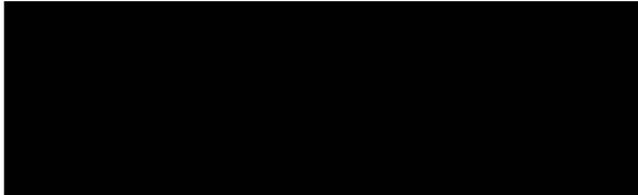


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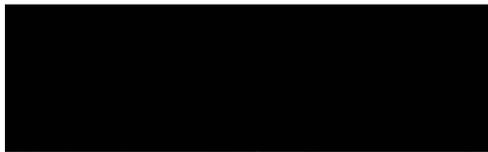
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FILE: EAC 04 204 51626 Office: VERMONT SERVICE CENTER Date: JUN 22 2006

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: Self-represented

INSTRUCTIONS:

This is the decision of the Administrative Appeals Office in your case. All materials have been returned to the office that originally decided your case. Any further inquiry must be made to that office.

A handwritten signature in cursive script, appearing to read "Robert P. Wiemann".

Robert P. Wiemann, Chief
Administrative Appeals Office

DISCUSSION: The service center director denied the nonimmigrant visa petition. The matter is now on appeal before the Administrative Appeals Office (AAO). The appeal will be dismissed. The petition will be denied.

The petitioner is a provider of home healthcare, staffing, and medical equipment. It seeks to employ the beneficiary as an accountant and to classify her 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 on the ground that the record failed to establish that the beneficiary is qualified to perform services in a specialty occupation.

Section 214(i)(1) of the Act, 8 U.S.C. § 1184(i)(1), defines the term "specialty occupation" as an occupation that requires:

- (A) theoretical and practical application of a body of highly specialized knowledge, and
- (B) attainment of a bachelor's or higher degree in the specific specialty (or its equivalent) as a minimum for entry into the occupation in the United States.

Section 214(i)(2) of the Act, 8 U.S.C. § 1184(i)(2), provides that an alien must have the following credentials to be qualified to perform the services of a specialty occupation:

- (A) full state licensure to practice in the occupation, if such licensure is required to practice in the occupation,
- (B) completion of the degree described in paragraph (1)(B) for the occupation, or
- (C) (i) experience in the specialty equivalent to the completion of such degree, and
(ii) recognition of expertise in the specialty through progressively responsible positions relating to the specialty.

As further explained in 8 C.F.R. § 214.2(h)(4)(iii)(C), an alien must meet one of the following criteria to qualify to perform the services of a specialty occupation:

- (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.

For the purpose of deciding whether the beneficiary is qualified under 8 C.F.R. § 214.2(h)(4)(iii)(C)(4), 8 C.F.R. § 214.2(h)(4)(iii)(D) provides that the determination shall be based on 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 [CIS] 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. For purposes of determining equivalency to a baccalaureate degree in the specialty, three years of specialized training and/or work experience must be demonstrated for each year of college-level training the alien lacks. For equivalence to an advanced (or Masters) degree, the alien must have a baccalaureate degree followed by at least five years of experience in the specialty 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 ¹ in the same specialty occupation; (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 record of proceeding before the AAO contains: (1) Form I-129 and supporting documentation; (2) the director's decision; and (3) Form I-290B, an appeal brief, and supporting materials. The AAO reviewed the record in its entirety before issuing its decision.

The petitioner describes itself as a provider of healthcare staffing, medical billing services, and healthcare services. The petitioner states that it was established in 1999, has 150 employees and gross annual income of \$3.4 million, and proposes to employ the beneficiary for three years, at an annual salary of \$37,000, as an accountant. The petitioner indicates that the beneficiary is qualified for the job based on her three-year bachelor of commerce degree in financial accounting and auditing from the University of Mumbai in India, awarded on December 27, 2001, in addition to her employment with various Indian and Kuwaiti companies in the field of business administration between 1998 and 2004. According to the report of a credentials evaluation service in Mukilteo, Washington (e-ValReports), the beneficiary's education and work experience is equivalent to a bachelor's degree in business administration, with a concentration in accounting, from a U.S. college or university.

In her decision the director found that the beneficiary does not qualify to perform services in the specialty occupation. The director was not persuaded by the advisory opinion as to the U.S. equivalence of the beneficiary's education and work experience, noting that the documentation of record did not show that the beneficiary has had progressively responsible work experience in the field of accounting which, in combination with her education, would be equivalent to a baccalaureate degree in the specialty.

On appeal the petitioner asserts that the beneficiary has five years of accounting experience in her prior jobs, even if her job titles did not reflect that type of work. The petitioner submits letters from two of the beneficiary's prior employers, listing her accounting-related duties, refers to previously submitted letters from earlier employers, and submits documentation pertaining to the beneficiary's computer training. The petitioner reiterates that the beneficiary's services are vitally needed "to maintain invoicing, billing, payroll, banking, and finance responsibilities."

