

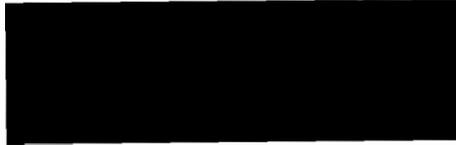


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FILE: WAC 08 149 52341 OFFICE: CALIFORNIA SERVICE CENTER DATE: **NOV 25 2009**

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:



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).

Perry Rhew  
Chief, Administrative Appeals Office

**DISCUSSION:** The service center director 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 avers that it is an importer and distributor of hair care products that was established in 2005 and currently has 10 employees. It seeks permission to employ the beneficiary as a staff accountant and, 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 was not qualified to perform the duties of the proffered position. On appeal, counsel submits a brief and additional evidence, and contends that the beneficiary's educational and employment experiences make her fully qualified for employment as a staff accountant.

When filing the petition, which the service center received on April 14, 2008, the petitioner indicated that the beneficiary "has completed all courses necessary to earn the degree of Bachelor's of Science in Business Studies at Southern New Hampshire University in January 2008." The petitioner continued to add that "as indicated in the attached letter, [the beneficiary's] degree is scheduled to be conferred at the next available date in May 2008." The petitioner submitted a letter from the beneficiary's university's associate registrar who confirmed that the beneficiary's degree was to be conferred on May 17, 2008 and that the degree was a "Bachelor of Science in Business Studies with a concentration in Marketing."

On July 24, 2008 the director denied the petition. Citing *Matter of Ling*, 13 I&N Dec. 35 (Reg. Comm. 1968), the director noted that a degree in business studies, like a degree in business administration, was a generalist degree that did not inherently involve the theoretical and practical application of a body of highly specialized knowledge. The director therefore concluded that the beneficiary was not qualified to perform the duties of a staff accountant.

On appeal, counsel disagrees with the director's conclusions. Counsel states, in part, that the beneficiary's academic pursuits at Taiwan's Transworld Institute of Technology and at Southern New Hampshire University "qualify her to have earned a[n] equivalent of [a] bachelor's degree with a major in Accounting, Finance, or General Business . . . ." Counsel submits an educational evaluation from Global Education Group, Inc. and copies of the beneficiary's transcripts and diploma.<sup>1</sup>

Section 214(i)(1) of the Act, 8 U.S.C. § 1184(i)(1), defines a specialty occupation as one that requires (1) the theoretical and practical application of a body of highly specialized knowledge, and (2) 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.

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<sup>1</sup> Counsel's other submitted evidence relates to whether the proffered position qualifies as a specialty occupation, which is not an issue discussed by the director in her decision. The AAO will not, therefore, discuss such evidence as it does not relate to the beneficiary's qualifications to perform the proffered position.

Pursuant to section 214(i)(2), 8 U.S.C. § 1184(i)(2), to be qualified to perform the duties of a specialty occupation, a beneficiary 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.

The regulations further define how to determine whether a beneficiary is qualified to perform the duties of a specialty occupation. The specific regulations at 8 C.F.R. § 214.2(h)(4)(iii)(C) and (D) state the following:

(C) Beneficiary qualifications. 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.

(D) Equivalence to completion of a college degree. For purposes of paragraph (h)(4)(iii)(C)(4) of this section, equivalence to completion of a United States baccalaureate or higher degree shall mean achievement of a level of knowledge, competence, and practice in the specialty occupation that has been determined to be equal to that of an individual who has a baccalaureate or higher degree in the specialty and 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. 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. If required by a specialty, the alien must hold a Doctorate degree or its foreign equivalent. 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;

(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<sup>2</sup> has determined to be significant contributions to the field of the specialty occupation.

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<sup>2</sup> *Recognized authority* means a person or an organization with expertise in a particular field, special skills or knowledge in that field, and the expertise to render the type of opinion requested. Such an opinion must state: (1) the writer's qualifications as an expert; (2) the writer's experience giving such opinions, citing specific

The AAO notes that when the petitioner filed the Form I-129 on April 14, 2008, the beneficiary had not yet been conferred her bachelor of science degree by Southern New Hampshire University. According to the beneficiary's diploma and a letter from the university, the beneficiary was conferred her degree on May 17, 2008, more than one month after the petition was filed. U.S. Citizenship and Immigration Services (USCIS) regulations affirmatively require a petitioner to establish eligibility for the benefit it is seeking at the time the petition is filed. 8 C.F.R. §§ 103.2(b)(1) and 103.2(b)(12). The evidence in the record does not support a conclusion that the beneficiary was qualified to perform the duties of a position that would have required a bachelor's degree in a specific specialty on the date that the petition was filed. As of April 14, 2008, the beneficiary had not yet been conferred her bachelor of science degree. Additionally, the beneficiary's educational credentials were, according to Global Education Group Inc., equivalent to only a U.S. high school diploma and two years of undergraduate study at an accredited community college in the United States. Regarding the coursework that the beneficiary completed at Southern New Hampshire University, her transcript shows that she took only one accounting course.<sup>3</sup> Thus, the beneficiary's combined coursework at Transworld Institute of Technology in Taiwan and Southern New Hampshire University would not equate to a bachelor of science degree in accounting. As the petitioner failed to demonstrate eligibility at the time of filing, the petition may not be approved.

Pursuant to section 291 of the Immigration and Nationality Act, 8 U.S.C. § 1361, the burden of proof is upon the petitioner to establish eligibility for the benefit it is seeking. Here, the petitioner has not met its burden. Accordingly, the AAO affirms the director's decision to deny the petition and dismisses the appeal.

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

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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).

<sup>3</sup> The beneficiary received a grade of "D" in this course.