

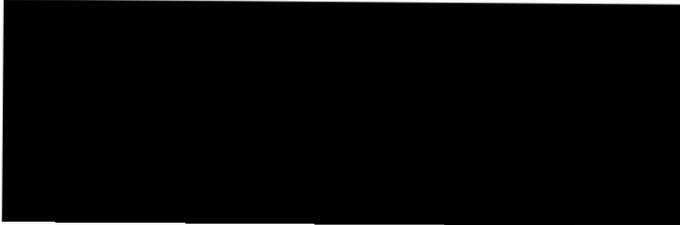
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U.S. Citizenship
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Services

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Dr

FILE: WAC 04 087 50546 Office: CALIFORNIA SERVICE CENTER Date: **SEP 28 2006**

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:
[Redacted]

INSTRUCTIONS:

This is the decision of the Administrative Appeals Office in your case. All materials have been returned to the office that originally decided your case. Any further inquiry must be made to that office.

Robert P. Wiemann, Chief
Administrative Appeals Office

DISCUSSION: The service center director denied the nonimmigrant visa petition. The decision was appealed to the Administrative Appeals Office (AAO), which remanded the matter to the director for further consideration. The director again denied the petition, and certified the case for review to the AAO. The petition will be denied.

The petitioner is a gas station, car wash, and auto mechanic services business. It seeks to employ the beneficiary as an accountant and to classify him 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 initially denied the petition on the ground that the record failed to establish that the proffered position is a specialty occupation. On appeal the AAO determined that that the proffered position qualifies as a specialty occupation, withdrew the director's decision, and remanded the matter for a determination by the director as to whether the beneficiary is qualified to perform services in the specialty occupation. In his second decision the director found that the evidence of record – which includes two evaluations of the beneficiary's credentials and a letter from his former employer in India – does not establish that the beneficiary has the equivalent of a baccalaureate degree in accounting or a related specialty, as required to establish his qualifications to perform services in the specialty occupation. The director denied the petition, therefore, and certified the case for review to the AAO.

Section 214(i)(1) of the Act, 8 U.S.C. § 1184(i)(1), defines the term "specialty occupation" as an occupation that requires:

- (A) theoretical and practical application of a body of highly specialized knowledge, and
- (B) attainment of a bachelor's or higher degree in the specific specialty (or its equivalent) as a minimum for entry into the occupation in the United States.

Section 214(i)(2) of the Act, 8 U.S.C. § 1184(i)(2), provides that an alien must have the following credentials to be qualified to perform the services of a specialty occupation:

- (A) full state licensure to practice in the occupation, if such licensure is required to practice in the occupation,
- (B) completion of the degree described in paragraph (1)(B) for the occupation, or
- (C) (i) experience in the specialty equivalent to the completion of such degree, and (ii) recognition of expertise in the specialty through progressively responsible positions relating to the specialty.

As further explained in 8 C.F.R. § 214.2(h)(4)(iii)(C), an alien must meet one of the following criteria to qualify to perform the services of a specialty occupation:

- (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.

For the purpose of deciding whether the beneficiary is qualified under 8 C.F.R. § 214.2(h)(4)(iii)(C)(4), 8 C.F.R. § 214.2(h)(4)(iii)(D) provides that the determination shall be based on 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 [CIS] 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. For purposes of determining equivalency to a baccalaureate degree in the specialty, three years of specialized training and/or work experience must be demonstrated for each year of college-level training the alien lacks. For equivalence to an advanced (or Masters) degree, the alien must have a baccalaureate degree followed by at least five years of experience in the specialty . . . 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 authorities¹ in the same specialty occupation; (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 record of proceeding before the AAO contains: (1) Form I-129 and supporting documentation; (2) the director's request for evidence (RFE); (3) the petitioner's response to the RFE; (4) the director's initial decision; (5) Form I-290B, an appeal brief, and supporting materials; (6) the director's second decision; and (7) the certification to the AAO. The AAO reviewed the record in its entirety before issuing its decision.

