



U.S. Citizenship  
and Immigration  
Services

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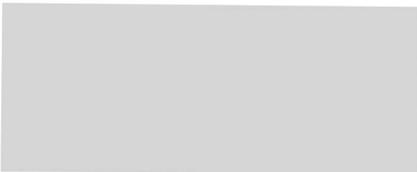


DATE: **MAR 31 2015** OFFICE: VERMONT SERVICE CENTER FILE: 

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:

Enclosed please find the decision of the Administrative Appeals Office (AAO) in your case.

This is a non-precedent decision. The AAO does not announce new constructions of law nor establish agency policy through non-precedent decisions. If you believe the AAO incorrectly applied current law or policy to your case or if you seek to present new facts for consideration, you may file a motion to reconsider or a motion to reopen, respectively. Any motion must be filed on a Notice of Appeal or Motion (Form I-290B) within 33 days of the date of this decision. **Please review the Form I-290B instructions at <http://www.uscis.gov/forms> for the latest information on fee, filing location, and other requirements. See also 8 C.F.R. § 103.5. Do not file a motion directly with the AAO.**

Thank you,

Ron Rosenberg  
Chief, Administrative Appeals Office

**DISCUSSION:** The service center director initially approved the nonimmigrant visa petition. In response to new evidence and upon subsequent review of the record, the director issued a notice of intent to revoke (NOIR), and ultimately did revoke the approval of the petition. The matter is now before the Administrative Appeals Office on appeal. The appeal will be dismissed. Approval of the petition will remain revoked.

On the Petition for a Nonimmigrant Worker (Form I-129), the petitioner describes itself as a 12-employee "Wholesale distribution & import/export of name brand perfumes and colognes" firm established in [REDACTED]. In order to employ the beneficiary in what it designates as a "Budget & Accounting Analyst" position, the petitioner seeks to classify him 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 approved the visa petition on August 29, 2012. However, on April 4, 2014 the service center director issued an NOIR in this matter. The petitioner's response was received on May 5, 2014. Subsequently, on July 1, 2014, the director revoked approval of the visa petition. The petitioner filed a timely appeal on July 15, 2014.

The director's revocation of approval of the petition was based on her finding that the petitioner had not demonstrated that the beneficiary is qualified for the proffered position and that the evidence available indicates that the approval of the visa petition was occasioned by gross error.

We have further determined that the director did not err in her decision to revoke approval of the petition. Accordingly, the director's decision will not be disturbed. The appeal will be dismissed, and approval of the petition will remain revoked.

We base our decision upon our 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 NOIR; (3) the response to the NOIR; (4) the director's revocation letter; and (5) the Form I-290B and the petitioner's submissions on appeal.

## I. THE LAW

USCIS may revoke the approval of an H-1B petition pursuant to 8 C.F.R. § 214.2(h)(11)(iii), which states the following:

- (A) *Grounds for revocation.* The director shall send to the petitioner a notice of intent to revoke the petition in relevant part if he or she finds that:
- (1) The beneficiary is no longer employed by the petitioner in the capacity specified in the petition . . . ; or

- (2) The statement of facts contained in the petition . . . was not true and correct, inaccurate, fraudulent, or misrepresented a material fact; or
  - (3) The petitioner violated terms and conditions of the approved petition; or
  - (4) The petitioner violated requirements of section 101(a)(15)(H) of the Act or paragraph (h) of this section; or
  - (5) The approval of the petition violated paragraph (h) of this section or involved gross error.
- (B) *Notice and decision.* The notice of intent to revoke shall contain a detailed statement of the grounds for the revocation and the time period allowed for the petitioner's rebuttal. The petitioner may submit evidence in rebuttal within 30 days of receipt of the notice. The director shall consider all relevant evidence presented in deciding whether to revoke the petition in whole or in part . . . .

The statutory and regulatory framework that we must apply in our consideration of the evidence of the beneficiary's qualification to serve in a specialty occupation follows below.

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, 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:

- (I) 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.

