



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

**Non-Precedent Decision of the
Administrative Appeals Office**

MATTER OF L&TT-S-, LTD.

DATE: JUNE 23, 2016

APPEAL OF CALIFORNIA SERVICE CENTER DECISION

PETITION: FORM I-129, PETITION FOR A NONIMMIGRANT WORKER

The Petitioner, a firm that offers product design and development solutions to various industries, seeks to temporarily employ the Beneficiary as an “industrial designer” under the H-1B nonimmigrant classification for specialty occupations. *See* Immigration and Nationality Act (the Act) section 101(a)(15)(H)(i)(b), 8 U.S.C. § 1101(a)(15)(H)(i)(b). The H-1B program allows a U.S. employer to temporarily employ a qualified foreign worker in a position that requires both (a) the theoretical and practical application of a body of highly specialized knowledge and (b) the attainment of a bachelor’s or higher degree in the specific specialty (or its equivalent) as a minimum prerequisite for entry into the position.

The Director, California Service Center, denied the petition. The Director concluded that the evidence of record did not demonstrate that the Beneficiary is qualified to perform the duties of the asserted specialty occupation in accordance with the relevant statutory and regulatory requirements. The matter is now before us on appeal.

On appeal, the Petitioner submits additional evidence and asserts that “[t]he totality of the circumstances outlined in the case demonstrated [the Beneficiary’s] qualification for the specialty occupation.”¹

Upon *de novo* review, we will dismiss the appeal.

I. LEGAL FRAMEWORK

Section 214(i)(2) of the Act, 8 U.S.C. § 1184(i)(2), states that a foreign national applying for classification as an H-1B nonimmigrant worker in a specialty occupation must possess:

- (A) full state licensure to practice in the occupation, if such licensure is required to practice in the occupation,

¹ On the Form I-290B, Notice of Appeal or Motion, the Petitioner indicated that it would submit a brief and/or additional evidence within 30 days. However, we have received neither.

- (B) completion of the degree described in [Section 214(i)(1)(B) of the Act, 8 U.S.C. § 1184(i)(1)] 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.

Implementing section 214(i)(2) of the Act, the regulation at 8 C.F.R. § 214.2(h)(4)(iii)(C) specifies that, to qualify to perform services in a specialty occupation, the foreign national must:

- (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 [(1)] 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 [(2)] have recognition of expertise in the specialty through progressively responsible positions directly related to the specialty.

The first three criteria are not factors in this appeal. The record reflects that the Beneficiary does not hold a U.S. baccalaureate or higher degree from an accredited college or university; a foreign degree determined to be equivalent to such a degree; or an unrestricted state license, registration or certification authorizing full practice and immediate engagement in a specialty occupation.

We will apply the fourth criteria, however, as the Petitioner contends that a combination of experience and foreign education qualifies the Beneficiary for service in a specialty occupation.

The fourth criterion specifies two requirements for qualifying under it. The evidence of record must establish that the Beneficiary has attained (1) education, specialized training, and/or progressively responsible experience that is equivalent to completion of at least a U.S. baccalaureate in the specialty occupation, and also (2) recognition of expertise in the specialty through progressively responsible positions directly related to the specialty.

The provisions at 8 C.F.R. § 214.2(h)(4)(iii)(D) supplement the degree-equivalency requirement at for the fourth criterion. First, they define “equivalence to completion of at least a U.S. baccalaureate or higher degree.” Second, they specify the means for establishing that degree equivalency.

The definitional segment at 8 C.F.R. § 214.2(h)(4)(iii)(D) states:

[F]or 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. . . .

The regulation then states that the degree-equivalency “shall be determined by one or more of following” five means:

- (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;²
- (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 [(a)] 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 [(b)] the [foreign national] has achieved recognition of expertise in the specialty occupation as a result of such training and experience. . . .

² In accordance with this provision, we will accept a credentials evaluation service’s evaluation of *education only*, not training and/or work experience.

