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U.S. Citizenship
and Immigration
Services

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FILE: SRC 03 055 52116 Office: TEXAS SERVICE CENTER Date: AUG 16 2005

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, Director
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 a photo productions business that seeks to employ the beneficiary as a part-time audiovisual public relations consultant. The petitioner endeavors to classify the beneficiary as a nonimmigrant worker in a specialty occupation pursuant to § 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 is not qualified to perform the duties of a specialty occupation. On appeal, counsel submits a brief.

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, in part: (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 part-time audiovisual public relations consultant. Although not explicitly stated, it appears that the petitioner requires a baccalaureate degree or its equivalent in communications for the proffered position.

The director found that the beneficiary was not qualified for the proffered position because the beneficiary's work experience was not equivalent to a baccalaureate degree in a specialty required by the occupation. On appeal, counsel states, in part, that the director ignored the evidence and incorrectly concluded that the petitioner submitted the same evidence in response to the director's request for evidence. Counsel states further that the evidence in the record, which includes six employment letters and two evaluations, establish that the beneficiary holds the equivalent of a related baccalaureate degree.

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

- Evaluation, dated September 2, 2003, from Robert Nanney, Ph.D., Professor of Communications at The University of Tennessee at Martin, who concludes that the beneficiary's coursework and fourteen years of employment experience are the equivalent of a Bachelor of Arts degree in communications;
- Evaluation, dated December 13, 2002, from Michelle A. Birch, President of the Global Education Group, Inc., who concludes that the beneficiary's professional work experience is equivalent to a Bachelor of Science in Communication degree awarded by a regionally accredited U.S. university;
- Translation of the beneficiary's "Grades and Results Report" for the 1998/1999 term at a French university, reflecting the following courses: French; English; Philosophy; and Literature;
- Translation of the beneficiary's transcript, dated April 2, 2001, from a French university, reflecting the following courses: General Culture and Expression; Basics of Sociology; Differential Psychology; Methodology; Methodology of the University Work; and Clinical Psychology; and with the following notation: "This transcript is a first draught. The real transcript will be issued between June and September.";
- Translation of a French university diploma, issued to the beneficiary on September 24, 1999, conferring the title of one university year 1998-1999;
- Two letters from the president of the French business, Kerozene Production, certifying that the beneficiary started working as a "free lance coordinator" and worked from 1999 – 2002 at Kerozene Production, utilizing his marketing knowledge;
- Two letters from the owner of the French news-casting business, Qualipige, certifying that the beneficiary worked as a production coordinator at Qualipige from 1992 – 1999;
- Two letters from the creative director of the French business, Publicis Conseil, which provides full-service advertising and specialty marketing services, certifying that the beneficiary worked as a stage manager for this business from September 1988 to August 1992; and
- Beneficiary's resume.

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 communications. The beneficiary does not hold a baccalaureate degree from an accredited U.S. college or university in any field of study, or a foreign degree determined to be equivalent to a baccalaureate degree from a U.S. college or university in any field of study. 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.

The record contains an evaluation from the Global Education Group, Inc., a company that specializes in evaluating academic credentials. The evaluator concluded that the beneficiary possesses the equivalent of a Bachelor of Science in Communication degree from a regionally accredited U.S. university. However, the evaluation is based upon the beneficiary's education, training and work experience. A credentials evaluation service may not evaluate an alien's work experience or training; it can only evaluate educational credentials. See 8 C.F.R. § 214.2(h)(4)(iii)(D)(3). Thus, the evaluation carries no weight in these proceedings. *Matter of Sea, Inc.*, 19 I&N Dec. 817 (Comm. 1988).

The record contains a second evaluation from a university professor, who concludes that the beneficiary holds the equivalent of a Bachelor of Arts degree in communications. The writer states further that his opinion "is strictly my opinion and is not the opinion of any of the universities with which I am affiliated or any of its dependents or affiliates." The writer does not indicate whether he is an official who has 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 based on an individual's training and/or work experience, nor does the

record contain any evidence thereof. As such, the evaluation carries no weight in these proceedings. *Matter of Sea, Inc.*, 19 I&N Dec. 817 (Comm. 1988).

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;
- (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 a specialty occupation. The record contains six employment letters from three employers. As described by each employer, the beneficiary's duties did not appear to involve the theoretical and practical application of a body of highly specialized knowledge. One employer assigns duties to the beneficiary such as a freelance coordinating, and the other employers describe the beneficiary's duties as production coordinating and working as a stage manager. As the employers do not provide any specificity regarding the level of the beneficiary's responsibility, the AAO cannot conclude that the beneficiary's past work experience included the theoretical and practical application of a body of highly specialized knowledge. Furthermore, the employers do not indicate 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.

Finally, there is insufficient evidence that the beneficiary has recognition of expertise. The AAO notes that the evaluator from the Global Education Group, Inc. cannot be considered a "recognized authority" because

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).

she did not provide her qualifications as an expert; no resume or other evidence was attached to the evaluation. The evaluator from the university professor also cannot be considered a "recognized authority" because he did not specify his experience in giving such opinions, citing specific instances where past opinions have been accepted as authoritative and by whom.

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.

Beyond the decision of the director, the AAO does not find that the proffered position is a specialty occupation because the duties, which appear to be related to public relations and marketing activities, do not appear to be so complex as to require a baccalaureate degree in a specific specialty. 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 not sustained that burden.

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