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



U.S. Citizenship
and Immigration
Services

82



FILE: [Redacted] Office: VERMONT SERVICE CENTER Date: FEB 01 2011

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:

Enclosed please find the decision of the Administrative Appeals Office in your case. All of the documents related to this matter have been returned to the office that originally decided your case. Please be advised that any further inquiry that you might have concerning your case must be made to that office.

If you believe the law was inappropriately applied by us in reaching our decision, or you have additional information that you wish to have considered, you may file a motion to reconsider or a motion to reopen. The specific requirements for filing such a request can be found at 8 C.F.R. § 103.5. 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 \$630. Please be aware that 8 C.F.R. § 103.5(a)(1)(i) requires that any motion must be filed within 30 days of the decision that the motion seeks to reconsider or reopen.

Thank you,

Perry Rhew
Chief, Administrative Appeals Office

DISCUSSION: The acting service center director denied the nonimmigrant visa petition. On appeal, the Administrative Appeals Office (AAO) remanded the matter. The service center director¹ then recommended denial of the visa petition and certified his decision to the Administrative Appeals Office (AAO) for review. The director's decision will be affirmed. The petition will be denied.

To employ the beneficiary in a position it designates as a preschool teacher, the petitioner endeavors to classify her 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 acting director denied the petition on October 24, 2005, finding that the petitioner failed to establish that the proffered position qualifies as a position in a specialty occupation. On appeal, the AAO found that the petitioner had overcome that basis for denial, and the AAO withdrew that basis in a decision issued on July 30, 2007. The AAO also noted, however, that the petitioner did not appear to have demonstrated that the beneficiary is qualified for the proffered position. The matter was remanded for the issuance of a new decision, to be certified for review if adverse to the petitioner's interests. In a notice of intent to deny issued on November 1, 2007 the director informed the petitioner that he was contemplating dismissing on the basis suggested in the AAO decision and accorded the petitioner 45 days to submit evidence and argument pertinent to that point. The petitioner did not respond. The director then issued the second decision, finding, as the AAO had observed, that the petitioner had not demonstrated that the beneficiary is qualified for the proffered position. The director certified that decision to the AAO.

The AAO bases its decision upon its review of the entire record of proceedings, which includes: (1) the petitioner's Form I-129 and the supporting documentation filed with it; (2) the service center's request for additional evidence (RFE); (3) the response to the RFE; (4) the acting director's denial letter; (5) the Form I-290B and counsel's brief and attached exhibits in support of the appeal; (6) the AAO's decision of July 30, 2007; (7) the service center's second RFE; and (8) the Notice of Certification (Form I-290C) and the recommended decision of the director.

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.

The degree referenced by section 214(i)(1)(B) of the Act, 8 U.S.C. § 1184(i)(1)(B), means one in a specific specialty that is characterized by a body of highly specialized knowledge that must be

¹ During the interim between the first decision of denial and the second a permanent service center director replaced the acting director.

theoretically and practically applied in performing the duties of the proffered position. The requirement of a college degree for the sake of general education, or to obtain what an employer perceives to be a higher caliber employee, also does not establish eligibility. See *Matter of Michael Hertz, Assoc.*, 19 I&N Dec. 558, 560 (Comm. 1988).

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.

In implementing section 214(i)(2) of the Act, 8 U.S.C. § 1184(i)(2), the regulation at 8 C.F.R. § 214.2(h)(4)(iii)(C) states that an alien must also meet one of the following criteria in order 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 [a] 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 [b] have recognition of expertise in the specialty through progressively responsible positions directly related to the specialty.

Therefore, provided licensing is not an issue, to qualify an alien for classification as an H-1B nonimmigrant worker under the Act, the petitioner must establish either that the beneficiary has completed a degree in the specialty that the occupation requires, or, if he or she does not possess the required degree, that the alien has [1] education, specialized training, and/or progressively

responsible experience in the specialty equivalent to the completion of such degree, and [2] recognition of expertise in the specialty through progressively responsible positions relating to the specialty.

