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FILE: WAC 07 139 51467 Office: CALIFORNIA SERVICE CENTER Date: **APR 02 2009**

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.

If you believe the law was inappropriately applied or you have additional information that you wish to have considered, you may file a motion to reconsider or a motion to reopen. Please refer to 8 C.F.R. § 103.5 for the specific requirements. All motions must be submitted to the office that originally decided your case by filing a Form I-290B, Notice of Appeal or Motion, with a fee of \$585. Any motion must be filed within 30 days of the decision that the motion seeks to reconsider or reopen, as required by 8 C.F.R. § 103.5(a)(1)(i).

John F. Grissom, Acting Chief
Administrative Appeals Office

DISCUSSION: The Director, California 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 engaged in the distribution of consumer and electronic products that seeks to employ the beneficiary as an accountant. The petitioner 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 finding that the beneficiary is not qualified to perform a specialty occupation. On appeal, counsel for the petitioner submits Form I-290B with a brief and additional evidence.

Section 214(i)(1) of the Immigration and Nationality Act (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 Immigration and Nationality Act (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)(A), to qualify as a specialty occupation, the position must meet one of the following criteria:

- (1) A baccalaureate or higher degree or its equivalent is normally the minimum requirement for entry into the particular position;
- (2) The degree requirement is common to the industry in parallel positions among similar organizations or, in the alternative, an employer may show that its particular position is so complex or unique that it can be performed only by an individual with a degree;
- (3) The employer normally requires a degree or its equivalent for the position; or
- (4) The nature of the specific duties is so specialized and complex that knowledge required to perform the duties is usually associated with the attainment of a baccalaureate or higher degree.

United States Citizenship and Immigration Services (USCIS) interprets the term “degree” in the criteria at 8 C.F.R. § 214.2(h)(4)(iii)(A) to mean not just any baccalaureate or higher degree, but one in a specific specialty that is directly related to the proffered position.

The record of proceeding before the AAO contains: (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 and supporting documentation. The AAO reviewed the record in its entirety before issuing its decision.

The petitioner is seeking the beneficiary’s services as an accountant. Evidence of the beneficiary’s duties includes: the I-129 petition; the petitioner’s March 9, 2007 letter in support of the petition; and the petitioner’s response to the director’s request for evidence. According to the March 9, 2007 letter, the beneficiary, as an accountant, will be responsible for the following duties:

1. Tax planning and tax return preparation (18-22%)
2. Advising company of the tax advantages and disadvantages of certain business decisions (14-16%)
3. Advising on compensation or employees health care benefits (10-13%)
4. Design of accounting and data processing systems (15-17%)
5. Selecting controls to safeguard assets (10-12%)
6. Analyzing and interpreting the financial information for making business decision[s] (10-12%)
7. Preparing financial reports for non-management groups (5-8%)
8. Conducting financial analysis, planning and budgeting, and cost accounting (10-15%)
9. Examining and evaluating financial systems [] against fraud and waste (10-12%)

The petitioner further indicated that a bachelor’s degree in accounting or a related major is the appropriate minimum education requirement for the position in question.

The director found 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 in a specialty required by the occupation. On appeal, the petitioner states that the beneficiary is qualified for the position, and contends that the director did not afford sufficient weight to the credentials evaluation submitted prior to adjudication. Counsel submits additional evidence, including an additional educational evaluation, in support of these contentions.

Pursuant to 8 C.F.R. § 214.2(h)(4)(iii)(C), an alien must meet one of the following criteria to qualify to perform services in 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.

The director began by individually addressing each of the four criteria above. Although the beneficiary in fact possesses a Master of Business Administration from the Indiana University of Pennsylvania, the director noted that the beneficiary's degree was not required by the specialty occupation. Second, the director further noted that the petitioner had not demonstrated that the beneficiary's foreign degree in business administration from Tunghai University was the equivalent of a bachelor's degree in accounting from an accredited U.S. university. Finally, the director noted that the beneficiary did not hold an unrestricted state license, registration or certification which authorizes her to fully practice the specialty occupation and be immediately engaged in that specialty in the state of intended employment. Therefore, the director concluded that 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;
- (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.

