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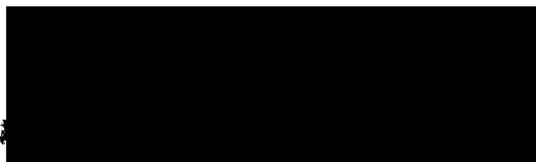


FILE: WAC 04 012 50473 Office: CALIFORNIA SERVICE CENTER Date: JUN 13 2005

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 sustained. The petition will be approved.

The petitioner is a manufacturer, wholesaler, and retailer of hobby products that seeks to employ the beneficiary as a design and development engineer/specialist. 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 on the basis that the beneficiary did not qualify to perform the duties of the proposed position.

The record of proceeding before the AAO contains: (1) the Form I-129 and supporting documentation; (2) the director's request for additional evidence (RFE); (3) the petitioner's RFE response and supporting documentation; (4) the director's denial letter; and (5) the petitioner's 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 design and development engineer/specialist. Evidence of the beneficiary's duties includes: the Form I-129; the attachments accompanying Form I-129; the company support letter; the petitioner's RFE response; the attachments accompanying the petitioner's RFE response; the Form I-290B; the appellate brief accompanying the Form I-290B; and the attachments accompanying the Form I-290B. The petitioner's letter of support set forth the following description of the duties of the proposed position:

[The beneficiary will be] responsible for designing, developing, and creating a new from scratch [sic] performance race car for [the petitioner] that can compete and exceed the performance of other RC [radio-controlled] race cars in its class. This assignment will provide a new flagship car in its class so that [the petitioner] can establish itself as a race and performance leader in the United States. Consequently, [the beneficiary's] job duties [will] include implementing the design and engineering ideas that he has learned from vast experience in the industry, including charts, graphs, and other analytical data to determine power ratios, chassis, and other performance indicators used in the design of RC cars. [The beneficiary] will be specifically in charge of a design, engineering, and development team at [the petitioner] to create a special car intended to compete at the highest levels of racing.

.....

In the proposed position, [the beneficiary] will work forty hours a week and will supervise a design team. He will commission studies and reports from other industry experts and be responsible for the physical design and creation of [the petitioner's] flagship race car. He will oversee and develop improved and innovative design changes and methods to promote car performance, speed, and handling. He will use computer design programs to design and test engines, suspensions, chassis, and transmissions to optimize speed and performance. He will be responsible for the technical, engineering, and performance related operations used in the design of a new RC car and will be the one responsible to make sure that the car can compete and even excel in competition against other similar cars.

As proof of the beneficiary's qualifications for the proposed position, the record contains an evaluation from the Foundation for International Studies, Inc. (FIS), dated January 12, 2004, which concludes that the beneficiary's foreign degree is equivalent to a bachelor's degree in mechanical engineering technology from a college or university in the United States. The record also contains a copy and English translation of a "Certificate of Employment" from Tamiya, Inc., where the beneficiary worked from April 1991 until December 2002 as a designer, developer, and tester of new products. There are three letters of reference: one from the president of a rival company in Japan, one from a professional radio-controlled car driver, and another from his current employer (for whom he has worked since January 2003).

The director denied the petition, ruling that the beneficiary did not qualify to perform the duties of a specialty occupation. The director concluded that the FIS evaluation did not satisfy the regulatory criteria governing such evaluations, stating the following:

The petitioner is attempting to show that degree equivalency is being sought for the beneficiary based on 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.

[T]he Service requested that the petitioner provide evidence to show this basis for degree equivalency. In response to that request, the petitioner submitted an evaluation of experience from a private educational evaluation service that was completed by a consultant who asserts to be an Assistant Professor. However, there is no evidence from [the university] that the university that they have a program [sic] for granting college[-]level credit . . .

.....

Without evidence regarding the evaluator's authority to grant college-level credit for training and/or experience, proof of accreditation of the evaluator's employer, and recognition of expertise[,] the petitioner has not shown that the beneficiary is eligible for the position.

On appeal, counsel submits additional evidence in support of the FIS evaluation. Counsel submits an original, signed letter, placed on letterhead, from the evaluator, who is an assistant professor in the Department of Industrial and Systems Engineering at an accredited institute of technology in the United States. This letter contains a detailed summary of the evaluator's credentials and work experience. The evaluator states the following:

[I]t is my professional opinion that [the beneficiary] has earned an educational equivalent to a Bachelor's Degree in Mechanical Engineering Technology from an accredited university or college in the U.S. through his educational background and his 12+ years of full-time, progressively more responsible work experience. The equivalency is based on the experience from the 12 years of employment within the period 1991-2003 and considering three years of full[-]time employment to be equivalent to one university-level year.

The letters of reference of record support the evaluator's conclusion.

Counsel also submits a copy of the evaluator's resume.

Counsel also submits a letter from the department head of the Department of Industrial and Systems Engineering, confirming that the evaluator has the authority to grant college-level credit for training and experience, and that the university has a program for granting credit based on training or experience.

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.

In making its determination as to whether the beneficiary qualifies to perform the duties of a specialty occupation, the AAO turns to the criteria at 8 C.F.R. § 214.2(h)(4)(iii)(C), as described above. The beneficiary does not qualify under sections (1), (2), or (3) of 8 C.F.R. § 214.2(h)(4)(iii)(C).

The beneficiary does not hold a college degree, so he is unqualified under the first and second criteria. The record does not demonstrate, nor has the petitioner contended, that the beneficiary holds an unrestricted state license, registration or certification to practice the specialty occupation, so he does not qualify under the third criterion, either.

The fourth criterion, set forth at 8 C.F.R. § 214.2(h)(4)(iii)(C)(4), requires a showing that the beneficiary's education, specialized training, and/or progressively responsible experience is equivalent to the completion of a United States baccalaureate or higher degree in the specialty occupation, and that the beneficiary also has recognition of that expertise in the specialty through progressively responsible positions directly related to the specialty.

It is this fourth criterion under which the petitioner seeks to classify the beneficiary's work experience.

Pursuant to 8 C.F.R. § 214.2(h)(4)(iii)(D), equating a beneficiary's credentials to a United States baccalaureate or higher degree is 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 FIS evaluation, when considered together with the additional evidence submitted by counsel on appeal, satisfies the requirement set forth at 8 C.F.R. § 214.2(h)(4)(iii)(D)(1). The department head of the university's Department of Industrial and Systems Engineering has confirmed that faculty members have the authority to grant college-level credit for work experience, and that the university has a program for granting such credit. As the evaluator is a member of the faculty, the AAO therefore concludes that he has the authority to grant college-level credit for work experience. The department head also confirmed that the university is accredited, as required by the regulation.

Thus, the AAO will accept the FIS evaluation's conclusion. As noted above, the FIS evaluation concludes that the beneficiary's work experience is equivalent to a bachelor's degree in mechanical engineering technology.

Accordingly, the beneficiary satisfies 8 C.F.R. § 214.2(h)(4)(iii)(C)(4) and therefore qualifies to perform the duties of a specialty occupation.

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 sustained that burden.

ORDER: The appeal is sustained. The petition is approved.