(b)(6)

Matter of L&TT-S-, Ltd.

The means for degree-equivalency determinations identified at 8 C.F.R. §§ 214.2(h)(4)(iii)(D)(2) and (4) will not detain us: there is no evidence of college-level equivalency examinations or special credit programs to which those provisions apply.

II. ANALYSIS

Upon review of the record in its totality and for the reasons set out below, we determine that the Petitioner has not demonstrated that the Beneficiary is qualified to work in the proffered position.³

A. Evaluation of Education and Work Experience

The record contains two evaluations from [REDACTED] of the [REDACTED] each entitled “Expert Opinion Evaluation of Academics and Work Experience” and reaching the same ultimate conclusion. We will address only the more recent submission, dated February 27, 2015, which is the longer of the two, and we shall refer to it as “the degree-equivalency evaluation.” We shall separately address the two major divisions of the evaluation, which [REDACTED] introduces by the headings “Academics” and “Professional Experience.”

1. The “Academics” Section of the Evaluation

[REDACTED] stated that, based upon his review of the diploma of completion and the transcripts related to the Beneficiary’s three-year diploma course in mechanical engineering at the [REDACTED] India, it “becomes apparent” that the Beneficiary “has satisfied requirements that are substantially similar to those required toward the completion of an Associate’s Degree, or the first two years of course work in a four-year Bachelor’s Degree program at an accredited institution of higher education in the United States.”

We are not persuaded that the “Academic” section of the baccalaureate-degree equivalency evaluation establishes the Beneficiary’s foreign education as equivalent to a U.S. two-year degree, as [REDACTED] claims. He concludes that the U.S. equivalency is “apparent,” but provides no substantive analysis to support that position, and it cites no references, sources, or research materials as the basis of its conclusion. “[G]oing 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’r 1998) (citing *Matter of Treasure Craft of Cal.*, 14 I&N Dec. 190 (Reg’l Comm’r 1972)). Because the claims in the evaluation’s “Academic” section are not substantiated, we accord them no significant weight, and we find that they are insufficient to establish U.S. equivalency of the Beneficiary’s foreign coursework.

³ The Petitioner submitted documentation to support the H-1B petition, including evidence regarding the proffered position and its business operations. While we may not discuss every document submitted, we have reviewed and considered each one.

Matter of L&TT-S-, Ltd.

2. The Evaluation's "Professional Experience" Section

The second part of [REDACTED] "Expert Opinion Evaluation of Academics and Work Experience" concludes that the Beneficiary's "six-plus years of employment" equate to at least two years of U.S. university-level coursework in mechanical engineering technology. As we shall now discuss, we do not agree.

As evident in the regulatory description, to merit consideration for the beneficiary-qualification path at 8 C.F.R. § 214.2(h)(4)(iii)(D)(I), a petitioner must submit an evaluation of training and/or experience that satisfies certain requirements. As well as being an accredited U.S. college or university, the evaluator's educational institution must

1. Operate a program for granting college-level credit for training and/or experience; and
2. Have designed that program to include granting of college-level credit in the relevant specialty – which [REDACTED] claims to be mechanical engineering technology.

Also, the evaluator of the training and/or experience must be an official whom the college or university has authorized to grant college-level credit in the relevant specialty, as part of a program for granting college-level credit for training and/or experience in that specialty. *Id.*

[REDACTED] submitted a letter from the Dean of the [REDACTED]. It states in pertinent part that [REDACTED] is "authorized and qualified to grant 'life experience' credits through the [REDACTED] program offered through the [REDACTED]."

However, there is no evidence of the extent of the Business School Dean's participation in or personal knowledge of the [REDACTED] program, which the Dean's own letter acknowledges as one administered by an entity other than his Business School, namely, the [REDACTED].

