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U.S. Citizenship
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FILE: SRC 03 104 52128 Office: TEXAS SERVICE CENTER Date: JUN 16 2005

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.

Robert P. Wiemann, Director
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 provides interior and exterior custom painting and paint finishes. It seeks to employ the beneficiary as an 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).

The director denied the petition because the beneficiary is not qualified to perform the proffered position. On appeal, counsel states that the beneficiary is qualified for the proffered position and submits previously submitted evidence.

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. The AAO reviewed the record in its entirety before issuing its decision.

The petitioner is seeking the beneficiary's services as an accountant. The petitioner's February 3, 2003 letter indicated that a candidate must possess a baccalaureate degree in business or a business-related field.

The director concluded that the beneficiary's education, experience, and training are not equivalent to a baccalaureate degree in a specific specialty as required for the proposed position. The director stated that the beneficiary holds a baccalaureate degree in business administration, and that based on the court's decision in *Matter of Ling*, 13 I&N Dec. 35 (Reg. Comm. 1968):

A degree in business administration alone is insufficient to qualify the holder as a member of the professions, unless the academic courses pursued and knowledge gained is a realistic prerequisite to a particular occupation in the field of business administration in which he is engaged or plans to be engaged.

The director found that in the submitted employment letters the beneficiary did not perform the duties of an accountant, and that no evidence establishes that the beneficiary has educational or work experience in the principles of accounting, cost accounting, and business statistics.

Upon review of the record, the petitioner has failed to establish that the beneficiary qualifies to perform the proposed position.

The beneficiary does not hold a U.S. baccalaureate or higher degree required by the specialty occupation from an accredited college or university. 8 C.F.R. §§ 214.2(h)(4)(iii)(C)(1). Nor does the beneficiary hold a foreign degree determined to be equivalent to a U.S. baccalaureate or higher degree required by the specialty occupation from an accredited college or university. 8 C.F.R. § 214.2(h)(4)(iii)(C)(2). The submitted educational evaluation from Foundation for International Services, Inc. (FIS) indicates that the beneficiary's studies with the Centro de Formacion Tecnica INACAP are equivalent to 2 ½ years of university-level credit in international business from an accredited community college in the United States. However, the record does not contain the document, the beneficiary's transcript from the institution, upon which the evaluation is based. Going on record without supporting documentary evidence is not sufficient for purposes of meeting the burden of proof in these proceedings. *Matter of Soffici*, 22 I&N Dec. 158, 165 (Comm. 1998) (citing *Matter of Treasure Craft of California*, 14 I&N Dec. 190 (Reg. Comm. 1972)).

Because the beneficiary does not hold a U.S. baccalaureate or higher degree required by the specialty occupation or a foreign degree determined to be equivalent to a U.S. baccalaureate or higher degree required by the specialty occupation, 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; 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.

On appeal, to show that the beneficiary qualifies for the proposed position, counsel refers to the credentials evaluation from AETS, which states that the beneficiary holds the educational equivalent to a bachelor's degree in business administration. In the evaluation, ██████████ states that he is the academic program director of the Graduate School of Business at Florida Metropolitan University and is also a consultant for AETS. ██████████ avers that Florida Metropolitan University is an accredited university that grants credit based on a person's education and work experience; that he reviews, evaluates, and recognizes work experience for credit granting purposes; and that he is widely considered a "recognized authority" in the field of higher education.

██████████ evaluation fails to equate the beneficiary's credentials to a U.S. baccalaureate or higher degree under the first criterion at 8 C.F.R. § 214.2(h)(4)(iii)(D). It is unclear in the evaluation whether or not ██████████ is acting in the capacity as an official of Florida Metropolitan University; he seems to evaluate the beneficiary's credentials as a representative of AETS. This is inferred because the evaluation is submitted on AETS, rather than university, letterhead. In addition, we note that no independent documentary evidence substantiates ██████████ statement about his authority to grant college-level credit for training and/or work experience in the specialty. Simply going on record without supporting documentary evidence is not sufficient for purposes of meeting the burden of proof in these proceedings. *Matter of Soffici*, 22 I&N Dec. 158, 165 (Comm. 1998) (citing *Matter of Treasure Craft of California*, 14 I&N Dec. 190 (Reg. Comm. 1972)).

Pursuant to 8 C.F.R. § 214.2(h)(4)(iii)(D)(3), equating the beneficiary's credentials to a United States baccalaureate or higher degree shall be determined by a reliable credentials evaluation service which specializes in evaluating foreign educational credentials. In the instant case, ██████████ evaluates the beneficiary's education and work experience as a consultant with AETS, which is a credentials evaluation service. Because a credentials evaluation service can evaluate only educational credentials, which excludes

an alien's work experience and training, the evaluation cannot satisfy the criterion at 8 C.F.R. § 214.2(h)(4)(iii)(D)(3). The evaluation of the beneficiary's qualifications from FIS is also from a credentials evaluation service; thus, FIS can evaluate only educational credentials.

No evidence in the record establishes the criteria at 8 C.F.R. §§ 214.2(h)(4)(iii)(D)(2) or (4).

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.

Upon a review of the record, a combination of the beneficiary's education, specialized training, and/or work experience is insufficient to establish that he holds the equivalent of the degree required by the specialty occupation, which in this case is an accountant.

As stated by FIS, the beneficiary's diploma from Centro de Formacion Tecnica INACAP is the educational equivalent of 2 ½ years of university-level credit in international business from an accredited community college in the United States. The beneficiary has prior work experience as a foreign trade assistant with Telecomunicaciones y Servicios Consosur Ltda.; in the import and export department with Empresas Cardoen; and as an operations and logistic manager with LOGIMEX Ltda. None of the beneficiary's prior

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).

employment is described as involving duties relating to an accountant. Thus, the positions did not involve the theoretical and practical application of specialized knowledge required by the specialty occupation. Nor do the employers 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. Although [REDACTED] states that he is a "recognized authority" in the specialty, no evidence in the record substantiates this. Based on the above discussion, 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.

Beyond the decision of the director, the record evinces that the proposed position does not qualify as a specialty occupation.

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