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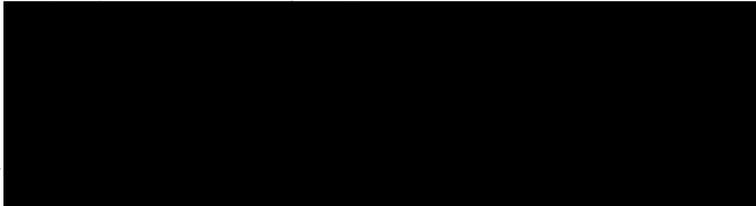


U.S. Citizenship and Immigration Services

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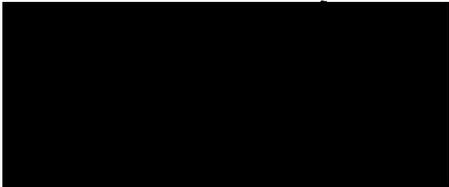


FILE: LIN 03 236 50417 Office: NEBRASKA SERVICE CENTER Date:

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:



ANGELES, CA 90010

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 is a civil engineering and architectural design and consulting firm that 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 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. 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 indicated that a candidate must possess a baccalaureate degree, or its equivalent, in accounting.

The director determined that the beneficiary was not qualified for the proffered position because the beneficiary's education, experience, and training were not equivalent to a baccalaureate degree required by the specialty.

In the appeal brief, counsel contends that the director erroneously rejected the credentials evaluation performed [REDACTED] that the beneficiary's work experience letters sufficiently detail work experience that is directly related to the proposed position; and that prior AAO decisions found that a combination of education and work experience are sufficient to establish equivalency to a bachelor's degree.

Upon review of the record, the petitioner has not established that the beneficiary is qualified to perform the duties of the proffered position.

No evidence in the record establishes 8 C.F.R. § 214.2(h)(4)(iii)(C)(1) or (2). The beneficiary does not hold a baccalaureate degree from an accredited U.S. college or university in any field of study. [REDACTED] evaluation states that the beneficiary completed the equivalent of one year of study toward a bachelor's degree. 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; 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 record contains a certification confirming that the beneficiary passed an advanced bookkeeping and accounts examination. It also contains a credentials evaluation from [REDACTED] assistant professor at the Hofstra University School of Business, which concludes that, based on the beneficiary's education and experience, she possesses the equivalent to a bachelor of science degree in accounting from an accredited institution of higher education in the United States. The record also contains a letter from [REDACTED] Department of Finance, [REDACTED]

This letter indicates that Hofstra grants college-level credit for training and experience through its internship programs; that the university's faculty members are capable of forming judgments as to the equivalency between work experience and various aspects of college education; and that they have authority in that capacity to grant college-level credit for training and experience obtained through internships.

[REDACTED] letter reveals that Hofstra University grants college-level credit for training and experience in limited circumstances: through its internship programs only. This is not a program for granting college level credit based on an individual's training and/or work experience under 8 C.F.R. § 214.2(h)(4)(iii)(D)(I). Consequently [REDACTED] authority to grant college-level credit for training and/or experience in the specialty applies only to the university's internship program. Because the beneficiary's work experience was not gained through an internship with Hofstra University [REDACTED] has no authority to grant college-level credit for the training and/or work experience.

The AAO now turns to 8 C.F.R. § 214.2(h)(4)(iii)(D)(5). 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;

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).

- (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.

As described by each employer, the beneficiary's prior work experience did not include the theoretical and practical application of specialized knowledge required by the specialty. The letter from [REDACTED] Industry (Private) Ltd. relays that the beneficiary's work related to sales ledger control, debtor's ledger control, general accounts, and salary. As described in the Department of Labor's *Occupational Outlook Handbook* (the *Handbook*), a resource that the AAO often consults to determine the duties and educational requirements of particular occupations, these duties are associated with those of bookkeeping, accounting, auditing, and financial clerks, which do not qualify as specialty occupations. The *Handbook* describes bookkeeping, accounting, auditing, and financial clerks as follows:

Bookkeeping, accounting, and auditing clerks are an organization's financial recordkeepers. They update and maintain one or more accounting records, including those that tabulate expenditures, receipts, accounts payable and receivable, and profit and loss. . . . post debits and credits, produce financial statements, and prepare reports and summaries for supervisors and managers. . . . handle the payroll, make purchases, prepare invoices, and keep track of overdue accounts.

More advanced accounting clerks may total, balance, and reconcile billing vouchers; ensure completeness and accuracy of data on account. . . . They may also review invoices and statements to ensure that all information is accurate and complete. . . . Auditing clerks verify records of transactions posted by other workers.

Financial clerks . . . record all amounts coming into or leaving an organization . . . keep track of a store's inventory. . . .

Auditing clerks verify records of transactions posted by other workers. They check figures, postings, and documents to ensure that they are correct, mathematically accurate, and properly coded.

The letter, dated January 27, 1997, from Full Moon Beach Resort states that the beneficiary held the position of assistant accountant costing, but the letter does not indicate the length of the employment in this capacity. Another letter from Full Moon Beach Resort states that the beneficiary joined the company as an accounts clerk, charged with coding stock, and a part-time outlet cashier. Such duties are described in the *Handbook* as associated with bookkeeping, accounting, auditing, and financial clerks. Yet another letter from the company states that the beneficiary did the payroll and checked creditors payments. Again, these duties are shown in the *Handbook* as performed by bookkeeping, accounting, auditing, and financial clerks. The letter from Islanders (Maldives) Private Limited states that the beneficiary "maintained statistics of our shop sales," but no explanation is given of what the beneficiary did in order to "maintain" statistics. The letter dated December 16, 1992 from Ariaratnam, Varendran & Co., Chartered Accountants states that the beneficiary prepared financial accounts of the company's clients, yet no detail is provided explaining this duty. The

beneficiary's experience as a teacher is irrelevant, though the experience letter indicates that the beneficiary taught "accounts." We note that there is no evidence in the record that explains the course "accounts."

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. The AAO notes that there is sufficient evidence that the beneficiary has recognition of expertise. Mr. Spieler's resume establishes that he has been published in the accounting field.

Based on the evidence in the record, particularly the employment letters, the petitioner failed to satisfy 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.