The petitioner describes itself as engaged in a variety of business activities including a gas station, a car wash, auto servicing operations such as lubrication, oil changes, and mechanical work, and a convenience store. The petitioner states that it was established in 1992, has 26 employees, and earned gross annual income of over \$3 million in 2002. It proposes to employ the beneficiary for three years, at an annual salary of \$36,700, as an accountant. The petitioner asserts that the beneficiary is qualified for the job based on 24 years of experience in progressively responsible accounting positions with an Indian company. According to the reports of two credentials evaluation services in California and Florida, the beneficiary's work experience is equivalent to a bachelor's degree in accounting from a U.S. college or university.

On remand the petitioner resubmits copies of the evaluation reports from the American Evaluation Institute (AEI) in Long Beach, California, and the American Evaluation and Translations Service, Inc. (AETS) in Miami Beach, Florida, along with a letter from the proprietor of an Indian company, [REDACTED], for whom the beneficiary worked from 1979 to 2003. The letter from [REDACTED] states that the beneficiary was initially hired as a junior accountant, that he was promoted to a full-fledged accountant in 1983 and a senior accountant in 1993, and that he continued to work as a senior accountant until 2003. [REDACTED] describes the beneficiary's junior accounting duties from 1979 to 1983 as follows:

[The beneficiary] was responsible for verification, allocation and posting of financial and accounting transactions in journals from company documents that included invoices, receipts, and other records. He prepared summaries of different categories of accounting transactions and transferred information from individual ledgers to general ledger and balanced the accounts. He prepared and provided reports of income and expenditures, accounts receivable and accounts payable, payroll and taxes. He also prepared periodic accounting reports for clients.

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).

[REDACTED] describes the beneficiary's accounting duties from 1983 to 1993 as follows.

During this period, [the beneficiary] analyzed accounting and financial information from journals and ledgers with a view to documenting transactions. He was exclusively responsible for the preparation of balance sheet, income statements showing profits and loss, fund flow and cash flow statements detailing the availability of cash for company transactions. He was also responsible to audit invoices, vouchers, and other similar documents to support transactions. He reviewed periodically the control procedures and changed and modified procedures to exercise fiscal control. He supervised the bookkeeper and cashier during this time.

[REDACTED] describes the beneficiary's senior accounting duties from 1993 to 2003 as follows:

Budget: [The beneficiary] conferred with management and other office personnel and studied and analyzed past data from accounting records to forecast revenues and expenditures with the use of statistical tools including variance and regression analysis and computer programs. He formulated the annual budget from scratch and implemented the budget, making mid-course corrections wherever necessary. He interpreted the details of the budget and advised management on the optimal use of company resources.

Costing: [The beneficiary] collected data on the costs of various business activities and any variances from the costs. He then identified causes for cost variances and their impact on the profitability of the company. He also helped the company establish optimal pricing strategies.

Tax Accounting: [The beneficiary] was responsible for the preparation of company tax returns. He prepared tax returns and computed taxes paid and taxes owed and advised the management on strategies to minimize tax liabilities. He served as liaison with tax board and other government agencies. He ensured that the company complied with federal and state regulations. He helped the certified public accounting office to conduct periodic audits.

Computerization of Accounting: [The beneficiary] took the lead role in computerizing the accounting and financial systems of the company. He studied the existing systems and computerized the systems wherever feasible in close coordination with computer personnel. He helped us in preparing a user friendly manual to help management and staff alike to use computers in performing their day to day job duties.

As a senior accountant, [the beneficiary] supervised other accountants and financial analysts.

Based on the foregoing description of the beneficiary's duties from 1979 to 2003, both of the credentials evaluation services, AEI and AETS, conclude that the beneficiary's work experience is equivalent to a bachelor's degree in accounting from an accredited U.S. college or university.

