

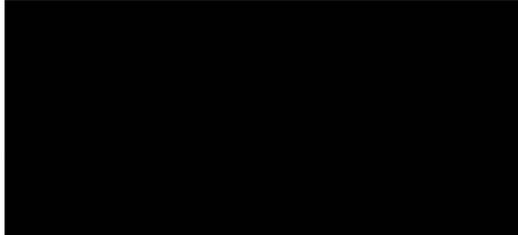
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U.S. Citizenship  
and Immigration  
Services

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FILE: LIN 04 246 51907 Office: NEBRASKA SERVICE CENTER Date: **JUN 23 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:



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 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 manufacturer of high-tech coating applicators. It seeks to employ the beneficiary as a chief executive officer and financial officer. 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 on the ground that (1) the proffered position is not a specialty occupation; and (2) the beneficiary is not qualified for a specialty occupation. On appeal, counsel submits a brief and additional and previously submitted evidence.

The AAO will first consider the director's conclusion that the offered position is not 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.

Pursuant to 8 C.F.R. § 214.2(h)(4)(iii)(A), to qualify as a specialty occupation, the position must meet one of the following criteria:

- (1) A baccalaureate or higher degree or its equivalent is normally the minimum requirement for entry into the particular position;
- (2) The degree requirement is common to the industry in parallel positions among similar organizations or, in the alternative, an employer may show that its particular position is so complex or unique that it can be performed only by an individual with a degree;
- (3) The employer normally requires a degree or its equivalent for the position; or
- (4) The nature of the specific duties is so specialized and complex that knowledge required to perform the duties is usually associated with the attainment of a baccalaureate or higher degree.

Citizenship and Immigration Services (CIS) interprets the term "degree" in the criteria at 8 C.F.R. § 214.2(h)(4)(iii)(A) to mean not just any baccalaureate or higher degree, but one in a specific specialty that is directly related to the proffered position.

The record of proceeding before the AAO contains: (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 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 chief executive officer and financial officer. Evidence of the beneficiary's duties includes: the Form I-129; the attachments accompanying the Form I-129; the petitioner's support letter; and the petitioner's response to the director's request for evidence. According to this evidence, the beneficiary would perform duties that entail: planning, directing, and coordinating the structure of the company vis-à-vis investors, negotiating the form of interest to be held by venture capitalists – equity, debt, or a hybrid form; overseeing the short-term investment of funds temporarily unused in order to maximize the money available to DUX>Area, Inc.; and overseeing the petitioner's accounting professionals, ensuring that accurate and transparent accounts are maintained for company officers and investors.

In the denial letter, the director stated that although the submitted evidence indicates the petitioner's intention to operate a business, it did not show that the petitioner conducts a business and a job would exist for the beneficiary. The director stated that the record did not reflect that the petitioner established one of the criteria at 8 C.F.R. § 214.2(h)(4)(iii)(A). The director found that the beneficiary's work experience and training did not qualify him for a specialty occupation.

On appeal, counsel states that the petitioner is a start-up company that has an exclusive patent for a spray gun that is used for coating objects demanding tolerances, such as the painting of jet airplanes. Counsel states that the petitioner has raised venture capital money with which to start the company and will raise a second round of venture financing to initiate its start-up activities that will include acquiring patent rights, designing and building a paint test booth at the Washington site, acquiring Internet technology infrastructure and software, marketing, purchasing initial stock/inventory, and hiring additional staff. Counsel contends that the petitioner is conducting a business and that it employs the equivalent of 10 full-time employees. Counsel states that the *Occupational Information Network (O\*Net)* and the Department of Labor's *Occupational Outlook Handbook* (the *Handbook*) report that a top executive in the private sector requires at least a bachelor's degree (or its equivalent). Counsel contends that the educational evaluations from [REDACTED] establish the beneficiary's qualifications for the offered position.

Upon review of the record, the petitioner has established one of the four criteria outlined in 8 C.F.R. § 214.2(h)(4)(iii)(A). Therefore, the proffered position is a specialty occupation.

The petitioner established 8 C.F.R. § 214.2(h)(4)(iii)(A)(I): a baccalaureate or higher degree or its equivalent is the normal minimum requirement for entry into the particular position. As described by the petitioner and based on the evidence in the record, the AAO finds that the offered position parallels the *Handbook's* description of a financial manager, which is an occupation that involves directing an "organization's financial goals, objectives, and budgets"; and overseeing the investment of funds, managing associated risks, supervising cash management activities, executing capital-raising strategies to support expansion, and dealing with mergers and acquisitions. This occupation qualifies as a specialty occupation, as the *Handbook* states

“[a] bachelor’s degree in finance, accounting, economics, or business administration is the minimum academic preparation for financial managers.”

