**U.S. Department of Homeland Security**
U.S. Citizenship and Immigration Services
*Office of Administrative Appeals* MS 2090
Washington, DC 20529-2090

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U.S. Citizenship and Immigration Services

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FILE: EAC 08 139 50692 Office: VERMONT SERVICE CENTER Date: JUL 08 2009

IN RE: Petitioner: [redacted]
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:

[redacted]

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 service center director denied the immigrant 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 cell phone wholesaler that seeks to employ the beneficiary as an accountant consultant. 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 of his determination that the petitioner had failed to establish that the beneficiary qualifies to perform the duties of a specialty occupation.

The record of proceeding before the AAO contains (1) the 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) the Form I-290B and supporting documentation. The AAO reviewed the record in its entirety before issuing its decision.

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;
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> (*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 record indicates that the beneficiary earned a bachelor's degree in commerce from the University of Mumbai, in India, in 2005. She also earned a "diploma in event management" from the National Institute of Event Management, in India, in 2005. The petitioner also submitted a letter from the beneficiary's previous employer, Emem Builder's & Developers Pvt. Ltd. (Emem), which stated that she had worked for that organization as an "assistant manager (finance)" from April 2003 until September 2006. The petitioner also submitted a March 27, 2007 credentials evaluation performed by the Center for Educational Research and Evaluation (CERE). The CERE evaluator

found that the combination of the beneficiary's degrees in commerce and event planning, and her work experience at Emem were equivalent to a bachelor's degree in commerce from a United States institution of higher education. The AAO, however, notes that the CERE evaluator did not address three issues: (1) how he was able to make a determination regarding the petitioner's work experience, given that Emem's letter did not address any of her work responsibilities; (2) whether the beneficiary's role at Emem was a full-time position, given that the beneficiary earned her degree from the University of Mumbai while working at the Emem position; and (3) how the petitioner's degree in event management is equivalent to a "year of schooling," as claimed in the evaluation, as the beneficiary was simultaneously earning her degree in commerce and working for Emem while she was earning the event management degree.

In his April 24, 2008 request for additional evidence, the director questioned the CERE evaluation. Noting that the CERE's evaluator's conclusion was based partly upon the beneficiary's degree in event management, the director requested documentary evidence that her training at the National Institute of Event Management has been accredited by an appropriate body at the university level. The director also notified the petitioner that if the beneficiary's work experience at Emem was to be considered in determining whether she has the equivalent of a bachelor's degree, it would need to submit an original letter from Emem detailing her employment there. Finally, the director notified the petitioner that a degree in commerce or business administration, alone, is insufficient to qualify a candidate for all business-related positions, as those terms are general terms that incorporate a wide variety of both professional and nonprofessional activities.

Counsel responded to the director's request for additional evidence on July 1, 2008. Although the CERE evaluator's determination that the combination of the beneficiary's education and work experience was equivalent to a bachelor's degree in commerce from a United States institution of higher education was based partly on the beneficiary's degree in event planning, counsel stated in his June 24, 2008 letter that that degree was now irrelevant. Counsel submitted a new evaluation, conducted by the Trustforte Corporation (Trustforte) which, unlike the CERE evaluation, did not take the beneficiary's degree in event planning into account.

Counsel also submitted another letter from Emem with regard to the beneficiary's employment with that company. Although the first letter from Emem stated that the petitioner had worked for that organization as "assistant manager (finance)," the letter submitted in response to the director's request for additional stated that she had worked for the organization as an accountant.

As was noted previously, the CERE evaluator had found that the combination of the beneficiary's degree in commerce, her diploma in event management, and her work experience at Emem was equivalent to a bachelor's degree in commerce from a United States institution of higher education. However, in his June 9, 2008 evaluation, the Trustforte evaluator found that the combination of the beneficiary's degree in commerce and her work experience at Emem was equivalent to a bachelor's degree in business administration, with a concentration in accounting, from a United States institution of higher education.

The director found the petitioner's submissions unconvincing, and denied the petition on July 14, 2008.

On appeal, the petitioner submits a third letter from Emem regarding the beneficiary's work experience at that company. The letter from Emem again renames the position held by the beneficiary at the company: the position she held between 2003 and 2006 is now entitled "assistant manager (finance)/accountant."