Prior to adjudication, the petitioner submitted an evaluation of the beneficiary's work and academic experience prepared by [REDACTED] Associate Professor of Management Sciences at the Robert H. Smith School of Business at the University of Maryland, College Park, Maryland. Upon review of the beneficiary's academic transcript and work experience, [REDACTED] concluded that the beneficiary possessed the equivalent of a U.S. bachelor's degree in accounting.

The director rejected the evaluator's conclusions. Specifically, the director noted that while the evaluator's conclusion that the foreign bachelor's degree in business administration appeared to be the equivalent of a U.S. bachelor's degree in business administration, the evidence did not support a finding that the combined work experience and academic record of the beneficiary was equivalent to a U.S. bachelor's degree in accounting. The AAO concurs.

Upon review, the beneficiary's transcript from [REDACTED] indicates that while the beneficiary enrolled in a number of accounting courses, she did not pass several of these courses and thus did not receive the requisite credit. As correctly noted by the director, the beneficiary completed a general accounting course over two semesters and one managerial accounting course. Moreover, she completed one additional management accounting course at the graduate level. The director questioned the validity of the claim that these four courses, combined with professional experience, warranted a finding that she possessed the U.S. equivalent of a bachelor's degree in accounting.

The AAO concurs with the director's conclusion prior to adjudication. A degree in business administration alone is insufficient to qualify the beneficiary to perform the services of a specialty occupation, unless the academic courses pursued and knowledge gained is a realistic prerequisite to a particular occupation in the field. The beneficiary's coursework must indicate that he or she obtained knowledge of the particular occupation in which he or she will be employed. *Matter of Ling*, 13 I&N Dec. 35 (Reg. Comm. 1968). Merely receiving credit for four accounting courses throughout her studies raises questions regarding the validity of the claim that the beneficiary possesses the equivalent of a U.S. bachelor's degree in accounting.

Moreover, the director noted that the credentials evaluator, [REDACTED] omitted critical evidence. Specifically, [REDACTED] failed to provide independent evidence that he had the authority to grant college credit for training and/or work experience in the field. Furthermore, [REDACTED] failed to explain exactly how he concluded that the beneficiary's work experience equated to a bachelor's degree in accounting, for he did not provide a detailed discussion with regard to the specific tasks and positions from which she gained her qualifications. Going on record without supporting documentary evidence is not sufficient for purposes of meeting the burden of proof in these proceedings. *Matter of Soffici*, 22 I&N Dec. 158, 165 (Comm. 1998) (citing *Matter of Treasure Craft of California*, 14 I&N Dec. 190 (Reg. Comm. 1972)). Based on the deficiencies with Dr. [REDACTED] evaluation, discrepancies regarding the wages paid to the petitioner's accounting personnel, and the

lack of persuasive evidence of academic achievement in accounting, the director concluded that the petitioner had satisfied neither the requirements of 8 C.F.R. §§ 214.2(h)(4)(iii)(D)(1) or (5).

On appeal, the petitioner contends that the director erroneously disregarded the conclusions of [REDACTED] evaluation. In support of this contention, the petitioner submits a more detailed evaluation by [REDACTED] along with a lengthy resume outlining [REDACTED] accomplishments. In conclusion, counsel contends in his brief that by virtue of being an associate professor at the University of Maryland, [REDACTED] has the authority to grant college-level credit based on an individual's training and work experience.

The AAO finds this documentation unpersuasive. The regulation at 8 C.F.R. § 214.2(h)(4)(iii)(D)(1) provides that an individual's credentials may be evaluated for equivalency with a U.S. bachelor's degree in the specific specialty by 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. Although counsel claims on appeal that [REDACTED] has this authority, no documentary evidence, such as a letter from the school's president or provost, supporting this contention has been submitted. Without documentary evidence to support the claim, the assertions of counsel will not satisfy the petitioner's burden of proof. The unsupported assertions of counsel do not constitute evidence. *Matter of Obaigbena*, 19 I&N Dec. 533, 534 (BIA 1988); *Matter of Laureano*, 19 I&N Dec. 1 (BIA 1983); *Matter of Ramirez-Sanchez*, 17 I&N Dec. 503, 506 (BIA 1980). While [REDACTED] accomplishments are numerous and impressive, none of the documentation submitted establishes that the University of Maryland has a program which provides college level credit for work experience or training and that [REDACTED] has the authority to grant such credit. USCIS uses an evaluation by a credentials evaluation organization of a person's foreign education as an advisory opinion only. Where an evaluation is not in accord with previous equivalencies or is in any way questionable, it may be discounted or given less weight. *Matter of Sea, Inc.*, 19 I&N Dec. 817 (Comm. 1988).