In addition, 8 C.F.R. § 214.2(h)(4)(v)(A) states:

General. If an occupation requires a state or local license for an individual to fully perform the duties of the occupation, an alien (except an H-1C nurse) seeking H classification in that occupation must have that license prior to approval of the petition to be found qualified to enter the United States and immediately engage in employment in the occupation.

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, that he or she 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 U.S. degree or its foreign degree equivalent, the petitioner must show that the beneficiary possesses both (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.

## II. EVIDENCE

With the visa petition, the petitioner submitted: (1) evidence pertinent to the beneficiary's education; (2) evidence pertinent to the beneficiary's previous employment experience; (3) an evaluation, dated September 28, 2011, of the beneficiary's education; and (4) an undated evaluation of the beneficiary's education and employment experience, considered together.

The evidence pertinent to the beneficiary's education shows that he has a bachelor of commerce degree awarded by [REDACTED] in Pakistan. The September 28, 2011 evaluation states that the beneficiary's two-year bachelor of commerce degree is equivalent to a U.S. associate's degree in business administration.

The evidence pertinent to the beneficiary's prior employment consists of employment verification letters from two alleged previous employers. A letter dated November 5, 2005 states that the beneficiary worked for [REDACTED] from February 1999 to October 2005. A letter dated December 16, 2008 from [REDACTED] in [REDACTED] states that the beneficiary worked for that company as an accounts manager from August 2007 to November 2008. The beneficiary's job title at [REDACTED] is not stated.

The undated evaluation was produced by [REDACTED] Ph.D., Associate Professor, School of Business Administration, [REDACTED] and states: "I have examined the work history (presumed to be verifiable) of [the beneficiary] . . ." It further states that the beneficiary's education and his asserted employment experience, considered together, are equivalent to a U.S. bachelor's degree in business administration with a concentration in accounting. In an October 17, 2011 cover letter appended to that evaluation, the evaluator stated:

The [REDACTED] offers internships (professional experience) for which credits are granted. I am authorized to grant credit and grades for internships completed by [REDACTED] students.

The visa petition was approved on the strength of the evidence submitted. However, the NOIR issued on April 4, 2014 stated:

**Discussion of Investigative Report of Memorandum**

You offered the beneficiary a position as a budget and accounting analyst for your company, a position requiring the expertise of a holder of at least a bachelor's degree in the specialty occupation.<sup>1</sup> During the consular interview, the beneficiary provided evidence of having been granted only a two-year Bachelor of Science degree from the [REDACTED] which is not equivalent to university level course work in the United States.

Furthermore, the beneficiary's employment history did not establish that he had experience that would qualify him for the duties described in the petition.

**Suggested documentation to Overcome Grounds for Revocation**

You may submit any further available evidence to establish that the beneficiary qualifies for the proffered position.

**A copy of the investigative report or memorandum that provided this information is enclosed.**

<sup>1</sup> While we do not agree with the conclusion that a budget and accounting analyst position necessarily requires a specialized bachelor's degree, the issue of whether or not the proffered position is a specialty occupation is not currently before us.

The investigative report observed that the beneficiary's education is equivalent to a U.S. associate's degree. As to the beneficiary's claims of employment, the report stated:

A subsequent investigation and interview by [redacted] Fraud Prevention Unit revealed that the beneficiary's employment in all three companies was tentative and unverifiable: he filed no tax returns with local tax authorities but provided fraudulent income tax documents. He also provided highly suspect, newly handwritten salary slips, which he explained by saying that he was paid under the table, in cash. The salary slips showed an income of approximately \$200/month, a woefully inadequate wage for a trained accountant in the local job market, casting into severe doubt the nature of the beneficiary's job activities.

Post recommends that USCIS revoke [the beneficiary's] H-1B petition as he is not qualified – either academically or by virtue of his job experience – to work under the terms for which he has been petitioned.

