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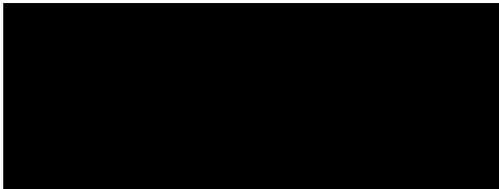
FILE: SRC 02 246 54785 Office: TEXAS SERVICE CENTER Date: **SEP 21 2005**

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 freight forwarding company that seeks to employ the beneficiary as an entry-level accountant. 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 qualifies for the proffered position and submits previously submitted and additional evidence.

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. The AAO reviewed the record in its entirety before issuing its decision.

The petitioner is seeking the beneficiary's services as an entry-level accountant. The director concluded that the petitioner failed to establish that the beneficiary's education, training and/or work experience is equivalent to a bachelor's degree in the specialty occupation.

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

The beneficiary does not hold a U.S. baccalaureate degree in a specific specialty or a foreign degree determined to be equivalent to a U.S. 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.

The record contains two educational evaluations, one from [REDACTED] and the other from Dr. [REDACTED] of New York University (NYU). Both evaluations are based on the same evidence describing the beneficiary's prior employment. [REDACTED] states that the beneficiary's work experience is equivalent to a U.S. bachelor's degree in business administration with a major in accounting awarded by a regionally accredited university in the United States. Dr. [REDACTED] states that the beneficiary has, based on his work experience, attained the equivalent of a bachelor of arts degree in accounting from an accredited institution of higher education in the United States.

The evaluations do not satisfy the regulation under 8 C.F.R. §§ 214.2(h)(4)(iii)(D)(1), which states that the evaluation must be 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. The record contains a November 15, 2000 letter from a dean with Florida International University (FIU) certifying that Dr. [REDACTED] the evaluator with [REDACTED] is a professor at FIU. The dean states that Dr. [REDACTED] is authorized to grant college-level credit for training and/or experience in the field of business administration in certain cases; and that the College of Business Administration at FIU has an executive MBA program and other programs that require evaluation of work experience before admission is granted to a candidate. A May 21, 2002 letter from the assistant general counsel with FIU states that the College of Business Administration allows the practice of granting credit based on work experience; that Dr. [REDACTED] has advisory authority to grant college-level credit to students based on their work experience; and that "[t]his advisory authority is limited solely to certain courses within the College of Business Administration." No evidence in the record identifies those "certain courses," however. Thus, no evidence shows that the "certain courses" that Dr. [REDACTED] has authority to grant college-level credit for training and/or experience in encompasses courses in accounting and course work that is relevant to the beneficiary's work experience. For this reason, Dr. [REDACTED] evaluation carries little weight in establishing that the beneficiary qualifies for the proposed position. The AAO notes that in order to meet the criterion at 8 C.F.R. § 214.2(h)(4)(iii)(D)(1), the evaluation should be submitted on university letterhead to show that the evaluator is speaking on behalf of the university. Because Dr. [REDACTED] evaluation was done on behalf of an educational evaluation service, it does not meet the criterion at 8 C.F.R. § 214.2(h)(4)(iii)(D)(1).

In the NYU evaluation, Dr. [REDACTED] states that he has authority to evaluate foreign educational credits, 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 NYU. However, no independent evidence corroborates that Dr. [REDACTED] is an official who has authority to grant college-level credit for training and/or experience in the specialty at an accredited college or university, or confirms that NYU has a program for granting such credit based on an individual's training and/or work experience. 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)). Dr. [REDACTED] evaluation also carries little weight in establishing the beneficiary's qualifications for the proposed position.

Under the regulation at 8 C.F.R. § 214.2(h)(4)(iii)(D)(3), an educational evaluation from a credentials evaluation service which specializes in evaluating foreign educational credentials, such as [REDACTED], can be used to equate the beneficiary's credentials to a U.S. baccalaureate degree. In an evaluation, the evaluator can consider foreign educational credentials, but the evaluator cannot consider work experience. Because the evaluation from [REDACTED] is based on work experience, it carries little weight in establishing that the beneficiary qualifies for the proposed position.

On appeal, counsel states that the director did not consider the educational evaluation from Morningside Evaluations and Consulting. The AAO notes that the record does not contain an educational evaluation from Morningside Evaluations and Consulting.

No evidence satisfies the criteria under 8 C.F.R. §§ 214.2(h)(4)(iii)(D)(2), or (4).

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 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;
- (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.

The beneficiary's work experience must include the theoretical and practical application of specialized knowledge required by the specialty occupation, which in this case is accounting. The beneficiary's work experience was acquired through his employment with [REDACTED] and the letter from [REDACTED] describes the beneficiary's employment there. The letter states that in 1988 the beneficiary was employed as a bookkeeper, and in 1990 was promoted to assistant accountant. As an assistant accountant the beneficiary assisted the accountant in all financial matters: he was responsible for preparing financial reports, and supervising the bookkeeper. In 1994 the beneficiary was promoted to an accountant, a position involving compiling and analyzing financial information; preparing

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).

entries to accounts; documenting business transactions; analyzing financial information detailing assets, liabilities, and capital; preparing balance sheets, profit and loss statements, and other reports; summarizing the company's current and projected financial position; auditing contracts, orders and vouchers; and preparing reports to substantiate individual transactions prior to settlement. The letter indicates that the beneficiary's duties required knowledge and application of accounting principles, and establishes that the beneficiary's duties involved the theoretical and practical application of specialized knowledge in accounting.

The regulation at 8 C.F.R. § 214.2(h)(4)(iii)(D)(5) states that the alien's experience must have been gained while working with peers, supervisors, or subordinates who have a degree or its equivalent in the specialty occupation, and the alien must have recognition of expertise in the specialty by at least two recognized authorities in the same specialty occupation. The beneficiary's experience as an assistant accountant was gained while working with an accountant. The beneficiary has recognition of expertise in the specialty (accounting) by Dr. [REDACTED] who is a recognized authority in the field of business. Although Dr. [REDACTED] is an assistant professor of accounting at the University of Wisconsin, no evidence indicates that he is a recognized authority in accounting or business. Thus, the evidence fails to show that the beneficiary has sufficient recognition of expertise in the specialty – accounting.

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.

Beyond the decision of the director, the proposed position does not qualify as a specialty occupation, as it differs from an accountant.

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.