a specialty occupation. For this additional reason, the petition may not be approved.

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.