



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

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

MATTER OF ECSR-T-, LLC

DATE: OCT. 6, 2016

APPEAL OF VERMONT SERVICE CENTER DECISION

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

The Petitioner, a precious metals refinery, seeks to employ the Beneficiary as a “general manager” under the H-1B nonimmigrant classification. *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, Vermont Service Center, denied the petition. The Director concluded that the Petitioner had not demonstrated that the Beneficiary is qualified to perform services in a specialty occupation.

The matter is now before us on appeal. In its appeal, the Petitioner submits a brief and additional evidence in support of the visa petition.

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

I. LAW

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 individual 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 a beneficiary 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 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.

Therefore, to qualify a beneficiary for classification as an H-1B nonimmigrant worker under the Act, the petitioner must establish that the beneficiary possesses the requisite degree or its foreign equivalent. Alternatively, if a 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.

In order to equate a beneficiary's credentials to a U.S. baccalaureate or higher degree, 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

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;²
- (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

¹ The Petitioner should note that, in accordance with this provision, we will accept a credential evaluation service's evaluation of *education only*, not training and/or work experience.

² *Recognized authority* means a person or organization with expertise in a particular field, special skills or knowledge in that field, and the expertise to render the type of opinion requested. 8 C.F.R. § 214.2(h)(4)(ii). 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. *Id.*

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 U.S. Citizenship and Immigration Services (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 proceedings 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.

II. FACTUAL BACKGROUND

As indicated above, the Petitioner is a precious metals refinery and seeks to employ the Beneficiary as a general manager.³ The Petitioner provided the following general summary of the proffered position (verbatim):

The General Manager is responsible for planning, directing, and coordinating the daily operations of the Facility. He/she is responsible for sustaining, ensuring, and improving the facilities departmental and organizational operations, through: performance, productivity, efficiency and profitability. These goals are to be met through the use of effective methods and strategies that are to be created by the General Manager and his/her Supervisor. The General Manager must be professional, knowledgeable, and skilled in the Electronics Recycling and Precious Metals Recovery Industry; and have specific knowledge and skilled in industry specific equipment, processes, preventative maintenance, and industry standards and regulations. In addition to these requirements the General Manager is expected to be very knowledgeable in the many dynamic incoming materials and hazards associated with in the electronic recycling industry. The job of the General Manager has great emphasis on technical skills.

The Petitioner stated that the proffered position requires at least a bachelor's degree in health and safety, engineering, "or equivalent of Seven (7) years or more experience in the field of Electronic Recycling." The Petitioner additionally requires seven to nine years of knowledge and/or experience in the principles and practices of organizational effectiveness and operations management, business and management, finance and accounting, human resources, and project management.

³ Although the Petitioner indicated on the H-1B petition that it is requesting "[c]ontinuation of previously approved employment without change with the same employer," the Petitioner also indicated that it previously employed the Beneficiary as an operations manager, and is now seeking to accord him the new title of general manager.

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According to the Petitioner, the Beneficiary possesses a foreign associate's degree in hotel tourism and restaurant management, and "has been in the hazardous waste and recycling industry for over 15 years."

III. ANALYSIS

Upon review, we find that the record does not demonstrate that the Beneficiary's combined education and work experience is the equivalent to a U.S. bachelor's degree in a specific specialty.

The Petitioner does not assert that the Beneficiary's claimed associate's degree in hotel tourism and restaurant management, or his claimed coursework and certifications in supervisory skills, materials handling equipment instruction, and transportation of dangerous goods handling, are relevant to our determination of the Beneficiary's equivalent degree. Nor does the Petitioner submit copies of the Beneficiary's claimed degree, coursework, or certifications. Therefore, we will only consider whether the Beneficiary's prior work experience and/or work-related training equates to at least a U.S. bachelor's degree in a specific specialty.

