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U. S. Department of Homeland Security
U. S. Citizenship and Immigration Services
Administrative Appeals Office (AAO)
20 Massachusetts Ave., N.W., MS 2090
Washington, DC 20529-2090



**U.S. Citizenship
and Immigration
Services**

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[Redacted]

Date: **SEP 01 2011** Office: CALIFORNIA SERVICE CENTER FILE: [Redacted]

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:
[Redacted]

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 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.

On the Form I-129 visa petition, the petitioner stated that it is an adult day health care center with 17 employees. To employ the beneficiary in a position it designates as a social worker position, 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 director denied the petition, finding that the petitioner failed to establish that the beneficiary is qualified for the proffered position. On appeal, counsel asserted that the director's basis for denial was erroneous and contended that the petitioner satisfied all evidentiary requirements. In support of these contentions, counsel submitted a brief and additional evidence.

The AAO bases its decision upon its review of the entire record of proceeding, 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 director's denial letter; and (5) the Form I-290B and counsel's brief and attached exhibits in support of the appeal.

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 theoretically and practically applied in performing the duties of the proffered position.

A bachelor's degree does not, *per se*, qualify a beneficiary for employment in a specialty occupation. Rather, the position must require a degree in a specific specialty. *See Matter of Michael Hertz, Assoc.*, 19I&N Dec. 558,560 (Comm. 1988). Further, the beneficiary must have a degree in that specific specialty. *See Matter of Matter of Ling*, 13 I&N Dec. 35 (R.C. 1968).

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 education, specialized training, and/or progressively responsible experience that are 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.

Therefore, to qualify an alien for classification as an H-1B nonimmigrant worker under the Act, the petitioner must establish that the beneficiary possesses the requisite license or, if none is required, has completed a degree in the specialty that the occupation requires. Alternatively, if a license is not required and if the beneficiary does not possess the required degree, the petitioner must show that the beneficiary possesses both (1) 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.

In order to equate a beneficiary's credentials to a U.S. baccalaureate or higher degree under 8 C.F.R. § 214.2(h)(4)(iii)(C)(4), the provisions at 8 C.F.R. § 214.2(h)(4)(iii)(D) require 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;¹
- (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. . . .

With the visa petition, counsel submitted (1) a letter, dated March 31, 2009, from the petitioner's administrator; (2) a letter, dated July 2008, pertinent to claimed prior employment experience of the beneficiary; (3) an evaluation, dated March 30, 2009, and prepared by an associate professor of social work at Columbia University, of the beneficiary's foreign education and her experience; and (4) a transcript and certificate of graduation pertinent to the beneficiary's studies in Korea and her receipt of a bachelor's degree in home economics.

The March 31, 2009 letter from the petitioner's administrator states that the petitioner's minimum requirement for the proffered position is a bachelor's degree in a related field and that a professional credential evaluation service has found that the beneficiary has a degree that is equivalent to a bachelor's degree in social work earned at a United States university.

The March 30, 2009 evaluation does not, in fact, state that the beneficiary's foreign education is equivalent to a U.S. bachelor's degree in social work. It makes a different claim. It notes that the beneficiary has a four-year bachelor's degree in home economics from a Korean university. As to the equivalence of that degree to a U.S. bachelor's degree, it states:

The studies undertaken [by the beneficiary], the number of credit hours earned, the number of years of coursework, and the degree earned all indicate that [the beneficiary] satisfied requirements equivalent to those required for the attainment of a

¹ The petitioner should note that, in accordance with this provision, the AAO will accept a credentials evaluation service's evaluation of *education only*, not experience.

Bachelor of Arts degree in Economics from an accredited institution of higher education in the United States.

The evaluator also states that the beneficiary's education and degree, and her employment experience, considered together, are equivalent to a bachelor's degree in social work.

"Economics" and "Home Economics" share a word in common. The similarity begins and ends there. They are manifestly different subjects. Economics is the branch of social science that deals with the production, distribution, management, and consumption of goods and services. Home economics pertains to the management of a single home, the practice of homemaking.