The beneficiary does not qualify to perform the services of the specialty occupation under 8 C.F.R. § 214.2(h)(4)(iii)(C)(1) because she does not have a U.S. baccalaureate or higher degree, or under 8 C.F.R. § 214.2(h)(4)(iii)(C)(2) because she does not hold a foreign degree determined to be equivalent

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).

to a U.S. baccalaureate or higher degree, or under 8 C.F.R. § 214.2(h)(4)(iii)(C)(3) because she does not have an unrestricted state license to practice the specialty occupation.

In order for the beneficiary to qualify under 8 C.F.R. § 214.2(h)(4)(iii)(C)(4) to perform services in a specialty occupation, the record must establish that she has a combination of education, specialized training and progressively responsible work experience equivalent to a U.S. baccalaureate or higher degree in the specialty occupation, as evidenced by one or more of the documentary forms set forth in 8 C.F.R. § 214.2(h)(4)(iii)(D). The evaluation of the beneficiary's education and work experience (from e-ValReports) is not authored by an official with authority to grant college-level credit for training and/or experience in the specialty at an accredited college or university with a program for granting such credit. Accordingly, the evaluation cannot be considered as evidence of the beneficiary's U.S. degree equivalency under 8 C.F.R. § 214.2(h)(4)(iii)(D)(1). Furthermore, the evaluation from e-ValReports is not an evaluation of the beneficiary's foreign education alone, as required to be considered as evidence of the beneficiary's U.S. degree equivalency under 8 C.F.R. § 214.2(h)(4)(iii)(D)(3), and specifically states that the beneficiary's education consists of a three-year bachelor of commerce degree from Mumbai University, which is not equivalent to a four-year baccalaureate degree in business administration from a U.S. college or university.

Nor does the record establish that the beneficiary has the equivalent of a U.S. degree in business administration, with a concentration in accounting, through a combination of education, specialized training, and/or work experience in the specialty occupation or related areas, and recognition of expertise therein, as required to meet the alternative qualifying criteria at 8 C.F.R. § 214.2(h)(4)(iii)(D)(5). As previously discussed, the beneficiary earned a three-year bachelor of commerce degree in financial accounting and auditing from the University of Mumbai in India. According to the credentials evaluation from e-ValReports, the beneficiary's three years of coursework in India is equivalent to three years of undergraduate credit in business and accounting at a U.S. college or university. To account for a fourth year of credit in the specialty, therefore, the beneficiary must demonstrate three years of progressively responsible experience in accounting.

The record includes a series of letters from the beneficiary's prior employers, including two Indian companies for whom the beneficiary worked as an internet customer support officer (January to July 2000) and as the "shift in charge" of a call center (August to October 2001), as well as two Kuwaiti companies for whom the beneficiary worked as a marketing co-coordinator and office manager (January 2002 to August 2003) and as a senior accounts assistant (March 2003 to June 2004). On appeal the petitioner has submitted additional letters from her two Kuwaiti employers. One is from the chairman of Global GNRI Services, for whom the beneficiary began working temporarily in October 2001, and subsequently under contract from January 2002 until August 2003, stating that her accounting duties included handling the daily petty cash account, submission of monthly cash statements to the managing director, handling accounts receivable and issuing periodic reminders to the customers, assisting management in financial decisions, and maintaining sound bookkeeping on a daily basis. The second letter is from the managing director of Around the World Shopping Est, for whom the beneficiary worked as a senior accounts assistant beginning in March 2003, stating that the beneficiary is responsible for timely receipt of freight invoices, approving invoices after reconciling with the quotations from the sales department, handling monthly international "outstandings" and making sure they are settled on time, making data entries in the accounting system, assisting the finance manager in approving payments and

receivables from local vendors, interacting with banks in daily foreign exchange transactions and keeping records updated, as well as handling correspondence in different financial situations.

Only the latter two positions with Kuwaiti companies contain any evidence of accounting duties. The beneficiary did not begin working for the first of those companies until October 2001, which was less than three years before the instant H-1B petition was filed in July 2004. At the time the petition was filed, therefore, the beneficiary did not have three years of experience that could be viewed as accounting or accounting-related work. Furthermore, there is no evidence in the record that the beneficiary's experience with the Kuwaiti companies was gained while working with peers, supervisors, or subordinates who have a degree or its equivalent in the specialty occupation, or that the beneficiary has documented recognition of expertise in the specialty, as required under the regulation. Accordingly, the beneficiary's work experience cannot be counted for the purpose of determining degree equivalency under 8 C.F.R. § 214.2(h)(4)(iii)(D)(5). The AAO concludes, therefore, that the beneficiary's education and work experience combined is not equivalent to a U.S. degree in business administration and/or accounting.

For the reasons discussed above, the petitioner has failed to establish that the beneficiary is qualified to perform services in a specialty occupation.

The petitioner bears the burden of proof in these proceedings. *See* section 291 of the Act, 8 U.S.C. § 1361. The petitioner has not sustained that burden. Accordingly, the AAO will not disturb the director's decision denying the petition.

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