The evidence in the instant case includes a certification, dated November 1, 1996, indicating that the beneficiary was trained in the implementation of Gestalt principles. The evidence includes an Israeli teaching certificate indicating that the beneficiary studied at the Seminar Hakibbutzim in the [REDACTED] for Education during 1994 and 1995 and is certified, in Israel, to teach certain subjects.

The record also contains an evaluation, dated March 13, 2005, from an associate professor at the [REDACTED] University, Division of Behavioral and Social Sciences. That evaluation notes the beneficiary's experience in education and states,

[The beneficiary] has more than enough years of professional work experience to achieve the equivalent of a Bachelor of Science degree in Education with a major in Early Childhood at a regionally accredited institution in the United States and beyond.

The evaluator further stated, "I am qualified to assign college credit for professional work experience at [REDACTED] University."

The record contains no other evidence suggesting that the beneficiary has a minimum of a bachelor's degree or the equivalent in a specific specialty as required for the proffered position.

The first criterion of 8 C.F.R. § 214.2(h)(4)(iii)(C) requires a showing that the beneficiary earned a baccalaureate or higher degree from a United States institution of higher education. The beneficiary did not earn a degree in the United States, 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 evaluation provided determined that the combination of the beneficiary's foreign education and experience are equivalent to a bachelor's degree in education with a major in early childhood education, this evaluation does not satisfy 8 C.F.R. § 214.2(h)(4)(iii)(C)(2). In order to qualify under this criterion, the evaluation must be based solely upon the beneficiary's foreign degree.

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 showing 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 associate professor who provided the evaluation possesses the authority to grant college-level credit for training and/or experience in education 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 early childhood education or a related field. Although the professor states that he is "qualified to assign college credit for professional work experience at [REDACTED] University," he has submitted no evidence to support this assertion, e.g., a corroborating letter from the dean or provost of [REDACTED] University, *infra*. 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)). Further, to be qualified to assign college credit is not equivalent to having been accorded the authority to do so. The AAO also notes that the professor did not state specifically, or submit evidence to demonstrate, that he has the authority to

grant college-level credit for training and/or experience in the field of education. Nor did he state, or submit evidence to demonstrate, that ██████████ University has a program for granting such credit based on an individual's training and/or work experience in the field of education.² Moreover, the AAO questions that professor's expertise in evaluating work experience in the field of education, particularly early childhood education, as it does not appear from his submitted credentials that he has any training, expertise, or work experience in this field. For all of these reasons, this evaluation is deficient for purposes of establishing eligibility under this criterion.

No evidence has been submitted to establish, nor has the petitioner 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 evaluation submitted by the petitioner is not based solely on education and is otherwise deficient.

No evidence has been submitted to establish, nor has the petitioner 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 next turns to the fifth criterion. When U.S. Citizenship and Immigration Services (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 occupation³;

² The AAO will not accept a faculty member's opinion as to the college-credit equivalent of a particular person's work experience or training, unless authoritative, independent evidence from the official's college or university – such as a letter from the appropriate dean or provost – establishes that the official is authorized to grant academic credit of that institution, in the pertinent specialty, on the basis of training or work experience, and that such authorization is pursuant to a program at that educational institution for granting that institution's credits in the pertinent specialty on the basis of training or work experience.

³ *Recognized authority* means a person or organization with expertise in a particular field, special

- (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.

While the record contains several 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 education, 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).

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 by extension does not qualify under 8 C.F.R. § 214.2(h)(4)(iii)(C)(4).

Therefore, the petitioner has not shown that the beneficiary is qualified to work in the proffered position. On that basis, the director's decision will be affirmed and the petition will be denied.

As always, the burden of proving eligibility for the benefit sought rests solely with the petitioner. Section 291 of the Act, 8 U.S.C. § 1361.

ORDER: The director's decision is affirmed. The petition is denied.

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).