



U.S. Citizenship
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AUG 07 2007

FILE: LIN 05 214 50072 Office: NEBRASKA SERVICE CENTER Date:

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.

for *Robert P. Wiemann*
Robert P. Wiemann, Chief
Administrative Appeals Office

DISCUSSION: The Director, Nebraska Service Center, denied the nonimmigrant visa petition and the petitioner filed an appeal. The matter is now before the Administrative Appeals Office (AAO). The appeal will be sustained. The petition will be approved.

The petitioner is an engineering firm concentrating primarily on advanced technology and techniques related to automotive engineering and development. It seeks to employ the beneficiary as a market research analyst. Accordingly, it 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).

On December 9, 2005, the director denied the petition, determining that the record did not establish that the beneficiary is qualified to perform services in a specialty occupation. On appeal, counsel for the petitioner asserts that the evaluation and experience previously submitted was substantively sufficient for Citizenship and Immigration Services (CIS) to reach an affirmative evaluation under 8 C.F.R. §§ 214.2(h)(4)(iii)(D)(I) or (5). In support of the appeal, counsel submits a brief and additional evidence, including new evaluations of the beneficiary's qualifications.

The record contains: (1) the Form I-129 filed July 11, 2005 and supporting documentation; (2) the director's September 20, 2005 request for further evidence (RFE); (3) counsel's November 4, 2005 response to the director's RFE; (4) the director's December 9, 2005 denial decision; and (5) the Form I-290B and counsel's January 5, 2006 brief and documentation in support of the appeal. The AAO reviewed the record in its entirety before rendering its decision.

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:

- (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.

Pursuant to 8 C.F.R. § 214.2(h)(4)(iii)(C), to qualify to perform services in a specialty occupation, the 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.

As expanded by the petitioner's submissions on appeal, the record of proceeding includes the following evidence regarding the beneficiary's qualifications to serve in the proffered specialty-occupation position: an educational equivalency evaluation; a professor's opinion that the beneficiary has attained the equivalent of a U.S. bachelor's degree in marketing research; three former employers' letters addressing the beneficiary's work experience; two additional evaluations of the beneficiary's education and work experience that are submitted on appeal as opinions of recognized authorities who recognize the beneficiary's expertise in the specialty occupation; two letters, first submitted on appeal, that expand upon the description of the beneficiary's previous work experience and that demonstrate that the beneficiary has mastered the advanced theoretical concepts of market research analysis and the practical application of those skills, and that the majority of her peers, superiors, and subordinates were degreed professionals in the marketing field.

The record does not contain evidence that the beneficiary holds a United States baccalaureate or higher degree as required to establish that the beneficiary is qualified pursuant to the regulation at 8 C.F.R. § 214.2(h)(4)(iii)(C)(1). Neither does the record provide evidence establishing that the beneficiary's foreign diploma in liberal arts is equivalent to a United States baccalaureate or higher degree in marketing or a related field as required by 8 C.F.R. § 214.2(h)(4)(iii)(C)(2). The petitioner has provided no evidence that the beneficiary has the type of credentials specified at 8 C.F.R. § 214.2(h)(4)(iii)(C)(3).

The AAO finds, however, that the totality of the evidence in this particular record of proceeding, including the additional evidence presented on appeal, satisfies the criterion at 8 C.F.R. § 214.2(h)(4)(iii)(C)(4). That is, the petitioner has established that the beneficiary possesses a combination of 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 that the beneficiary has recognition of expertise in the specialty through progressively responsible positions directly related to the specialty.

When determining a beneficiary's qualifications under 8 C.F.R. § 214.2(h)(4)(iii)(C)(4), the AAO relies upon the five criteria specified at 8 C.F.R. § 214.2(h)(4)(iii)(D). The AAO finds that the total evidence submitted by the petitioner is sufficient to support a determination, under the fifth criterion of 8 C.F.R. § 214.2(h)(4)(iii)(D), that, in the language of that criterion, "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."

Upon review of the evidence in the record regarding the proffered position, the AAO also finds that the record is sufficient to conclude that the proffered position comprises 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. Accordingly, the petition will be approved.

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