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U.S. Citizenship and Immigration Services

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[redacted]

FILE: [redacted] Office: VERMONT SERVICE CENTER Date: JUL 05 2005

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:

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 acting director of the Vermont 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 telecommunications-consulting firm, with seven employees. It seeks to employ the beneficiary as a senior radio frequency engineer. The director denied the petition because he found the record did not establish that the beneficiary was qualified to perform the duties of a specialty occupation.

The record of proceeding before the AAO contains: (1) Form I-129 and supporting documentation; (2) the director's request for evidence; (3) the response to the director's request for evidence; (3) the director's denial letter; and (4) Form I-290B, with a letter from counsel and previously submitted information. The AAO reviewed the record in its entirety before reaching its decision.

The issue before the AAO is whether the beneficiary is qualified to perform the duties of the proffered position. In determining whether an alien is qualified to perform the duties of a specialty occupation, Citizenship and Immigration Services (CIS) looks to the petitioner to establish that the beneficiary meets one of the requirements set forth at Section 214(i)(2) of the Act, 8 U.S.C. § 1184(i)(2) -- full state licensure to practice in the occupation, if such licensure is required; completion of a degree in the specific specialty; or 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.

Further discussion of how an alien qualifies to perform services in a specialty occupation is found at 8 C.F.R. § 214.2(h)(4)(iii)(C), and requires the individual to:

> *(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 beneficiary does not possess a U.S. baccalaureate degree required by the specialty occupation, nor does the proffered position require a license or certification. To establish that the beneficiary is qualified to perform the duties of the proffered position, counsel has submitted two separate evaluations of the beneficiary's overseas education, one at the time of filing and the other in response to the director's request for evidence. The AAO

finds neither evaluation to establish a foreign degree equivalency under the second criterion at 8 C.F.R. § 214.2(h)(4)(iii)(C).

The first evaluation, prepared by the Global Education Group, Inc., reviewed both the beneficiary's education and work history. As a credentials evaluation service may evaluate only a beneficiary's educational credentials, the AAO has considered only Global Education's assessment of the beneficiary's academic record. 8 C.F.R. § 214.2(h)(4)(iii)(D)*(3)*. However, the evaluation, which finds the beneficiary to have completed the equivalent of two years of an undergraduate study in communications, is unsupported by any meaningful documentation of the beneficiary's academic record. Further, Global Education Group, Inc. does not indicate what documents it reviewed in reaching its conclusions regarding the beneficiary's overseas education. While the record contains a statement from an overseas university, which indicates that the beneficiary completed the course work for a bachelor's degree in science and lists some of the courses taken by the beneficiary during the course of his studies, this statement cannot serve as the basis for an educational evaluation. Accordingly, the AAO will not accept the evaluation prepared by the Global Education Group as establishing that the beneficiary has the equivalent of two years of undergraduate study in communications. The AAO uses an evaluation by a credentials evaluation organization as an advisory opinion only. Where an evaluation is not in accord with previous equivalences or is in any way questionable, it may be discounted or given less weight. *Matter of Sea, Inc.*, 19 I&N Dec. 817 (Comm. 1988).

The second evaluation of the beneficiary's educational background was prepared by the Trustforte Corporation and concludes that the beneficiary's overseas education is the equivalent of a U.S. baccalaureate degree in physics. As noted by the acting director, this evaluation is inconsistent with that provided by the Global Education Group. Based on the language of the Trustforte evaluation, it appears that the author reviewed documentation beyond that provided in the record. However, as that documentation was not submitted as evidence, the AAO has no basis on which to assess Trustforte's evaluation. Accordingly, it will also not accept this second evaluation of the beneficiary's educational background, as its conclusions are not supported by adequate documentation and it conflicts with the educational assessment provided at the time of filing. As just noted, credentials evaluations are used by CIS as advisory opinions only and may be discounted when they are inconsistent with previous equivalencies or are in any way questionable. *Matter of Sea, Inc.* Further, the AAO notes that where the record provides inconsistent evidence, it is incumbent upon the petitioner to resolve such inconsistencies with independent objective evidence. Any attempt to explain or reconcile such inconsistencies will not suffice unless the petitioner submits competent objective evidence pointing to where the truth lies. *Matter of Ho*, 19 I&N Dec. 582, 591-592 (BIA 1988).

As the petitioner cannot establish the beneficiary's qualifications to perform the duties of its position based on a degree equivalency under the second criterion at 8 C.F.R. § 214.2(h)(4)(iii)(C), the AAO turns to the record for evidence that might establish the beneficiary has education, specialized training, and/or progressively responsible experience that would be equivalent to the completion of a U.S. baccalaureate or higher degree in the specialty occupation, and has had his expertise in the specialty recognized through progressively responsible positions -- the requirements of the fourth criterion at 8 C.F.R. § 214.2(h)(4)(iii)(C).

For the purposes of 8 C.F.R. § 214.2(h)(4)(iii)(C)*(4)*, equivalence to a U.S. baccalaureate or higher degree shall mean the 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 requirements at 8 C.F.R. § 214.2(h)(4)(iii)(D):

(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.

