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FILE: EAC 06 157 52230 Office: VERMONT SERVICE CENTER Date: FEB 04 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

Robert P. Wiemann, Chief
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 production business engaged primarily in producing printed media and maintaining web sites. It seeks to employ the beneficiary as a graphic designer. 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 determining that the record failed to establish that the beneficiary is qualified to perform the duties of a specialty occupation.

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: (1) the Form I-129 and supporting documentation; (2) the director's request for additional evidence (RFE); (3) counsel'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.

The petitioner is seeking the beneficiary's services as a graphic designer. The petitioner indicated that the beneficiary is a qualified candidate for the job because he possesses a foreign bachelor's degree in business administration, a U.S. associate's degree in graphic communications, and approximately five years of related employment experience.

The director found that the beneficiary was not qualified for the proffered position because the petitioner had not submitted evidence to verify the beneficiary's foreign employment experience. The director also found that the beneficiary had not satisfied the three-for-one rule based on the beneficiary's employment experience. The director concluded that the petitioner failed to establish any of the criteria found at 8 C.F.R. § 214.2(h)(4)(iii)(C).

On appeal, counsel states, in part, that the director ignored the evidence. Counsel also states that the beneficiary's at least three years of applicable education and more than three years of related work experience are the equivalent of a bachelor's degree in graphic design, thus qualifying him for the specialty occupation. Counsel states further that the supporting documentation includes a letter from the petitioner's president, an evaluation report from an evaluation service, satisfying the criterion under 8 C.F.R. § 214.2(h)(4)(iii)(D)(3), and 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, satisfying the criterion under 8 C.F.R. § 214.2(h)(4)(iii)(D)(1).

Upon review of the record, the petitioner has failed to establish that the beneficiary is qualified to perform an occupation that requires a baccalaureate degree in graphic design or a related field. The beneficiary holds a foreign bachelor's degree in business administration, a U.S. associate's degree in graphic communication, and related employment. The beneficiary, however, does not hold a baccalaureate degree from an accredited U.S. college or university in graphic design or a related field, or a foreign degree determined to be equivalent to a baccalaureate degree from a U.S. college or university in graphic design or a related field. Therefore, the petitioner must demonstrate that the beneficiary meets the criterion at 8 C.F.R. § 214.2(h)(4)(iii)(C)(4).

The record contains the following documentation pertaining to the beneficiary's qualifications:

- A credentials evaluation, dated May 21, 2004, from International Academic Credential Evaluators, Inc., concluding that the beneficiary's foreign bachelor's degree in business administration is the U.S. equivalent of a bachelor's degree in business administration;
- An evaluation letter, dated September 20, 2006, from an associate professor of art-graphic design at Seattle Pacific University, who concludes that the beneficiary has earned the U.S. equivalent of a bachelor's degree in graphic design, based on his foreign bachelor's degree in business administration, his U.S. associate's degree in graphic communication, and his four plus years of professional employment experience;

- An evaluation report, dated September 22, 2006, from the Foundation for International Services, Inc. (FIS) concluding that the beneficiary "has the equivalent of a bachelor's degree in business administration from a regionally accredited college or university in the United States and has an associate degree in graphic communication from a regionally accredited community college in the United States. Furthermore through the expert opinion letter by ██████████ of Seattle Pacific University, [the beneficiary] has, as a result of his education and experience, an educational background the equivalent of an individual with a bachelor degree in graphic design from an accredited university in the United States.";

A Certificate of Graduation, and transcripts, issued to the beneficiary by a Japanese university on March 14, 1998;

- An Associate in Applied Science degree issued to the beneficiary by a U.S. junior college on August 19, 2004; and
- A letter, dated April 20, 2006, from the petitioner's president, asserting that the beneficiary is qualified for the proffered position, based on his educational and employment background.

When determining a beneficiary's qualifications under 8 C.F.R. § 214.2(h)(4)(iii)(C)(4), the AAO relies upon the five criteria specified at 8 C.F.R. § 214.2(h)(4)(iii)(D). A beneficiary who does not have a degree in the specific specialty may still qualify for an H-1B nonimmigrant visa based on:

- (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 listed above, the record contains three evaluations. The first credentials evaluation is from International Academic Credential Evaluators, Inc., dated May 21, 2004, concluding that the beneficiary's foreign

bachelor's degree in business administration is the U.S. equivalent of a bachelor's degree in business administration. While the AAO will accept the evaluator's opinion regarding the beneficiary's foreign bachelor's degree as the U.S. equivalent of a bachelor's degree in business administration, such a degree does not qualify the beneficiary for the proffered position of graphic designer.