The record, however, does not include a submission from the Dean of the [REDACTED] or documentation that the Dean of the Business School is authorized to speak for the [REDACTED] with regard to its [REDACTED] program and the authority that it has delegated under that program. We find that these aspects of the record are sufficient reasons for us to accord no significant weight to the letter from the Dean of the Business School, particularly as this Dean presents no substantive information or documentation to support his conclusory declaration that [REDACTED] is "authorized and qualified to grant 'life experience credits' through the [REDACTED] program."

We also find that the totality of the evidence, including the material submitted on appeal about the academic aspects of the [REDACTED] program, indicates no course offerings or degrees in mechanical engineering technology that would be available through the [REDACTED] program. Thus, the evidence of record establishes neither that the [REDACTED] program awards college-credit in the relevant specialty nor that [REDACTED] has authority to award college-credit in the relevant specialty.

Further, we find that, even taken at face value, the letter from the Business School Dean does not establish that [REDACTED] involvement in the [REDACTED] program qualifies him as "an official who has authority to grant college-level credit for training and/or experience in

(b)(6)

Matter of L&TT-S-, Ltd.

the specialty” in a [redacted] “program for granting such credit based on an individual’s training and/or work experience.” Specifically, the Dean of the Business School states that [redacted] is authorized to grant “life experience” credits, *not* “college-level credit” and *not* “college-level credit in the [pertinent] specialty” as specified at 8 C.F.R. § 214.2(h)(4)(iii)(D)(1).

We will not speculate as to the nature, qualifying grounds, or academic weight of what is meant by “life-experience” credits, and the record of proceedings throws little light on this aspect of the [redacted] program. It is the Petitioner’s burden to establish both what constitutes “life experience” as defined for credit-assessment in the [redacted] program, and that “life experience” evaluated for credit in the [redacted] program is substantially the same as “training and/or work experience” which must be the basis of college-credit awarded by a person whom a petitioner holds out as qualifying as an 8 C.F.R. § 214.2(h)(4)(iii)(D)(1) official. For this reason, too, we find that the Petitioner has not established that [redacted] is an official who has authority to grant college-level credit for training and/or experience in the specialty at an accredited college of university which has a program in granting such credit based on an individual’s training and/or work experience.

In addition to the material deficiencies noted above, we also find that the evaluation misinterprets and misapplies the so-called “three-for-one” rule. [redacted] also stated that USCIS has “established that three years of work experience and/training is equivalent to one year of university-level training.” This statement is an erroneous simplification.

The only section of the H-1B beneficiary-qualification regulations that provides for application of a three-for-one ratio is the provision at 8 C.F.R. § 214.2(h)(4)(iii)(D)(5). However, that provision reserves its application exclusively for USCIS agency-determinations.⁴ Further, that provision requires substantially more than simply equating any three years of work experience in a specific field to attainment of a year’s worth of U.S. college credit in that field or specialty. In fact, the provision inserts a number of elements of proof into the experience and/or training equation that both evaluators have overlooked. The regulation at 8 C.F.R. § 214.2(h)(4)(iii)(D)(5) - which, the regulation at 8 C.F.R. § 214.2(h)(4)(iii)(C)(4) introduces as one of the avenues towards establishing a beneficiary’s qualifications - reads as follows:

⁴ That the application is exclusively a measure for USCIS is clear in the language of the regulation. Additionally, the supplementary comments to the Final Rule that first introduced the ratio into agency regulations include the following statements:

For the benefit of petitioners and applicants who may have difficulty in seeking and obtaining a determination of equivalency through authoritative sources, the Service adopted its own standard for substituting specialized training and/or experience for college-level training, and for assuring that the alien is recognized as a member of the profession. The three-for-one formula which will be used is based on a survey of relevant precedent decisions which reflect the number of years of experience held by aliens who did not have degrees, but were regarded by the Service as members of their profession. . . .

Temporary Alien Workers Seeking Classification Under the Immigration and Nationality Act, 55 Fed. Reg. 2606, 2611 (Jan. 26, 1990)(to be codified at 8 CFR pt. 214).