In addition, counsel submits a second credentials evaluation of the beneficiary's academic record and work experience on appeal from [REDACTED], Program Director and Full-Time Faculty Member at South University in West Palm Beach, Florida. Counsel again contends that [REDACTED] also has the authority to grant college-level credit for training and/or experience in the specialty and that the university has a program for granting such credit based on an individual's **training and/or work experience**. [REDACTED] evaluation is accompanied by a letter from [REDACTED] **Lead Online Program Director at South University**, which states that [REDACTED] "is qualified" to grant college-level credit on behalf of the university in the fields of Education, Business Administration, Health Science, Criminal Justice, Graphic Design, Healthcare Management, Information Technology, Nursing, Legal Studies, and all related fields, and further confirms that the university has a program which allows the granting of college-level credit.

[REDACTED] evaluation, written on behalf of American Evaluation and Translation Service (AETS), a credentials evaluation service, is limited to professional work experience evaluation. An educational evaluation is provided by [REDACTED], who concludes that the beneficiary's foreign degree in business administration is the equivalent of a bachelor's degree in business administration from an accredited college or university in the United States. The AAO accepts [REDACTED] equation of these degrees.

█'s evaluation of the beneficiary's work experience concludes that the beneficiary's work experience "is the equivalent of 60 semester credit hours." █ notes that the beneficiary's six years of full-time employment and the job duties associated therewith have instilled the requisite experience on the beneficiary, including tax planning and preparation, preparing financial statements, and preparing income tax returns. Moreover, █ claims that she has reviewed the letters from the beneficiary's former employers, who provide brief statements with regard to the beneficiary's former duties at these companies.

The AAO finds several problems with the evaluation. First, while █ equates the beneficiary's six years of work experience to 60 semester credit hours, there appears to be very little detail with regard to the nature of the beneficiary's duties upon which her opinion can be based. For example, the three letters included in the record from the beneficiary's former employers provide her title and a generic overview of accounting duties. In addition, the only other form of evidence pertaining to the professional experience the beneficiary gained is the beneficiary's own resume, which is uncorroborated and self-serving. More problematic, however, is the fact that █ appears to have broad range in terms of granting college-level credit, and appears to have qualifications to grant credit in such disciplines as nursing, legal studies, and graphic design, as well as business administration. The AAO notes that there is no specific mention of accounting, and further notes that her educational background is in unrelated fields, such as English, Psychology and Education. Therefore, while she may in fact be qualified to generally issue college-level credit on behalf of her university, the AAO finds it questionable that someone with no accounting or business background can draw such a specific conclusion with regard to the beneficiary's qualifications. Doubt cast on any aspect of the petitioner's proof may, of course, lead to a reevaluation of the reliability and sufficiency of the remaining evidence offered in support of the visa petition. *Matter of Ho*, 19 I&N Dec. 582, 591 (BIA 1988). If USCIS fails to believe that a fact stated in the petition is true, USCIS may reject that fact. Section 204(b) of the Act, 8 U.S.C. § 1154(b); see also *Anetekhai v. I.N.S.*, 876 F.2d 1218, 1220 (5th Cir.1989); *Lu-Ann Bakery Shop, Inc. v. Nelson*, 705 F. Supp. 7, 10 (D.D.C.1988); *Systronics Corp. v. INS*, 153 F. Supp. 2d 7, 15 (D.D.C. 2001). Most problematic, however, is the fact that the letter from Sheila Sweeney only indicates that █ "is qualified" to grant university-level credit; it does not state that she has the "authority" to do so as required by 8 C.F.R. § 214.2(h)(4)(iii)(D)(1).