As the record provides no evidence that would allow the petitioner to establish the beneficiary's qualifications under the first four criteria at 8 C.F.R. § 214.2(h)(4)(iii)(D), the AAO will conduct its own evaluation of the beneficiary's training and employment history under the requirements of the fifth and final criterion. When evaluating a beneficiary's qualifications under the fifth criterion, CIS considers three years of specialized training and/or work experience to be the equivalent of one year of college-level training. In addition to documenting that the length of the beneficiary's training and/or work experience is the equivalent of four years of college-level training, the petitioner must also establish that the beneficiary's training and/or work experience has included the theoretical and practical application of the specialized knowledge required by the specialty occupation, and that the experience was gained while working with peers, supervisors, or subordinates who have degrees or the equivalent in the specialty occupation. The petitioner must also document recognition of the beneficiary's expertise in the specialty, as evidenced by one of the following: recognition of expertise in the specialty occupation by at least two recognized authorities in the same specialty occupation; membership in a recognized foreign or U.S. association or society in the specialty occupation; published material by or about the alien in professional publications, trade journals, books or major newspapers; licensure or registration to practice the specialty in a foreign country; or achievements

which a recognized authority has determined to be significant contributions to the field of the specialty occupation.

The record offers the following documentation of the beneficiary's employment history: the discussion of the beneficiary's work experience included in the evaluation provided by the Global Education Group; the beneficiary's resume; a statement from a U.S. business that previously sought to employ the beneficiary as an H-1B worker identifying the duties of its position and jobs previously held by the beneficiary; and statements from three of the beneficiary's previous employers certifying his employment. However, this evidence does not establish that the beneficiary's employment history provides him with a degree equivalency.

The evaluation of the beneficiary's employment history by the Global Education Group, Inc. will not be considered by the AAO, as credentials evaluation services may only evaluate academic records. 8 C.F.R. § 214.2(h)(4)(iii)(D)*(3)*. The beneficiary's resume does not constitute independent evidence of his work history and is too generalized to be instructive. Neither the statement from the U.S. firm who previously sought the beneficiary's services or the employment certifications provided by the beneficiary's previous employers offer the detail required for the AAO to conduct an analysis under the fifth criterion at 8 C.F.R. § 214.2(h)(4)(iii)(D). They offer no information that establishes that the beneficiary's work experience included the theoretical and practical application of a specialized body of knowledge, that he worked with supervisors, peers, or subordinates that hold baccalaureate or higher degrees in fields related to the proffered positions, or that his expertise in the specialty has received the required recognition. Accordingly, the record does not establish that the beneficiary is qualified to perform the duties of the proffered position under the fourth criterion at 8 C.F.R. § 214.2(h)(4)(iii)(C).

On appeal, counsel states that the beneficiary has previously been approved for H-1B status. However, the approval of prior H-1B petitions filed on behalf of the beneficiary do not provide a basis on which to approve this petition. CIS is not bound to approve applications or petitions where eligibility has not been demonstrated merely because of prior approvals that may have been erroneous. *See, e.g. Matter of Church Scientology International*, 19 I&N Dec. 593, 597 (Comm. 1988). Each petition filing is a separate proceeding with a separate record and CIS is limited to the information contained in that record in reaching its decision. 8 C.F.R. §§ 103.2(b)(16)(ii) and 103.8(d). Further, the AAO's authority over the director is comparable to the relationship between a court of appeals and a district court. Even if a director had approved a nonimmigrant petition on behalf of a previous beneficiary, the AAO would not be bound to follow that decision. *Louisiana Philharmonic Orchestra v. INS*, 2000 WL 282785 (E.D.La.), *aff'd*, 248, F.3d 1139 (5th Cir. 2001), *cert. denied*, 122 S.Ct. 51 (2001).

Therefore, for the reasons related in the preceding discussion, the petitioner has failed to establish that the beneficiary is qualified to perform the duties of a specialty occupation. Accordingly, the AAO shall not disturb the director's denial of the petition.

Beyond the decision of the director, the AAO also finds the petitioner has failed to establish its proffered position as a specialty occupation. At the time of filing, counsel stated that the petitioner is a company that provides support to other telecommunications businesses, offering "turnkey outsourcing services in the planning, design, deployment and management of their networks." The petitioner's October 3, 2003 job offer

to the beneficiary specifically stated that his employment would involve working for other businesses, indicating that his first contract would require him to provide services for a national provider of telecommunications services. However, the AAO finds the petitioner to have submitted no evidence to establish that the beneficiary's work under contract qualifies as a specialty occupation.

Petitioners that seek to employ H-1B beneficiaries for contract work with other businesses must submit an employment itinerary that includes the dates and locations of the services to be provided by these beneficiaries. 8 C.F.R. § 214.2(h)(2(i)(B). Further, they must submit the contracts and/or statements of work under which the services of these beneficiaries will be provided to allow for CIS review of the beneficiaries' ultimate employment. *See Defensor v.* [redacted] 201 F. 3d 384 (5th Cir. 2000). In the instant case, the petitioner has submitted no employment itinerary, nor any contract/statement of work identifying the tasks to be performed by the beneficiary while working for its clients. As a result, the record lacks the evidence required to establish the proffered position as a specialty occupation.

Further, the AAO notes that the certified Labor Condition Application (LCA) submitted by the petitioner at the time of filing indicated only one location where the beneficiary would work – Arlington, Virginia. However, the letter offering employment to the beneficiary indicated that he would initially be working at a California location. As a result, the petitioner has also failed to submit a certified LCA valid for all intended locations of H-1B employment as required by 20 C.F.R. § 655.730(c)(1)(1)(v).

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 met that burden.

ORDER: The appeal is dismissed. The petition is denied.