The beneficiary does not qualify to perform the services of the specialty occupation under 8 C.F.R. § 214.2(h)(4)(iii)(C)(1) because he does not have a U.S. baccalaureate or higher degree, or under 8 C.F.R. § 214.2(h)(4)(iii)(C)(2) because he does not hold a foreign degree determined to be equivalent to a U.S.

baccalaureate or higher degree, or under 8 C.F.R. § 214.2(h)(4)(iii)(C)(3) because he does not have an unrestricted state license to practice the specialty occupation.

In order for the beneficiary to qualify under 8 C.F.R. § 214.2(h)(4)(iii)(C)(4) to perform services in a specialty occupation, the record must establish that he has a combination of education, specialized training and progressively responsible work experience equivalent to a U.S. baccalaureate or higher degree in the specialty occupation, as evidenced by one or more of the documentary forms set forth in 8 C.F.R. § 214.2(h)(4)(iii)(D). The credentials evaluation reports in the record base their analyses of the beneficiary's U.S. degree equivalency exclusively on his work experience, since he does not appear to have any college or university background.

The evaluation from AEI is not authored by an official with authority to grant college-level credit for training and/or experience in the specialty at an accredited college or university with a program for granting such credit. Accordingly, the evaluation cannot be considered as evidence of the beneficiary's U.S. degree equivalency under 8 C.F.R. § 214.2(h)(4)(iii)(D)(1). The evaluation from AETS is authored by a professor at American Intercontinental University (AIU) in Fort Lauderdale, who asserts that she "review[s], evaluate[s] and recognize[s] work experience for credit granting purposes" and that AIU "is an accredited university that grants credit based on an individual's education and/or work experience." The letter does not specifically state that AIU has a program for granting college-level credit for an individual's training and/or work experience in a specialty field. Nor is there any corroborating documentation from a competent AIU official that the university has such a program, or that the professor has the authority to grant academic credit for an individual's training and/or work experience in the field of accounting or a related specialty. Accordingly, the evaluation from AETS also cannot be considered as evidence of the beneficiary's U.S. degree equivalency under 8 C.F.R. § 214.2(h)(4)(iii)(D)(1).

Since neither the AEI nor the AETS report is an evaluation of the beneficiary's foreign education, but rather of his work experience, neither can be considered as evidence of the beneficiary's U.S. degree equivalency under 8 C.F.R. § 214.2(h)(4)(iii)(D)(3).

Nor does the record establish that the beneficiary has the equivalent of a U.S. degree in accounting through a combination of education, specialized training, and/or work experience in the specialty occupation or related areas, and recognition of expertise therein, as required to meet the alternative qualifying criteria at 8 C.F.R. § 214.2(h)(4)(iii)(D)(5). Since the record does not indicate that the beneficiary has any college or university credit, the beneficiary must demonstrate twelve years of progressively responsible experience in accounting. Though the letter from his previous employer in India states that the beneficiary worked 24 years for the company as an accountant and describes the duties he performed over the years, there is no evidence in the record that the beneficiary's experience was gained while working with peers, supervisors, or subordinates who have a degree or its equivalent in the specialty occupation,² or that the beneficiary has documented recognition of expertise in the specialty, as required under the regulation. Thus, the beneficiary's work experience cannot be counted for the purpose of determining degree equivalency under 8 C.F.R. § 214.2(h)(4)(iii)(D)(5). The AAO concludes, therefore, that the evidence of record does not establish that the beneficiary's work experience is equivalent to a U.S. degree in accounting.

² The record does not establish that the accountants and financial analysts with whom the beneficiary worked have baccalaureate degrees in accounting or a related specialty.

For the reasons discussed above, the petitioner has failed to establish that the beneficiary is qualified to perform services in a specialty occupation.

The petitioner bears the burden of proof in these proceedings. *See* section 291 of the Act, 8 U.S.C. § 1361. The petitioner has not sustained that burden. Accordingly, the AAO will not disturb the director's decision denying the petition.

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