The NOIR states that a copy of the investigative report was appended to it when it was sent to the petitioner. Included in the record are: (1) a revised version of the November 5, 2005 letter from [redacted] also dated November 5, 2005; (2) a revised version of the December 18, 2008 letter from [redacted] also dated December 18, 2008; (3) a letter, dated August 26, 2011, from [redacted]; (4) a statement, dated September 1, 2013, from the beneficiary pertinent to his alleged employment at [redacted]; (5) a letter, dated January 8, 2013 from [redacted] (6) a letter, dated January 18, 2013, from [redacted] (7) handwritten receipts purporting to show payments by [redacted] to the beneficiary; (8) a letter, dated January 22, 2013, from [redacted] (9) salary slips purporting to show wage payments by Haji [redacted] to the beneficiary; (10) documents that purport to be Pakistani income tax returns for the years ended June 30, 2007 and June 30, 2008; and (11) "Affidavits" from [redacted] of [redacted] and [redacted] of [redacted].

The August 26, 2011 letter from [redacted] states: "This is to certify that [the beneficiary] . . . had been working with us since 22-May-2006 to 16-Jul-2007. He was working with us in the capacity of ACCOUNTANT."<sup>2</sup> The person who produced that letter enclosed the date and one paragraph of the body of that letter in a box.

The beneficiary's September 1, 2013 statement reads:

**PROOF OF SALARY** [redacted]

<sup>2</sup> We observe that this employment claim was not made in the submissions originally provided with the visa petition.

I worked at [REDACTED] as an accountant. I received my salary in my bank Account # [REDACTED] as per company policy I received my salary in two parts for every month. Highlighted transactions are related to your requirements and others are personal.

For the purpose, my bank statement and NTN certificate are enclosed.

My Salary there was 22000/=Rs Plus 1 Bonus, leave encashment and Fuel 2000/=Rs include in salary.

No bank statements were then provided to us with that letter. The person who produced that letter enclosed both the heading and a portion of the body of that letter in boxes.

The January 8, 2013 letter from [REDACTED] characterizes the beneficiary's former position as a "Senior Accountant" position. It further states:

[The beneficiary's] monthly salary at the time of leaving job Rs.20,000/ - (Rupees Twenty Thousand only) per month Plus One Bonus French benefits other during his tenure he drew his salary on Cash basis.

[Verbatim]

We observe that the person who produced that letter enclosed two paragraphs of the body of that letter in boxes.

The January 18, 2013 letter from [REDACTED] characterizes the beneficiary's previous position as an "Accountant" position. The person who produced that letter enclosed the single paragraph of the body of that letter in a box.

The handwritten receipts purport to show that [REDACTED] paid the beneficiary 20,000 Rupees on two occasions.

The January 22, 2013 letter from [REDACTED] states that the beneficiary's appointment to his Accounts Manager position there was made without an appointment letter.

The "Salary Slip[s]" from [REDACTED] purport to show that the company paid a gross salary of 29,000 Rupees on October 6, 2008 and November 3, 2008 as his salary for September and October of that year.

The income tax returns provided purport to show that the beneficiary earned 260,000 Rupees during the year ended June 30, 2007 and 348,000 Rupees during the year ended June 30, 2008. A note typed on those returns presumably by a consular official indicates that those returns were never filed.

In response to the NOIR, the petitioner submitted a printout of transactions pertinent to the beneficiary's account with [REDACTED] in [REDACTED] and a letter pertinent to an account the beneficiary held with [REDACTED]

An unsigned letter that purports to be from [REDACTED] is dated January 8<sup>th</sup>, 2010 and states that the beneficiary's account with that bank has been marked as dormant and transactions are restricted. It further states, "You are requested to please call on us for re-activation of your above account."

In his May 2, 2014 letter, counsel states that the consulate did not specify in what sense the beneficiary's employment claims were tentative and unverifiable and otherwise asserted that the evidence submitted is sufficient to show that the proffered position should be approved. Counsel cited the Pakistani wage data provided, together with the exchange rate information, to support the proposition that the salary reportedly paid to the beneficiary by his Pakistani employers was commensurate with an accountant position.

