U.S. Citizenship and Immigration Services

Non-Precedent Decision of the Administrative Appeals Office

MATTER OF M- CORP.

DATE: NOV. 7, 2018

APPEAL OF CALIFORNIA SERVICE CENTER DECISION

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

The Petitioner, a software company, seeks to temporarily employ the Beneficiary as a "software engineer" under the H-1B nonimmigrant classification for specialty occupations. Immigration and Nationality 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 of the California Service Center denied the petition, concluding that the Beneficiary is not qualified to perform the duties of the proffered position. On appeal, the Petitioner submits a brief and asserts that the Director erred.

Upon *de novo* review, we will dismiss the appeal.[1]

I. LEGAL FRAMEWORK

Section 214(i)(2) of the Act, 8 U.S.C. § 1184(i)(2), states that a foreign national, for whom a petitioner requests 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,
>
> (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

[1] We follow the preponderance of the evidence standard as specified in *Matter of Chawathe*, 25 I&N Dec. 369, 375-76 (AAO 2010).

> (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 fourth criterion specifies two requirements for qualifying under it. The evidence of record must establish that the Beneficiary has attained (1) education, specialized training, 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 8 C.F.R. § 214.2(h)(4)(iii)(C)(*4*). 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;
>
> (*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 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 [(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 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.

By its very terms, 8 C.F.R. § 214.2(h)(4)(iii)(D)(*5*) is a matter strictly for USCIS application and determination. Also by the 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.

II. ANALYSIS

In support of the petition, the Petitioner asserted that it requires "either a minimum of a bachelor or a master degree in a relevant field" for entry into the proffered "software engineer" position.[2] On appeal, the Petitioner asserts that the record establishes the Beneficiary is qualified for specialty occupation work. Specifically, the Petitioner states that "university transcripts demonstrating over four years of college level coursework at [redacted] in Sweden toward degrees in Computer Engineering and Computer Science, plus employment verification letters demonstrating over three years of professional level software engineering experience" establish the Beneficiary's qualifications. The Petitioner also submitted an evaluation of the Beneficiary's qualifications signed by [redacted] an associate professor at the [redacted] and submits a "reassessment" in support of the appeal. However, the record does not establish that the Beneficiary is qualified for entry into the proffered position.

The Beneficiary is ineligible under 8 C.F.R. § 214.2(h)(4)(iii)(C)(*1*)-(*2*). The academic transcripts establish that the Beneficiary completed 174.5 credits toward a 270-credit degree in "computer engineering" and 69 credits toward a 120-credit degree in "computer science – algorithms, languages, and logic, master's program" from [redacted] in [redacted] Sweden. Both transcripts state that "60 credits correspond to one year of full time studies. Neither transcript establishes that the Beneficiary completed either degree, and both of [redacted] evaluations concede that the Beneficiary "has not provided evidence of graduation from either program." Therefore, the Beneficiary holds neither a U.S. bachelor's or higher degree required by

[2] We note that the Petitioner's academic requirement is vague and permits subjective conclusions about which fields may be relevant to software engineering. Although petitioners need not provide exhaustive lists of all possible variations of degree titles that may satisfy academic requirements for entry into positions, examples of degree titles petitioners consider relevant limit subjective conclusions.

the specialty occupation nor a foreign degree determined to be equivalent to a qualifying U.S. bachelor's or higher degree.

The criterion at 8 C.F.R. § 214.2(h)(4)(iii)(C)(*3*) is inapplicable to the proffered position. We recognize the U.S. Department of Labor's (DOL) *Occupational Outlook Handbook (Handbook)* as an authoritative source on the duties and educational requirements of the wide variety of occupations that it addresses.[3] On the labor condition application (LCA)[4] submitted in support of the H-1B petition, the Petitioner designated the proffered position under the occupational category "Software Developer," corresponding to the Standard Occupational Classification code 15-1132. The subchapter of the *Handbook* titled "How to Become a Software Developer" does not indicate that a state license, registration or certification authorizes individuals to practice software development, regardless of educational requirements. Bureau of Labor Statistics, U.S. Dep't of Labor, *Occupational Outlook Handbook*, Software Developers, https://www.bls.gov/ooh/computer-and-information-technology/software-developers.htm#tab-4 (last visited Nov. 5, 2018).

