

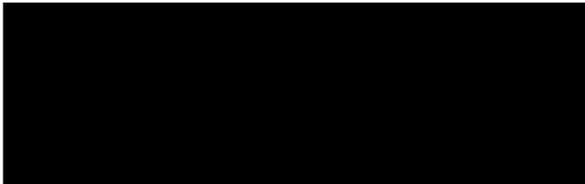
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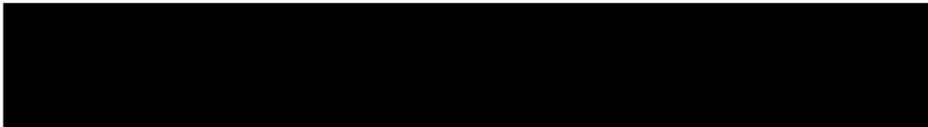


FILE: EAC 05 203 52086 Office: VERMONT SERVICE CENTER Date: JAN 25 2008

IN RE: Petitioner: [Redacted]
Beneficiary: [Redacted]

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 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 service center 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 involved in the sale and distribution of office seating products. It seeks to employ the beneficiary as an accounts receivable/collections manager 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 was not qualified to perform the duties of the proffered position, which, the director determined, was a specialty occupation. On appeal, the petitioner submits an evaluation of the beneficiary's education and past work experience stating that the beneficiary is qualified to perform the duties of a specialty occupation.

The issue before the AAO is whether the beneficiary is qualified to perform the duties of a specialty occupation.

Section 101(a)(15)(H)(i)(b) of the Act, 8 U.S.C. § 1101(a)(15)(H)(i)(b), provides, in part, for the classification of qualified nonimmigrant aliens who are coming temporarily to the United States to perform services in 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:

- (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.

Pursuant to 8 C.F.R. § 214.2(h)(4)(iii)(C), to qualify to perform services in a specialty occupation, the 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.

Pursuant to 8 C.F.R. § 214.2(h)(4)(iii)(D), for purposes of paragraph (h)(4)(iii)(C)(4) of this section, equivalence to completion of a United States baccalaureate or higher degree shall mean achievement of a level of knowledge, competence, and practice in the specialty occupation that has been determined to be equal to that of an individual who has a baccalaureate or higher degree in the specialty and 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;
- (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 petitioner seeks the beneficiary's services as an accounts receivable/collections manager and requires a bachelor's degree in business or a related field, such as commerce, finance or accounting for entry into the proffered position. In order to establish the beneficiary's qualifications for entry into the proffered position, the petitioner submitted the following credentials evaluations:

- An evaluation of the beneficiary's foreign education by [REDACTED], a credentials evaluation service, dated January 27, 2006;

The evaluation found the beneficiary's foreign education to be equivalent to a bachelor's degree in psychology earned at a regionally accredited institution of higher education in the United States.

- An evaluation, submitted on appeal, of the beneficiary's foreign education and work experience from [REDACTED] on behalf of [REDACTED], a credentials evaluation service;

The evaluation found the beneficiary's foreign education and past work experience to be equivalent to a bachelor's degree in business administration with a major in management from an accredited institution of higher education in the United States.

As noted above, the petitioner requires a bachelor's degree in business or a related field, such as commerce, finance or accounting for entry into the proffered position. The beneficiary does not qualify to perform the duties of the offered position by virtue of her foreign education because her degree (psychology) is not closely related to the duties of the proffered position, or closely related to the field of business, the degree required by the petitioner for the position. Further, the experiential evaluation submitted on appeal does not establish that the beneficiary's past education and work experience is equivalent to a bachelor's degree in business administration with a major in management. Evaluations of work experience for degree equivalence purposes may only be made by 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. 8 C.F.R. § 214.2(h)(4)(iii)(D)(1). The record does not establish that [REDACTED] has authority to grant college-level credit for training and/or experience, nor does the record establish that [REDACTED] employer, the University of Miami, has a program for granting such credit. As such, his evaluation is of little evidentiary value. CIS may, in its discretion, use as advisory opinion statements submitted as expert testimony. However, where an opinion is not in accord with other information or is in any way questionable, CIS is not required to accept, or may give less weight, to that evidence. *Matter of Caron International*, 19 I&N Dec. 791 (Comm. 1988).

Citizenship and Immigration Services (CIS), may itself determine whether the beneficiary is qualified to perform the duties of the specialty occupation. That determination may be made pursuant to 8 C.F.R. § 214.2 (h)(4)(iii)(D)(5), which provides:

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 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 documentation referencing the beneficiary's work experience is insufficient in detail to determine that the beneficiary's past work experience included the theoretical and practical application of specialized knowledge required by the specialty occupation; the beneficiary's experience 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 recognition of expertise in the specialty. CIS cannot, therefore, determine that the beneficiary is qualified to perform the duties of the specialty occupation.

For reasons related in the preceding discussion, the petitioner has not established that the beneficiary is qualified to perform the duties of a specialty occupation requiring a bachelor's degree in business or a related field. Accordingly, the AAO shall not disturb the director's decision denial of the petition.

Beyond the decision of the director, the record does not establish the position as a specialty occupation. The position is a combination of two occupations in the Department of Labor's *Occupational Outlook Handbook (Handbook)*, bookkeeping, accounting and auditing clerks and bill and account collectors. The *Handbook* indicates that entry into either of these positions does not normally require a degree in a specific educational discipline. Thus, the position doesn't qualify as a specialty occupation under 8 C.F.R. § 214.2(h)(4)(iii)(A)(I). The record does not establish that the position qualifies as a specialty occupation under any of the remaining criteria at 8 C.F.R. § 214.2(h)(4)(iii)(A). For this additional reason, the petition may not be approved.

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 failed to sustain that burden and the appeal shall accordingly be dismissed.

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