The AAO will now address the director’s conclusion that the beneficiary is not qualified for 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 AAO found that the proposed position resembles a financial manager and that this occupation requires a bachelor’s degree in finance, accounting, economics, or business administration.

To establish the beneficiary’s qualifications for the proposed position, the record contains educational evaluations, the beneficiary’s resume, and letters from former employers.

Upon review of the record, the petitioner has failed to establish that the beneficiary is qualified for the offered position.

No evidence in the record establishes one of the first three criteria at 8 C.F.R. § 214.2(h)(4)(iii)(C). The beneficiary does not hold a U.S. baccalaureate degree required by the offered position or a foreign degree determined to be equivalent to the U.S. baccalaureate degree. To establish the beneficiary’s qualifications for

the position offered here, 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 U.S. baccalaureate or higher degree in a field related to the proposed position requires 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 evidence in the record fails to establish the beneficiary's qualifications pursuant to 8 C.F.R. § 214.2(h)(4)(iii)(D)(1). The educational evaluation from [REDACTED] states that based on the evidence of the beneficiary's work experience, the beneficiary has earned the educational equivalent of a bachelor's degree in business administration with a specialization in finance. The January 25, 2004 letter from [REDACTED] associate dean at Portland State University (PSU), states that PSU has three programs, the credit by examination program, the waiver program, and the internship program, that recognizes learning that occurred outside of the traditional classroom, and that he is an official who has authority to grant college-level credit through these programs. The letter from the dean of the School of Business confirms [REDACTED] authority. Based on [REDACTED] letter, the internship program requires the associate dean's sponsorship of a student for internship credits; thus, an internship program for college credit is not a program for granting credit based on training or experience outside the realm of the university. The waiver program also does not apply here, as waiving a course or courses is not the same as granting college credit. As such, PSU does not have a program for granting college-level credit based on an individual's training and/or work experience.

The educational evaluation from [REDACTED] of Concordia University indicates that the beneficiary's work experience is the equivalent of a bachelor's degree in finance. However, the letter from the dean of the university states that Concordia University:

[O]ffers a limited amount of credit for training and/or experience as students seek to earn an undergraduate degree. Well developed guidelines exist that pertain to the offering of such credit.

Thus, the dean's letter does not establish that Concordia University has a program for granting credit for training and/or experience in the specialty, which in this case is finance, accounting, economics, or business administration with a concentration in a relevant field.

No evidence in the record establishes the beneficiary's qualifications pursuant to 8 C.F.R. §§ 214.2(h)(4)(iii)(D)(2), (3), and (4). The AAO notes that the evaluation report from the Foundation for International Services (FIS) bases its evaluation of the beneficiary's qualifications on the beneficiary's work experience. The regulation at 8 C.F.R. § 214.2(h)(4)(iii)(D)(3), however, indicates that a reliable credentials evaluation service is limited to evaluating foreign educational credentials. Thus, the evaluation of the beneficiary's work experience by FIS has no bearing on establishing the beneficiary's credentials under 8 C.F.R. § 214.2(h)(4)(iii)(D)(3).

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 occupation<sup>1</sup>;
- (ii) Membership in a recognized foreign or United States association or society in the specialty occupation;

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<sup>1</sup> *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).

- (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.

Upon a review of the record, the combination of the beneficiary's work experience and training is insufficient to establish the equivalent of a bachelor's degree in a field relating to the proposed position.

The record contains letters from the beneficiary's former employers and colleagues. The letter from Tilney states that the beneficiary was employed there from April 4, 1972 to May 30, 1977 in the Valuations Department. The letter from ██████████ Fairfax-Fishwick describes the beneficiary's employment history from 1972-1980. The letter from ProAct Financial Planning Ltd. describes the beneficiary's employment there from 1982-1985 as concentrating in investments, domestic tax planning, and offshore tax planning. The letter from ██████████ a colleague of the beneficiary, described their company, Cimtax Services Ltd., which operated from January 1983 to June 1985. The letter from ██████████ Birch describes the beneficiary's five years of employment with her firm, starting from May 1988. The beneficiary's resume also elaborates on his work experience. Collectively, the letters indicate that the beneficiary's prior positions involved the theoretical and practical application of specialized knowledge required by the offered position. Nonetheless the letters do not state 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 beneficiary has recognition of expertise in the specialty by recognized authorities in the business field: ██████████ and ██████████

For the reasons discussed above, the petitioner fails to establish the beneficiary's qualifications pursuant to 8 C.F.R. § 214.2(h)(4)(iii)(D)(5).

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.