

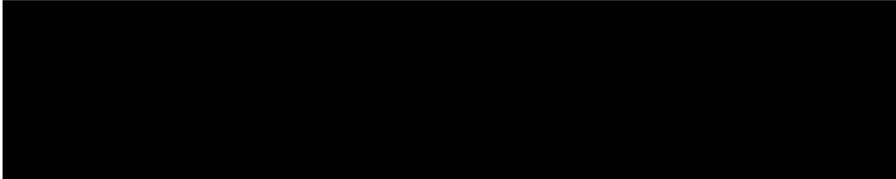
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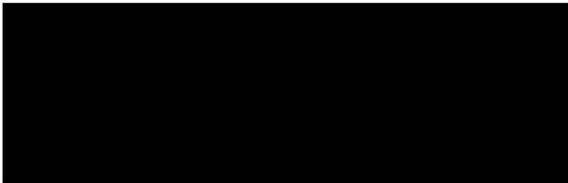
FILE: WAC 07 024 50662 Office: CALIFORNIA SERVICE CENTER Date: **AUG 01 2008**

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, 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 hotel/motel that seeks to employ the beneficiary as an environmental compliance manager. 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 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. The AAO reviewed the record in its entirety before issuing its decision.

The director denied the petition on the ground that the petitioner did not provide sufficient evidence to establish that the beneficiary is qualified to perform the duties of a specialty occupation.

The petitioner submitted the Form I-290B on August 27, 2007. The petitioner marked the box at section two of the Form I-290B to indicate that a brief and/or evidence would be sent within 30 days. As such, the AAO faxed a follow-up letter to counsel's office on May 14, 2008, requesting that the brief and/or additional evidence be sent within five business days. Counsel did not respond to the AAO's facsimile. Thus, the AAO deems the record complete and ready for adjudication.

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)(1), 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 petitioner submitted transcripts and a certificate of graduation from a three-year program at Gujarat University in India. The certificate states that the beneficiary was awarded a bachelor of science in botany. Since the degree was not obtained from a United States institution of higher education, he does not qualify under the first 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. The record contains an October 6, 2003 evaluation from [REDACTED] the director of evaluations for International Education Consulting. According to [REDACTED] the beneficiary completed a three-year full time program and earned the degree of Bachelor of Science. The three-year program completed by the beneficiary, alone, is not the equivalent of a four-year degree in the United States. In *Matter of Shah*, 17 I & N, Dec. 244 (Comm. 1977), the Regional Commissioner declined to consider a three-year Bachelor of Science degree from India as the equivalent of a United States baccalaureate degree because the degree did not require four years of study. Thus, the record does not establish that the beneficiary's foreign degree has been determined to be equivalent to a United States baccalaureate degree.

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 she 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 [REDACTED] possesses the authority to grant college-level credit for training and/or experience in a related field 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 the field. [REDACTED] stated that the beneficiary completed a three-year program leading to a bachelor of science degree, and has three and a half years of professional work experience as a supervisor of a chemical plant. [REDACTED] concluded that based on the beneficiary's studies and professional work experience, the beneficiary has "satisfied the curriculum for completion of a Bachelor of Science with concentration in Physics, Chemistry, and Biology from an accredited institution of higher education in the U.S." A credentials evaluation service may evaluate educational credentials only. 8 C.F.R. § 14.2(h)(4)(iii)(D)(3).

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 [REDACTED] evaluation concludes that the beneficiary's three year degree is equivalent to a bachelor's degree in physics, chemistry and biology in the U.S. As noted above, the AAO does not accept [REDACTED] conclusion, which fails to address how the beneficiary's three-year degree is the educational equivalent of a bachelor's from an accredited university in the U.S. 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)). See *Matter of Shah*, 17 I & N, Dec. 244.

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 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 evidence of record traces the beneficiary's work history from 1997 through 2006. As provided by regulation, the formula utilized by CIS is three years of specialized training and/or work experience for each year of college-level training that the alien lacks. The beneficiary must therefore demonstrate at least three years² of qualifying work experience in order to obtain the equivalent of a bachelor's degree.

The petitioner submitted a letter from the Director of Nebula Dyes Pvt. Ltd., stating that the beneficiary was employed as a "supervisor of drying & washer plant in our chemical factory from January 12, 1997 to February 14, 2001." The letter stated that the beneficiary's duties included "repair and maintenance of the chemical equipment, monitoring the chemicals and equipment during operation;" and, "analyze the chemical usage on a daily basis, which included sample testing and recording test data." The petitioner also submitted a letter from the CEO of Embassy Cleaners, Inc. outlining the duties performed by the beneficiary as manager from February 2, 2004 to October 26, 2006. The letter stated that the

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).

² The AAO will recognize three years of university-level study in general coursework taken while the beneficiary earned his degree in India.

beneficiary's duties included "repair and maintenance of the chemical equipment, laboratory testing, in addition to monitoring plant processes and preparing raw materials for use."

The employment letters provide a generic description of the types of duties the beneficiary performed upon his employment with the two companies mentioned above. The petitioner has not provided evidence discussing the details of the beneficiary's prior work experience and the specific duties he performed. The record does not establish that the work experience completed by the beneficiary included the theoretical and practical application of specialized knowledge required by the field, that it was gained while working with peers, supervisors, or subordinates who held a bachelor's degree or its equivalent in the field, and that 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).

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

Based on the foregoing analysis, the AAO has determined that the record, as presently constituted, fails to establish that the beneficiary qualifies to perform the duties of the proffered position. The petition will be denied and the appeal dismissed for the above stated reasons. In visa petition proceedings, the burden of proving eligibility for the benefit sought remains entirely with the petitioner. Section 291 of the Act, 8 U.S.C. § 1361. Here, that burden has not been met.

As always, the burden of proving eligibility for the benefit sought rests solely with the petitioner. Section 291 of the Act, 8 U.S.C. § 1361.

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