When USCIS determines a beneficiary'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." Again, as the Petitioner does not claim that the Beneficiary has any college-level education in a field related to the specific specialty, the Petitioner must demonstrate that the Beneficiary has at least 12 years of specialized training and/or work experience in order to be found to have the equivalent to a U.S. bachelor's degree in the specific specialty pursuant to 8 C.F.R. § 214.2(h)(4)(iii)(D)(5).⁴

As evidence of the Beneficiary's prior work experience, the Petitioner submitted the Beneficiary's resume, two letters from the Petitioner's executives, and a letter from the owners of [REDACTED]. However, these documents – individually and collectively – are insufficient to demonstrate that the Beneficiary has at least 12 years of specialized training and/or work experience in the hazardous waste and recycling industry, such that we could determine that he has the equivalent to a bachelor's degree in that field or in the related fields of health and safety or engineering.

The evidentiary weight of the Beneficiary's resume, alone, is insignificant. The resume represents a claim by the Beneficiary, rather than evidence to support that claim. Critically, the Petitioner has not submitted letters from the Beneficiary's previous employers or other objective evidence to

⁴ While the Petitioner states that it requires a bachelor's degree in health and safety or engineering, or seven years of related work experience, the Petitioner's self-imposed requirement does not and cannot replace the regulatory framework at 8 C.F.R. § 214.2(h)(4)(iii)(D)(5), which requires three years of specialized training and/or work experience for every year of U.S. college education lacking. A U.S. bachelor's degree is generally found to require four years of education. See *Matter of Shah*, 17 I&N Dec. 244 (Reg'l Comm'r 1977). Thus, the Petitioner must demonstrate that the Beneficiary has at least 12 years of relevant specialized training and/or work experience.

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corroborate the claims made in the Beneficiary's resume. "[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)).

Even if taken at face value, the Beneficiary's resume provides insufficient information about the Beneficiary's work experience. According to his resume, the Beneficiary has been working for the Petitioner for the past five years. Prior to that, he worked for [REDACTED] as a "production operations manager" from September 2003 to August 2009 (approximately six years), [REDACTED] as a "production supervisor" in 2002, and [REDACTED] in various positions from 1999-2002. But his resume does not identify whether the prior employers were in the hazardous waste and recycling industry, or another closely related industry. His resume also does not specify the dates (month and year) of the Beneficiary's employment at [REDACTED] and [REDACTED] where he was variously employed as a warehouse manager, hazardous analysis critical control point (HACCP) coordinator, afternoon building supervisor, and inventory control coordinator.

Moreover, the Beneficiary's resume does not sufficiently describe his job duties, the bodies of knowledge required to perform them, as well as the qualifications of the Beneficiary's peers, supervisors, or subordinates in those companies. 8 C.F.R. § 214.2(h)(4)(iii)(D)(5). For example, according to his resume, the Beneficiary's job duties at [REDACTED] included working with "the Health and Safety Committee," "the Ministry of Labor to become compliant as per the OSHA," and "the Ministry of Environment to become compliant with its certificates of Air, Waste, and Waste water." His resume – and the remaining evidence of record – is silent as to what specific job duties he performed, the bodies of knowledge applied in the performance of these duties, and the qualifications of the persons with whom he worked. We therefore cannot determine whether the Beneficiary's work experience and/or training at [REDACTED] "included the theoretical and practical application of specialized knowledge required by the specialty occupation," and "was gained while working with peers, supervisors, or subordinates who have a degree or its equivalent in the specialty occupation." *Id.*

The Beneficiary's resume indicates that his work at [REDACTED] spanned three years and encompassed several positions. But as mentioned above, the Petitioner did not specify exactly when (month and year) the Beneficiary held each position. The absence of this information is important, as it is not apparent how the Beneficiary's positions as an inventory control coordinator or afternoon building supervisor, or his associated job duties of "[ensuring] finished goods and primary packaging were accessible and maintained" and "[scheduling] start times and breaks for staff," for example, relate to the specific areas of the proffered position. Further, his resume – and the remaining evidence of record – is again silent as to what bodies of knowledge the Beneficiary applied in the performance of his duties, and the educational qualifications of his peers, supervisors, or subordinates. We therefore cannot determine whether, and if so, how much of, the Beneficiary's work experience and/or training at [REDACTED] can be counted towards the minimum requirement of 12 years of relevant specialized training and/or work experience pursuant to 8 C.F.R. § 214.2(h)(4)(iii)(D)(5).