After reviewing the petitioner's response to the NOIR and finding the evidence submitted insufficient to refute the findings in the NOIR, the director revoked the approval of the petition on July 1, 2014 finding, as was noted above, that the beneficiary had not been shown to be qualified for the proffered position. In that decision the director stated:

[Y]ou have included no specific information concerning the duties of the several positions to establish that the work experience included theoretical and practical application of specialized knowledge. You have submitted no evaluation of the beneficiary's work history from a qualified evaluator.

The petitioner submitted a timely Form I-290B appeal, again asserting that the evidence is sufficient to show that the beneficiary is qualified for the proffered position.

The petitioner stated:

The [director] revoked the H-1B petition based on completely different legal and factual grounds than those alleged in the Notice of Revocation. Specifically, the [NOIR] makes no mention that [the petitioner] did not submit an evaluation of [the beneficiary's] work history from a qualified evaluator. This issue was never raised in the [NOIR]. Likewise, the [NOIR] makes no mention that [the petitioner] did not provide specific information concerning the duties of the several positions to establish that [the beneficiary's] work experience included theoretical and practical application of specialized knowledge. Rather, the [NOIR] alleged solely that [the beneficiary's] employment was unverifiable, not that his employment (even if verifiable) would still not qualify him for the proffered position. These are two separate and distinct factual issues, which the VSC has improperly conflated.

On appeal, the petitioner submitted copies of evidence previously submitted along with an evaluation of the beneficiary's combined education and work experience by [REDACTED], Ph.D., of the [REDACTED] dated July 21, 2014. The evaluation by Dr. [REDACTED] is accompanied by a letter dated September 19, 2012 from Dr. [REDACTED] Dean, School of Business, [REDACTED].

### III. ANALYSIS

Initially, we observe that the NOIR stated, *inter alia*, "the beneficiary's employment history did not establish that he had experience that would qualify him for the duties described in the petition." Upon review of the record, we find that the NOIR placed the petitioner on notice that revocation of the approval of the petition was contemplated within the scope of the revocation-on-notice provisions, because the evidence of record did not establish that the beneficiary was qualified for the proffered position.

We further find that, fully considered in the context of the entire record of proceedings, the petitioner's response to the NOIR failed to overcome the grounds specified in the NOIR for revoking the petition.

The record indicates that the beneficiary holds a Bachelor of Commerce degree from the [REDACTED] which is a two-year program. An academic credentials evaluation by [REDACTED] of [REDACTED] equates the beneficiary's academic achievements to an "Associate in Arts in Business Administration" earned at a U.S. institution of higher education. Consequently, this evaluation does not establish that the beneficiary possesses "a foreign degree determined to be equivalent to a United States baccalaureate or higher degree" as required in part by 8 C.F.R. § 214.2(h)(4)(iii)(C)(2). Therefore, absent (1) an actual U.S. bachelor's or higher degree from an accredited college or university, (2) a foreign degree determined to be equivalent to such a degree, or (3) a pertinent license, the only remaining avenue for the beneficiary to qualify for the proffered position is pursuant to 8 C.F.R. § 214.2(h)(4)(iii)(C)(4).

Under 8 C.F.R. § 214.2(h)(4)(iii)(C)(4), the petitioner must establish both (1) that the beneficiary's combined education, specialized training, and/or progressively responsible experience are equivalent to completion of a United States baccalaureate or higher degree in the specialty occupation, and (2) that the beneficiary has recognition of expertise in the specialty through progressively responsible positions directly related to the specialty.

For purposes of 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 to determine whether a beneficiary has achieved a level of knowledge, competence, and practice in the specialty occupation that is equal to that of an individual who has a baccalaureate or higher degree in the specialty:

- (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;<sup>3</sup>
- (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. . . .

In accordance with 8 C.F.R. § 214.2(h)(4)(iii)(D)(5):

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. . . . 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

<sup>3</sup> The petitioner should note that, in accordance with this provision, we will accept a credentials evaluation service's evaluation of *education only*, not training and/or work experience.

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.

