



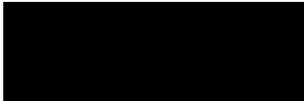
U.S. Citizenship
and Immigration
Services

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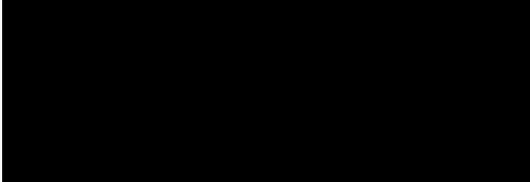


FILE: WAC 04 090 50344 Office: CALIFORNIA SERVICE CENTER Date: **APR 25 2006**

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 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 manufacturing company that seeks to employ the beneficiary as an applications engineer. 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 and 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.

To meet the criterion at 8 C.F.R. § 214.2(h)(4)(iii)(C)(4), the regulation at 8 C.F.R. § 214.2(h)(4)(iii)(D) states that 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 of proceeding before the AAO contains, in part: (1) Form I-129 and supporting documentation; (2) the request for evidence; (3) the response to the request for evidence; (4) the director's denial letter; and (3) the Form I-290B, the appeal brief, and supporting evidence. The AAO reviewed the record in its entirety before issuing its decision.

The petitioner is seeking the beneficiary's services as an applications engineer. An educational evaluation in the record reflects that the beneficiary holds the equivalent of a bachelor's degree in electrical engineering. The director found the beneficiary unqualified for the proffered position on the ground that the beneficiary's education, experience, and training are not equivalent to a baccalaureate degree in a field that is directly related to the proposed position. On appeal, counsel refers to the educational evaluation from Professor John Carroll and a letter from [REDACTED] chair of the computer science department at San Diego State University (SDSU), to establish the beneficiary's qualifications for the proposed position.

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

The beneficiary does not possess a U.S. baccalaureate, or a foreign degree that is equivalent to a U.S. baccalaureate degree, required by the specialty occupation of applications engineer. The beneficiary does hold a two-year degree, which confers the title of communication electrician, from the Northern Alberta Institute of Technology in Canada. The petitioner must therefore 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 U.S. 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 evidence in the record does not establish the beneficiary's qualifications pursuant to 8 C.F.R. § 214.2(h)(4)(iii)(D)(1). The letter from Mr. Beck, chair of the computer science department, indicates that Professor John Carroll, who is a faculty member in the computer science department of mathematical and computer sciences at SDSU in California, is an official who has authority to grant college-level credit for training and/or experience in the specialty at SDSU. However, Mr. Beck does not state in the letter that SDSU has a program for granting such credit based on an individual's training and/or work experience. Thus, the record fails to establish the beneficiary's qualifications under 8 C.F.R. § 214.2(h)(4)(iii)(D)(1).

No evidence establishes the beneficiary qualifications for the proposed position under 8 C.F.R. §§ 214.2(h)(4)(iii)(D)(2), (3), 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, the combination of the beneficiary's education and work experience is insufficient to establish the equivalent of a bachelor's degree in a field relating to the proposed position. The beneficiary holds a two-year degree, which primarily consisted of coursework in electrical engineering. The beneficiary's work experience, as depicted in letters from three former employers, establish that the beneficiary's prior positions involved the theoretical and practical application of specialized knowledge required by the specialty occupation of applications engineer. However, only the letter from [REDACTED] which did not indicate the beneficiary's dates of employment, stated 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. In the letter, [REDACTED] stated that the beneficiary "worked along side [p]rofessional [e]ngineers." The submitted letters, therefore, fail to establish the beneficiary's qualifications pursuant to 8 C.F.R. § 214.2(h)(4)(iii)(D)(5). The AAO notes that the evidence in the record fails to establish that the beneficiary has recognition of expertise in the specialty by two recognized authorities in the field of applications engineering.² For these reasons, 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.

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).

² The AAO acknowledges that Professor Carroll qualifies as a recognized authority based on his vita.

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