Although the Beneficiary could qualify for entry into the proffered position through a combination of education, specialized training, and progressively responsible experience equivalent to completion of a qualifying bachelor's or higher degree, with sufficient recognition of expertise, under 8 C.F.R. § 214.2(h)(4)(iii)(C)(*4*), the record does not satisfy the corresponding requirements at 8 C.F.R. § 214.2(h)(4)(iii)(D)(*1*)-(*5*).

We disagree with the Petitioner's assertion that the evidence of record is sufficient to satisfy 8 C.F.R. § 214.2(h)(4)(iii)(D)(*1*). Although we acknowledge [redacted] evaluation, we find it insufficient to meet the Petitioner's burden.[5] We have reviewed both the information submitted by the Petitioner as well as [redacted] website regarding the program for granting college credit based on "life experience," and note that it indicates the following: (1) credit for life experience is not evaluated during the admissions process at [redacted] but only after the student has enrolled in the program; (2) credit is not awarded for experiences but for the student's ability to demonstrate that these experiences constitute college-level learning; (3) students can earn up to 15 credits for documented learning experiences, published works, or artistic performances that occurred before they started college, during a hiatus of at least one year in their college careers, or in their current job if they were doing the same job for at least two years before starting college, provided they can show that what they learned or did is equivalent to college level work; (4) enrolled students can pursue the

[3] We do not maintain that the *Handbook* is the exclusive source of relevant information. That is, the occupational category designated by the Petitioner is considered as an aspect in establishing the general tasks and responsibilities of a proffered position, and we regularly review the *Handbook* on the duties and educational requirements of the wide variety of occupations that it addresses.

[4] A petitioner submits the LCA to DOL to demonstrate that it will pay an H-1B worker the higher of either the prevailing wage for the occupational classification in the area of employment or the actual wage paid by the employer to other employees with similar duties, experience, and qualifications. Section 212(n)(1) of the Act; 20 C.F.R. § 655.731(a).

[5] Although the assessment and the reassessment both indicate that [redacted] authored them, the signatures on the respective documents do not match. This inconsistency raises concerns about whether the assessment and reassessment were actually authored by [redacted] and, therefore, reflect his opinions. The record does not reconcile these concerns.

life experience option when they have earned between 45 and 90 credits; and (5) credit for prior learning cannot be applied to area(s) of concentration, liberal arts, residency, or core distribution requirements – in other words, this credit is always elective credit.

does not discuss these restrictions placed on program for granting college-level credit based on an individual's training and work experience. As indicated, the program allows the issuance of only 15 credits for documented learning experiences, and thus is limited to one semester's worth of courses. Moreover, the program is limited to enrolled students who have already earned between 45 and 90 credits and the type of credit issued is for elective courses, not courses within the core distribution requirements or in an area of concentration. Thus, it appears that program for granting college-level credit does not include life experience credit related to core areas of a student's study. There is no indication that a student (enrolled or otherwise) would be able to obtain college-level credit for numerous courses all related and leading to a degree in a particular discipline. Notably, the information emphasizes that it is *the student* who must demonstrate that his or her experiences constitute college-level learning. Although reviewed the Beneficiary's credentials, he does not indicate how the Beneficiary demonstrated that his work experience constituted any college-level learning. It appears, rather, that assumed that the work experience constituted college-level learning without interviewing or otherwise requiring the Beneficiary to demonstrate this essential element of program. The lack of an analysis of the Beneficiary's work experience within the context in which issues college credit for life or work experience significantly diminishes the probative value of evaluation. We may, in our discretion, discount or give less weight to an evaluation of a person's foreign education where that opinion is not in accord with other information or is in any way questionable. *Matter of Sea, Inc.*, 19 I&N Dec. 817, 820 (Comm'r 1988). We exercise that discretion in this matter and find that this evaluation does not satisfy 8 C.F.R. § 214.2(h)(4)(iii)(D)(*1*).