Upon review of the entire record of proceeding, the AAO agrees with the director's determination that the petitioner has failed to establish that the beneficiary qualifies to perform the duties of a specialty occupation. 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, which requires a demonstration that the beneficiary holds a United States baccalaureate or higher degree required by the specialty occupation from an accredited college or university.

The first criterion requires a showing that the beneficiary earned a baccalaureate or higher degree from a United States institution of higher education. The beneficiary earned her degree abroad, so she does not qualify under this criterion.

Nor does the beneficiary qualify under the second criterion, which requires a demonstration that the beneficiary's foreign degree has been determined to be equivalent to a United States baccalaureate or higher degree required by the specialty occupation from an accredited college or university. While the CERE and Trustforte evaluators both determined that the combination of the beneficiary's foreign education and work experience is equivalent to a bachelor's degree from a United States institution of higher education, their evaluations do not satisfy 8 C.F.R. § 214.2(h)(4)(iii)(C)(*2*). In order to qualify under this criterion, the evaluation must have been based solely upon the beneficiary's foreign degree; a credentials evaluation service may evaluate educational credentials only. 8 C.F.R. § 14.2(h)(4)(iii)(D)(3).

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 she 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 demonstration 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.

Thus, it is the fourth criterion under which the petitioner must classify the beneficiary's combination of education and 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 beneficiary does not qualify under 8 C.F.R. § 214.2(h)(4)(iii)(D)(*1*), as there has been no demonstration that the CERE or Trustforte evaluators possess the authority to grant college-level credit for training and/or experience in accounting or a related field at an accredited college or university which has a program for granting such credit based on an individual's training and/or work experience in accounting or a related field.

No evidence has been submitted to establish, nor has counsel contended, that the beneficiary satisfies 8 C.F.R. § 214.2(h)(4)(iii)(D)(*2*), which requires that the beneficiary submit 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).

Nor does the beneficiary satisfy 8 C.F.R. § 214.2(h)(4)(iii)(D)(*3*). As was the case under 8 C.F.R. § 214.2(h)(4)(iii)(C)(*2*), the beneficiary is unqualified under this criterion because the CERE and Trustforte evaluations were based upon both education and experience. In order to qualify under this criterion, the evaluations would have to have been based upon foreign educational credentials alone.

No evidence has been submitted to establish, nor has counsel contended, that the beneficiary satisfies 8 C.F.R. § 214.2(h)(4)(iii)(D)(*4*), which requires that the beneficiary submit 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.

The AAO turns next to the fifth criterion. 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 occupation;[1]

*(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 evidence of record traces the beneficiary's work history from 2003 through 2006. As provided by regulation, the formula utilized by USCIS is three years of specialized training and/or work experience for each year of college-level training that the alien lacks. A baccalaureate degree from a United States institution of higher education would require four years of study, and the CERE and Trustforte evaluators both determined that the beneficiary's foreign degree is equivalent to three years of academic study toward a bachelor's degree. The beneficiary must therefore demonstrate at least three years of qualifying work experience in order to qualify for its equivalency in accounting or a related field.

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[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).

While the record contains letters of reference regarding the beneficiary's work history, they do not establish that this work experience included the theoretical and practical application of specialized knowledge required by the specialty, that it was gained while working with peers, supervisors, or subordinates who held a bachelor's degree or its equivalent in accounting or a related field, and that she achieved recognition of expertise in the field as evidenced by at least one of the five types of documentation delineated in sections (*i*), (*ii*), (*iii*), (*iv*), or (*v*) of 8 C.F.R. § 214.2(h)(4)(iii)(D)(*5*). Moreover, as was noted previously, the beneficiary's work experience was gained at the same time she was earning her degree, so it is unclear whether she was performing full-time work during this period of time.

Accordingly, the beneficiary does not qualify under any of the criteria set forth at 8 C.F.R. §§ 214.2(h)(4)(iii)(D)(*1*),(*2*),(*3*),(*4*), or (*5*), and therefore by extension does not qualify under 8 C.F.R. § 214.2(h)(4)(iii)(C)(*4*). Therefore, the petitioner has not demonstrated that the beneficiary qualifies to perform the duties of a specialty occupation, and the petition was properly denied.

The petitioner has failed to demonstrate that the beneficiary qualifies to perform the duties of a specialty occupation. Accordingly, the AAO will 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.