It is always worth noting that, by its very terms, 8 C.F.R. § 214.2(h)(4)(iii)(D)(5) is a matter strictly for USCIS application and determination, and that, also by the clear terms of the rule, experience will merit a positive determination only to the extent that the record of proceeding establishes all of the qualifying elements at 8 C.F.R. § 214.2(h)(4)(iii)(D)(5) – including, but not limited to, a type of recognition of expertise in the specialty occupation.

As an analytical aid to this discussion, we note that the regulation at 8 C.F.R. § 214.2(h)(4)(iii)(D)(1) can be broken down into several evidentiary elements which must be satisfied for a submission to merit consideration as an educational-equivalency evaluation of training and/or experience under that criterion, namely, that the submission establishes:

- That, at the time of the evaluation, the person who made it was an official of an accredited U.S. college or university;
- That, at the time of the evaluation, said college or university official had authority to grant not just any college-level credit for training and/or experience, but "college-level credit for training and/or experience *in the specialty*" (emphasis added) at that educational institution; *and*
- That, at the time of the evaluation, that accredited college or university had "a program for granting such credit based upon an individual's training and/or work experience".

Also, it should be noted, that we require that the evidence of record include persuasive documentary evidence from an appropriate official at the referenced college or university - such as a dean or provost – that substantiates that, *at the time when the person rendered the evaluation of training and/or work experience*: he or she was an official at that college or university; that he or she was authorized to award college-level credit *in the particular specialty* pertinent to the petition; and that, at that same time, that accredited college or university *had a program for granting such credit in the pertinent specialty* based on an individual's training and/or work experience. We find that the evaluations of the beneficiary's combined education and work experience submitted by the petitioner are insufficient to establish that the beneficiary possesses the equivalent of a U.S. bachelor's degree in any specific specialty.

Specifically, Professor [REDACTED] authority to award credit is self-certified. As noted above, we 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 or work experience. That the director accepted Professor [REDACTED] opinion in initially granting the instant visa petition was gross error.

With respect to the evaluation by Dr. [REDACTED] submitted on appeal, we note that the letter written by Dr. [REDACTED] which was appended to the evaluation was written nearly two years prior to Dr. [REDACTED] evaluation; therefore, it does not demonstrate that (1) at the time of the evaluation, Dr. [REDACTED] had authority to grant not just any college-level credit for training and/or experience, but "college-level credit for training and/or experience *in the specialty*" (emphasis added) at the [REDACTED] and (2) at the time of the evaluation, the [REDACTED] had a "program for granting such credit based on an individual's training and/or work experience." Further, while Dr. [REDACTED] opines that the beneficiary's professional experience reflects "experience and training in positions of progressively increasing responsibility" and that the beneficiary's skills and training "demonstrate the equivalent of university level training in Accounting and related areas," there is insufficient evidence that Dr. [REDACTED] had the authority to grant college-level credit for training and/or experience in Accounting at the time of his evaluation.

Moreover, there is insufficient evidence in the record that the beneficiary has recognition of expertise in the industry, membership in a recognized association in the specialty occupation, or published material by or about the beneficiary. Thus, absent corroborating evidence as outlined in 8 C.F.R. § 214.2(h)(4)(iii)(D)(5), we cannot conclude that the beneficiary's past work experience included the theoretical and practical application of a body of highly specialized knowledge in a field related to the proffered position or that the beneficiary has recognition of expertise in the industry.

Based on these reasons, we agree with the director that the petitioner has failed to establish that the beneficiary is qualified to perform the duties of the proffered position. Therefore, approval of the instant visa petition was correctly revoked pursuant to 8 C.F.R. § 214.2(h)(11)(iii)(A)(5).

#### IV. CONCLUSION

The appeal will be dismissed and approval of the visa petition will remain revoked. In visa petition proceedings, it is the petitioner's burden to establish eligibility for the immigration benefit sought. Section 291 of the Act, 8 U.S.C. § 1361; *Matter of Otiende*, 26 I&N Dec. 127, 128 (BIA 2013). Here, that burden has not been met.

**ORDER:** The appeal is dismissed. Approval of the visa petition will remain revoked.