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The letters from the Petitioner's representatives provide limited insight into the Beneficiary's prior work experience. For instance, the letter from the Petitioner's former president highlights the Beneficiary's work at [REDACTED] as a HACCP coordinator and warehouse supervisor, in which roles he was "responsible for maintaining a safe manufacturing environment, in compliance with all regulation and standards." However, the Petitioner's letter does not further inform us about the specific dates of his employment in these positions, the bodies of knowledge the Beneficiary applied in the performance of his relevant duties, and the educational qualifications of his peers, supervisors, or subordinates. The same letter also highlights the Beneficiary's work at [REDACTED] and even attests that "he worked closely with many people in the recycling industry." But again, the letter does not identify what bodies of knowledge the Beneficiary applied in the performance of his job duties at [REDACTED] and the educational qualifications of his peers, supervisors, or subordinates in the recycling industry, such that we can consider all of his prior work experiences at these companies under 8 C.F.R. § 214.2(h)(4)(iii)(D)(5).

Based on the limited evidence of record, we cannot find that the Beneficiary's specialized training and/or work experience is equivalent to at least a U.S. bachelor's degree in the specific specialty.⁵

Furthermore, the record does not establish that the Beneficiary has achieved recognition of expertise in the specialty occupation as a result of such training and experience. See 8 C.F.R. §§ 214.2(h)(4)(iii)(C)(4) and (D)(1).

In this vein, the Petitioner provided the letters from its representatives as well as from the owners of [REDACTED]. These letters attest to the Beneficiary's contributions to the petitioning company and his overall knowledge of the electronics recycling industry. The fundamental deficiency with these letters, however, is that the Petitioner has not demonstrated that they were written by "experts" or "recognized authorities" in the field. 8 C.F.R. § 214.2(h)(4)(iii)(D)(5)(i); see also 8 C.F.R. § 214.2(h)(4)(ii) (defining a "recognized authority" as "a person or organization with expertise in a particular field, special skills or knowledge in that field, and the expertise to render the type of opinion requested").

While the Petitioner provided copies of the writers' diplomas and resumes, this evidence, without more, is insufficient. We note that the Petitioner submitted numerous articles about the electronics recycling industry and the various organizations and governmental bodies involved, but none of the articles specifically mentions these writers or their respective companies as "recognized authorities" with "expertise" in the field.

Overall, there is insufficient evidence in the record to demonstrate that the Beneficiary has recognition of expertise in the field, membership in a recognized association in the specialty

⁵ Because the Petitioner has not made this threshold showing, we will not further analyze whether the Beneficiary also meets the Petitioner's additional requirements of seven to nine years of knowledge and/or experience in the principles and practices of organizational effectiveness and operations management, business and management, finance and accounting, human resources, and project management.

occupation, or published material by or about the Beneficiary. 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 and/or specialized training 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 field.

Finally, we acknowledge the Petitioner's statements that the "[t]he Electronics Recycling Industry is an up and coming area of interest, growth, and employment in the United States," and "has officially been around for less than 10 years." The Petitioner further asserts that due to its "niche" and relatively new industry, the Petitioner has not been able to obtain an evaluation from an official of an accredited college or university pursuant to 8 C.F.R. § 214.2(h)(4)(iii)(D)(1). Even if true, however, the Petitioner's inability to obtain an evaluation under 8 C.F.R. § 214.2(h)(4)(iii)(D)(1) still does not overcome the Petitioner's burden of proof in these proceedings.

IV. CONCLUSION

The Petitioner has not established that the Beneficiary is qualified to perform the duties of a specialty occupation. For this reason, the petition will be denied.⁶

The burden is on the Petitioner to show 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.

Cite as *Matter of ECSR-T, LLC*, ID# 96338 (AAO Oct. 6, 2016)

⁶ As the identified ground of ineligibility is dispositive of the appeal, we will not address any additional deficiencies we have identified on appeal.