USCIS uses an evaluation by a credentials evaluation organization of a person's foreign education as an advisory opinion only. Where an evaluation is not in accord with previous equivalencies or is in any way questionable, it may be discounted or given less weight. *Matter of Sea, Inc.*, 19 I&N Dec. 817. For the reasons discussed above, the evaluation submitted is of little evidentiary value and does not establish that the beneficiary is qualified to perform the duties of a specialty occupation.

The AAO now turns to the director's basis for denial, in which he determined that the record is insufficient for USCIS to establish that the beneficiary is qualified to perform the duties of a specialty occupation under 8 C.F.R. § 214.2(h)(4)(iii)(D)(5).

When USCIS 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.

As stated earlier, the record confirms that the beneficiary completed four courses, or 12.0 credit hours, in accounting courses. The record also contains three employment letters from the beneficiary's former employers, which provide very brief overviews of her duties and position title during her former employment. The record reflects that she has three years of professional experience in accounting-related positions.

The documentation does not establish equivalence to a baccalaureate degree in accounting. Even if the AAO equated the beneficiary's experience with the college training she lacked, it is still clear that the beneficiary would not meet the requisite requirements. Employing the 3:1 ratio, the beneficiary would have two years of educational experience for the six years in which she worked. However, merely obtaining 12.0 credit hours in accounting would still render her short of possessing the qualifying experience. In addition, the petitioner did not submit any additional evidence of independent training or certifications obtained by the beneficiary. While counsel claims on appeal that the beneficiary is qualified by virtue of her education and professional experience, the record lacks evidence to support these contentions. Without documentary evidence to support the claim, the assertions of counsel will not satisfy the petitioner's burden of proof. The unsupported assertions of counsel do not constitute evidence. *Matter of Obaigbena*, 19 I&N Dec. 533, 534 (BIA 1988); *Matter of Laureano*, 19 I&N Dec. 1 (BIA 1983); *Matter of Ramirez-Sanchez*, 17 I&N Dec. 503, 506 (BIA 1980).

The AAO now turns to the beneficiary's prior work experience, and whether it included the theoretical and practical application of specialized knowledge required by the specialty. The beneficiary's duties as set forth

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).

in these letters do not appear to involve the theoretical and practical application of accounting. The letters identify general tasks such as *tax preparation and financial statement audits*. Moreover, one letter merely states her position title with no further details. All three letters describe the beneficiary's duties generically; no specificity to the beneficiary's daily activities or her level of responsibility is provided. Thus, the AAO cannot conclude that the beneficiary's past work experience included the theoretical and practical application of a body of highly specialized knowledge, which in this case is accounting. Moreover, the letters give no indication that she was working on a team or that her work experience was gained while working with peers, supervisors, or subordinates who have a degree or its equivalent in the specialty occupation.

The director also examined the beneficiary's organizational chart and salary history, noting that an accounts receivable employee on the petitioner's payroll earned substantially more than the beneficiary would in the proffered position of Senior accountant. Counsel on appeal alleges that the director's reliance on this fact is misplaced and is arbitrary and capricious. However, the AAO finds that the director's finding, while not a direct basis for denial of the petition, sheds doubt on the contentions of the petitioner and requires a more careful evaluation of the contents of the petition. As previously stated, doubt cast on any aspect of the petitioner's proof may, of course, lead to a reevaluation of the reliability and sufficiency of the remaining evidence offered in support of the visa petition. *Matter of Ho*, 19 I&N Dec. at 591.

Finally, there is insufficient evidence that the beneficiary has recognition of expertise. The AAO notes that the petitioner has failed to submit documentation that the beneficiary possesses expertise in the specialty occupation by at least two recognized authorities in the same specialty occupation, and has further failed to submit evidence that the beneficiary is a member of a recognized foreign or United States association or society in the specialty occupation. Moreover, no published material by or about the alien in professional publications, trade journals, books, or major newspapers is submitted, nor is there any evidence of achievements by the beneficiary which a recognized authority has determined to be significant contributions to the field of the specialty occupation.

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.