The second evaluation, dated September 20, 2006, is from an associate professor of art-graphic design at Seattle Pacific University, who concludes that the beneficiary has earned the U.S. equivalent of a bachelor's degree in graphic design. The evaluator bases her conclusion on the beneficiary's foreign bachelor's degree in business administration, his U.S. associate's degree in graphic communication, and his four plus years of professional employment experience. The evaluator, however, has not presented a sufficient factual basis to support her conclusions regarding this equivalency. The record does not contain evidence, such as a letter from the dean or provost, that this institution has a program for granting credit based on an individual's training and/or work experience, and that the professor/evaluator has authority to grant college-level credit for training and/or experience. Moreover, the evidence of record does not contain transcripts for the beneficiary's U.S. associate's degree in graphic communication. Nor does the record contain corroborating evidence of the beneficiary's foreign employment, such as letters from the beneficiary's foreign employers. The record contains no explanation for these deficiencies. Thus, the evaluator's conclusion that the beneficiary has earned the U.S. equivalent of a bachelor's degree in graphic design, based on his foreign bachelor's degree in business administration, his U.S. associate's degree in graphic communication, and his four plus years of professional employment experience, carries no weight in these proceedings. Citizenship and Immigration Services (CIS) uses an evaluation by a credentials evaluation organization of a person's foreign education as an advisory opinion only. Where an evaluation is not in accord with other information or is in any way questionable, the AAO is not required to accept or may give less weight to that evidence. *Matter of Caron International*, 19 I&N Dec. 791 (Comm. 1988). Counsel's assertion on appeal this evaluation letter satisfies the criterion under 8 C.F.R. § 214.2(h)(4)(iii)(D)(I), as 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, is noted. Without documentary evidence to support the claim, the assertions of counsel will not satisfy the petitioner's burden of proof. The unsupported assertions of counsel do not constitute evidence. *Matter of Obaigbena*, 19 I&N Dec. 533, 534 (BIA 1988); *Matter of Laureano*, 19 I&N Dec. 1 (BIA 1983); *Matter of Ramirez-Sanchez*, 17 I&N Dec. 503, 506 (BIA 1980).

The third evaluation, dated September 22, 2006, from the Foundation for International Services, Inc. (FIS) concluding that the beneficiary "has the equivalent of a bachelor's degree in business administration from a regionally accredited college or university in the United States and has an associate degree in graphic communication from a regionally accredited community college in the United States. . . . [and] through the expert opinion letter by [REDACTED] of Seattle Pacific University, [the beneficiary] has, as a result of his education and experience, an educational background the equivalent of an individual with a bachelor degree in graphic design from an accredited university in the United States," is noted. Again, the evaluator has not presented a sufficient factual basis to support her conclusions regarding this equivalency. As discussed above, the evidence of record does not contain transcripts for the beneficiary's U.S. associate's degree in graphic communication. Moreover, the record does not include evidence that the evaluator is

qualified to assess the beneficiary's work experience. A credentials evaluation service may evaluate only a beneficiary's educational credentials. *See* 8 C.F.R. § 214.2(h)(4)(iii)(D)(3). To establish an academic equivalency for a beneficiary's training and/or work experience, a petitioner must submit an evaluation of such experience from an official who has the authority to grant college-level credit for training and/or experience in the specialty at an accredited college or university that has a program for granting such credit. *See* 8 C.F.R. § 214.2(h)(4)(iii)(D)(1). Again, CIS uses an evaluation by a credentials evaluation organization of a person's foreign education as an advisory opinion only. Where an evaluation is not in accord with other information or is in any way questionable, the AAO is not required to accept or may give less weight to that evidence. *Matter of Caron International*, 19 I&N Dec. 791 (Comm. 1988). Counsel's assertion on appeal this evaluation satisfies the criterion under 8 C.F.R. § 214.2(h)(4)(iii)(D)(3), as an evaluation report from an evaluation service, is noted. Without documentary evidence to support the claim, the assertions of counsel will not satisfy the petitioner's burden of proof. The unsupported assertions of counsel do not constitute evidence. *Matter of Obaigbena*, 19 I&N Dec. 533, 534 (BIA 1988); *Matter of Laureano*, 19 I&N Dec. 1 (BIA 1983); *Matter of Ramirez-Sanchez*, 17 I&N Dec. 503, 506 (BIA 1980).

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;
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- (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.

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).

As discussed above, the record contains insufficient evidence that the beneficiary holds the equivalent of a baccalaureate degree in graphic design. The record does not contain letters from the beneficiary's foreign employers or transcripts for the beneficiary's associate's degree in graphic communication.

Upon review, the record does not contain evidence that the beneficiary's prior work experience included the theoretical and practical application of specialized knowledge required by the specialty. The record does not contain evidence that the beneficiary's duties for his foreign employers involved the theoretical and practical application of a body of highly specialized knowledge relating to the occupation of a graphic designer, or that the beneficiary's work experience was gained while working with peers, supervisors, or subordinates who have a degree or its equivalent in the specialty occupation. The record also contains no evidence of the recognition of expertise required by 8 C.F.R. § 214.2(h)(4)(iii)(D)(5).

In short, the record provides no basis for disturbing the director's decision. The petitioner failed to establish that the beneficiary is qualified to perform services in a specialty occupation according to the standards of 8 C.F.R. §§ 214.2(h)(4)(iii)(C) and (D).

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.

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.