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U.S. Department of Homeland Security
U.S. Citizenship and Immigration Services
Office of Administrative Appeals MS 2090
Washington, DC 20529-2090



U.S. Citizenship
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OCT 29 2009

FILE: WAC 07 239 52210 Office: CALIFORNIA SERVICE CENTER Date:

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)

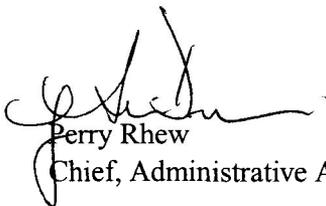
ON BEHALF OF PETITIONER:



INSTRUCTIONS:

This is the decision 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.

If you believe the law was inappropriately applied or you have additional information that you wish to have considered, you may file a motion to reconsider or a motion to reopen. Please refer to 8 C.F.R. § 103.5 for the specific requirements. All motions must be submitted to the office that originally decided your case by filing a Form I-290B, Notice of Appeal or Motion, with a fee of \$585. Any motion must be filed within 30 days of the decision that the motion seeks to reconsider or reopen, as required by 8 C.F.R. § 103.5(a)(1)(i).


Perry Rhew
Chief, Administrative Appeals Office

DISCUSSION: The Director, California 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 describes itself as a religious non-profit organization and submits a letter from the Internal Revenue Service indicating that it is exempt from federal income tax. Information on the petition reflects that the petitioner was established in 1922 and currently employs 46 persons. The petitioner seeks to employ the beneficiary as a full-time accountant. 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).

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 director found that the beneficiary was not qualified for the proffered position because the beneficiary's foreign bachelor's degree in business administration is not equivalent to a baccalaureate degree in a specialty required by the occupation. The director also found that the original evaluation of the beneficiary's foreign degree did not stipulate that the beneficiary's degree

included a concentration in accounting. On appeal, counsel states, in part, that an evaluation of the beneficiary's academic credentials by Morningside Evaluations and Consulting finds that the beneficiary holds the equivalent of a bachelor's degree in business administration with a concentration in accounting, and thus the beneficiary is qualified for the proffered position.

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

- Evaluation, dated May 19, 2006, from [REDACTED] Senior Evaluator of Education Evaluators International, Inc., who concludes that the beneficiary's Bachelor of Science degree in business administration from the University of San Carlos, located in Cebu City, Philippines, is the equivalent of a Bachelor of Business Administration degree awarded by regionally accredited colleges and universities in the United States;
- Evaluation, dated October 17, 2007, from [REDACTED] of Morningside Evaluations and Consulting, who concludes that the beneficiary's foreign Bachelor of Science degree is the equivalent of a Bachelor of Business Administration degree with a concentration in accounting from an accredited institution of higher education in the United States;
- Copy of the beneficiary's Bachelor of Science in Business Administration degree, issued on October 13, 1990, by the University of San Carlos, located in Cebu City, Philippines; and
- Copies of the beneficiary's transcripts from the University of San Carlos.

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 accounting. The beneficiary does not hold a baccalaureate degree from an accredited U.S. college or university in any field of study. Furthermore, although the evaluator from Education Evaluators International, Inc. concludes that the beneficiary's foreign bachelor's degree in business administration is the equivalent of a U.S. bachelor's degree in business administration, the field of business administration is not a specialized field of study. *See Matter of Michael Hertz Associates*, 19 I&N Dec. 558 (Comm. 1988). In addition, although the evaluator from Morningside Evaluations and Consulting concludes that the beneficiary's foreign bachelor's degree in business administration is the equivalent of a U.S. bachelor's degree in business administration with a concentration in accounting from an accredited institution of higher education in the United States, the evaluator does not provide sufficient information as to how his conclusions regarding the beneficiary's educational equivalency were reached. Specifically, although the evaluator lists some of the beneficiary's coursework, he does not discuss the specific coursework requirements for a concentration in accounting and specify how the beneficiary's coursework satisfies those requirements. Moreover, the record does not contain an explanation for the two different conclusions from the two evaluators. Although the director raised this latter issue in her denial, counsel does not address it on appeal. Doubt cast on any aspect of the petitioner's proof may, of course, lead to a reevaluation of the reliability and sufficiency of the

remaining evidence offered in support of the visa petition. It is incumbent upon the petitioner to resolve any inconsistencies in the record by independent objective evidence, and attempts to explain or reconcile such inconsistencies, absent competent objective evidence pointing to where the truth, in fact, lies, will not suffice. *Matter of Ho*, 19 I&N Dec. 582, 591-92 (BIA 1988). In view of the foregoing, the petitioner has not demonstrated that the beneficiary holds a foreign degree determined to be equivalent to a baccalaureate degree in a specialty from a U.S. college or university. Therefore, the petitioner must 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 United States baccalaureate or higher degree 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.

When U.S. Citizenship and Immigration Services (USCIS) 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 AAO now turns to the beneficiary's prior work experience, and whether it included the theoretical and practical application of specialized knowledge required by the specialty. In the petitioner's August 6, 2007 letter of support submitted at the time of filing, the petitioner's administrator stated that the beneficiary's education and work experience qualified him to perform the duties of an accountant. The record, however, contains no letters from the beneficiary's previous employers. Thus, the AAO cannot conclude that the beneficiary's past work experience included the theoretical and practical application of a body of highly specialized knowledge, which in this case is accounting. Furthermore, the record 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.

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).