(b)(6)

Matter of L&TT-S-, Ltd.

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. . . . *It must be clearly demonstrated* [(1)] that the [beneficiary's] training and/or work experience included the theoretical and practical application of specialized knowledge required by the specialty occupation; [(2)] that the [beneficiary's] experience was gained while working with peers, supervisors, or subordinates who have a degree or its equivalent in the specialty occupation; *and* [(3)] that the [beneficiary] 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 [beneficiary] 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.

[Emphasis added.]

Neither [redacted] evaluation, the documents accompanying it, nor any other part of the record of proceedings provides sufficient work-experience evidence for us to reasonably conclude that the Petitioner has satisfied the 8 C.F.R. § 214.2(h)(4)(iii)(D)(5) requirements for application of the “three-to-one ratio.” Accordingly, we cannot conclude that the evidence of the Beneficiary’s work experience qualifies for recognition of any years of college-level credit by correct application of the H-1B beneficiary-qualification regulations’ “three-for-one” standard.

We also find that the evaluation’s misapplication of a truncated and materially incomplete version of the true “three-for-one” rule is in itself sufficient grounds for dismissing the appeal and denying the petition, for the ultimate opinion expressed in [redacted] evaluation depends in material part upon that misapplication.

We may, in our discretion, use opinion statements submitted by the Petitioner as advisory. *Matter of Caron Int'l, Inc.*, 19 I&N Dec. 791, 795 (Comm'r 1988). However, where an opinion is not in accord with other information or is in any way questionable, we are not required to accept or may give less weight to that evidence. *Id.*

B. No Basis for Service Determination of College Credit under 8 C.F.R. § 214.2(h)(4)(iii)(D)(5)

As the application of the so-called three-for-one rule is a matter solely for USCIS determination, on our own initiative we considered whether the documentary evidence of the Beneficiary's work experience would support USCIS assigning two years of college-level credit to the Beneficiary on the basis of the so-called "three for one" rule at 8 C.F.R. § 214.2(h)(4)(iii)(D)(5). As the appeal does not address the part of the Director's decision that articulated the lack of evidence sufficient to clearly demonstrate that all of the regulatory requirements had been met, we will be brief, in the interest of adjudicative economy. We concur with the Director's determination on this issue and we that also find that the totality of the evidence, including all of the previous employment letters in the record on appeal, does not establish the recognition of expertise required by 8 C.F.R. § 214.2(h)(4)(iii)(D)(5).

Neither the two evaluations, the documents accompanying them, nor any other part of the record of proceedings provides sufficient evidence for us to reasonably conclude that the work-experience evidence satisfies the 8 C.F.R. § 214.2(h)(4)(iii)(D)(5) requirements for application of the "three-to-ratio." Accordingly, we cannot conclude that the evidence of the Beneficiary's work experience qualifies for recognition of any years of college-level credit by correct application of the H-1B beneficiary-qualification regulations' "three-for-one" standard.

III. CONCLUSION

Therefore, based upon the findings articulated above, we conclude that the totality of the evidence regarding the Beneficiary's foreign education and work experience does not satisfy any criterion at 8 C.F.R. § 214.2(h)(4)(iii)(C) and (D). As the Petitioner has not established that the Beneficiary is qualified to serve in the alleged specialty occupation in accordance with the requirements at 8 C.F.R. § 214.2(h)(4)(iii)(C) and (D), the appeal will be dismissed.⁵

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.

⁵ As this basis for denial is dispositive of the Petitioner's eligibility for the benefit sought, we need not and will not address at this time any additional issues in the record of proceedings, including the issue of whether the evidence of record was sufficient to establish the proffered position as a specialty occupation.

Matter of L&TT-S-, Ltd.

ORDER: The appeal is dismissed.

Cite as *Matter of L&TT-S-, Ltd.*, ID# 16804 (AAO June 23, 2016)