The Petitioner does not assert, and the record does not support the conclusion, that the Beneficiary completed a recognized college-level equivalency examination or special credit program, demonstrating that he possesses the equivalent to a U.S. or higher bachelor's degree. Therefore, the record does not satisfy 8 C.F.R. § 214.2(h)(4)(iii)(D)(*2*).

Although the Petitioner submitted the two evaluations from an associate professor at a school, discussed above, the record does not contain an evaluation of education by a reliable credentials evaluation service which specializes in evaluating foreign educational credentials. Instead, both evaluations focused on the Beneficiary's *combination* of education and experience, rather than on his *education alone*, which is the focus of this criterion.[6] Therefore, the record does not satisfy 8 C.F.R. § 214.2(h)(4)(iii)(D)(*3*).

[6] In other words, an evaluation of education alone conducted by a reliable credentials evaluation service *would* be relevant for our consideration under 8 C.F.R. § 214.2(h)(4)(iii)(D)(*3*).

The Petitioner does not assert, and the record does not support the conclusion, that the Beneficiary possesses a 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. Therefore, the record does not satisfy 8 C.F.R. § 214.2(h)(4)(iii)(D)(*4*).

We need not determine whether the Beneficiary has acquired the equivalent of a qualifying degree through a combination of education, specialized training, and work experience in areas related to the specialty because the record does not satisfy the second prong of 8 C.F.R. § 214.2(h)(4)(iii)(D)(*5*), which requires that the Beneficiary has "achieved recognition of expertise in the specialty occupation as a result of such training and experience . . . evidenced by at least one type of documentation."

Although the record contains employment confirmation letters that discuss the Beneficiary's skills, the letters do not state all of the following:

(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) (defining "[r]egonized [*sic*] authority"). Therefore, the employment confirmation letters do not qualify as "[r]ecognition of expertise in the specialty occupation by at least two recognized authorities in the same specialty occupation" under 8 C.F.R. § 214.2(h)(4)(iii)(D)(*5*)(*i*).

The Petitioner does not assert, and the record does not support the conclusion, that the Beneficiary possesses membership in a recognized foreign or U.S. association or society in the specialty occupation. Therefore, the record does not satisfy 8 C.F.R. § 214.2(h)(4)(iii)(D)(*5*)(*ii*).

The Petitioner does not assert, and the record does not support the conclusion, that professional publications, trade journals, books, or major newspapers have published material by or about the Beneficiary. Therefore, the record does not satisfy 8 C.F.R. § 214.2(h)(4)(iii)(D)(*5*)(*iii*).

The Petitioner does not assert, and the record does not support the conclusion, that the Beneficiary possesses licensure or registration to practice software development in a foreign country. Therefore, the record does not satisfy 8 C.F.R. § 214.2(h)(4)(iii)(D)(*5*)(*iv*).

The Petitioner does not assert, and the record does not support the conclusion, that the Beneficiary has earned achievements which a recognized authority has determined to be significant contributions to the field of the specialty occupation. Therefore, the record does not satisfy 8 C.F.R. § 214.2(h)(4)(iii)(D)(*5*)(*v*); *see also* 8 C.F.R. § 214.2(h)(4)(ii) (defining the "[r]egonized [*sic*] authority" that can make such a determination).

In sum, the record does not establish that the Beneficiary is qualified for entry into the proffered position under any of the criteria at 8 C.F.R. § 214.2(h)(4)(iii)(C)-(D).

III. CONCLUSION

The Petitioner has not established eligibility for the benefit sought.

ORDER: The appeal is dismissed.

Cite as *Matter of M- Corp.*, ID# 1494021 (AAO Nov. 7, 2018)