This distinction is manifested in the difference in the courses requisite to degrees in the two different subjects. The transcript provided shows that the beneficiary took courses entitled Introduction to Home Management, Housing, Hygiene, Principles of Home Economics, Practice in Home Management, Practice in Nutrition, Home Management, Practice in House Plan, House Plan, Family Development, Practice in Meal Planning & Management, Household Equipment, Meal Planning & Management, Theory of Korean Family, Family Economics, Family Finance, Practice in Dietary Management, Family Relationships, History of Family Living, Practice in Home Management, Analysis in Home Management, Marriage & Family, and Seminar in Family Relationships.

The beneficiary took none of the courses requisite to a degree in economics, such as Microeconomics, Macroeconomics, History of Economic Thought, etc. The beneficiary's transcript does not show that she has any background in economics at all, even at the introductory level, let alone that she has the equivalent of a bachelor's degree in that subject. The assertion that the beneficiary's home economics degree is equivalent to a degree in economics is manifestly incongruous and is, therefore, simply not credible.

Further, that the evaluator offered that implausible conclusion casts doubt on her other assertion, that the beneficiary's education and experience, taken together, are equivalent to a bachelor's degree in social work. *See Matter of Ho*, 19 I&N Dec. 582, 591-92 (BIA 1988). The AAO may, in its discretion, use as advisory opinion statements submitted as expert testimony. However, where an opinion is not in accord with other information or is in any way questionable, the AAO is not required to accept or may give less weight to that evidence. *Matter of Caron International*, 19 I&N Dec. 791 (Comm. 1988).

Moreover, reference to the duties the beneficiary performed indicates that they were not composed of, and did not include, social work duties. The July 2008 employment verification letter states that the beneficiary worked from 2001 to April 2008 as the coordinating director of the [REDACTED] and that her duties included "Music therapy, treatment recreation, counsel elders, manage school administration, direct all programs and health care." That employment experience bears little resemblance to the duties of a social worker. Even if the evaluator's opinion were not otherwise suspect, it would be discounted as unsupported by the evidence.

In addition, as was noted above, in order to demonstrate equivalence to a bachelor's degree, work experience must have been recognized through progressively more responsible position directly related to the specialty, in this case, social work. As was noted above, the employment experience relied upon was not directly related to social work. Even if it were, however, there is no indication in the record of progressively more responsible positions. Rather, the evidence only pertains to one single position, and contains no evidence that its duties became more responsible over time.

Yet further, 8 C.F.R. § 214.2(h)(4)(iii)(D)(1), set out above, requires that if a petitioner is relying on the substitution of training and/or experience for college-level credit it must support the equivalence of that substitution with an evaluation from an official who has authority to grant college-level credit for that training and/or experience. The final sentence in the final paragraph of the professor's letter states: "I have authority to evaluate whether the school is to grant college[-]level credit for experience, training, and/or courses taken at other US or international universities."

USCIS 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 for that institution, in the pertinent specialty, on the basis of training and/or work experience. In the instant case, even if the professor's assertions were credible, they would not be accepted by USCIS. As a result, the evaluation of the beneficiary's education and work experience will be accorded no evidentiary weight.

Absent that evaluation, the record contains no evidence that the beneficiary has the requisite minimum of a U.S. bachelor's degree or the equivalent in a field related to social work, which the petitioner's administrator stated is a requirement of the proffered position. The petitioner, therefore, has not demonstrated that the beneficiary is qualified to perform in the proffered position. The appeal will be dismissed and the petition denied on that basis.²

In visa petition proceedings, the burden of proving eligibility for the benefit sought remains entirely with the petitioner. Section 291 of the Act, 8 U.S.C. § 1361. Here, that burden has not been met. The appeal will be dismissed and the petition denied.

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

² It is noted that the director's reasoning regarding the specific licensing requirements for the proffered position need not be addressed. As discussed herein, the petitioner has failed to establish that the beneficiary even possesses the educational qualifications to perform the duties of the occupation, regardless of any licensure required, and, therefore, the licensing issue is moot.