



U.S. Citizenship
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FILE: EAC 03 033 53296 Office: VERMONT SERVICE CENTER Date: **SEP 21 2005**

IN RE: Petitioner: [Redacted]
Beneficiary: [Redacted]

PETITION: Petition for a Nonimmigrant Worker Pursuant to Section 101(a)(15)(H)(i)(b) of the
Immigration and Nationality Act, 8 U.S.C. § 1101(a)(15)(H)(i)(b)

ON BEHALF OF PETITIONER:

SELF-REPRESENTED

INSTRUCTIONS:

This is the decision of the Administrative Appeals Office in your case. All documents have been returned to the office that originally decided your case. Any further inquiry must be made to that office.

Robert P. Wiemann, Director
Administrative Appeals Office

DISCUSSION: The nonimmigrant visa petition was initially approved by the Vermont Service Center. A Notice of Intent to Revoke (NOIR) was thereafter served on petitioner's counsel by regular U.S. mail on September 16, 2003. No response to that NOIR was received by Citizenship and Immigration Services (CIS). The director then revoked approval of the Form I-129 petition on October 28, 2003. The matter is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed. The petition will be denied.

The petitioner is a general contractor. It seeks to employ the beneficiary as an operations manager, and endeavors 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's determination revoking the Form I-129 petition was based on the beneficiary's qualifications to perform the duties associated with that occupation following an interview with the beneficiary by the United States Consulate in Warsaw, Poland. The consulate provided a February 23, 2002 memorandum stating that the duties of the proffered position would require the beneficiary to "work with degreed architects and civil engineers . . . analyze blueprints . . . prepare cost-estimates . . . [and] compute cost factors using specialized methodologies, techniques, and principles." During the interview, the beneficiary acknowledged that he "lacks experience working with architects, has not previously prepared cost-estimates, and is unfamiliar with methodologies, techniques, or principles for computing cost estimates." The memorandum further noted that the duties of the offered position required extensive work with outside experts, employees, and contractors, and that the beneficiary's English skills were "extremely limited."

As previously noted, CIS did not receive a response to the NOIR and issued its revocation. The petitioner then appealed the revocation stating that it never received the NOIR, submitting information that it would have submitted in response to the NOIR had it been received. The NOIR was served upon the petitioner by regular U.S. mail sent to the petitioner's attorney. Counsel for the petitioner has submitted, on appeal, an unsworn statement indicating that it never received the NOIR from CIS.

The Department of Justice Executive Office for Immigration Review List of Disciplined Practitioners indicates that the petitioner's counsel, Earl S. David, was suspended for five months beginning July 9, 2004. The record reflects that the NOIR and a copy of the investigative report or memorandum prepared by the consular office were mailed to the petitioner's attorney by regular U.S. mail on Sept. 16, 2003. Neither the petitioner nor its counsel have rebutted this fact of record on appeal.

In addition to counsel's letter denying receipt of the CIS NOIR, the petitioner submitted a letter from Dr. Louis A. Arena, the University of Delaware Linguistics and Cognitive Science Department, stating that he was prepared to provide the beneficiary with English instruction upon arrival to the United States. Further, the petitioner provided a statement indicating that the duties of the proffered position do not require the beneficiary to be proficient in English, that the beneficiary will take a course in English as a second language upon arrival in the United States, and that the beneficiary is qualified to perform the duties of the position as established by an experiential evaluation from the Trustforte Corp.

Section 101(a)(15)(H)(i)(b) of the Act, 8 U.S.C. § 1101(a)(15)(H)(i)(b), provides, in part, for the classification of qualified nonimmigrant aliens who are coming temporarily to the United States to perform services in a specialty occupation.

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.

Pursuant to 8 C.F.R. § 214.2(h)(4)(iii)(C), to qualify to perform services in a specialty occupation, the alien must meet one of the following criteria:

- (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.

Pursuant to 8 C.F.R. § 214.2(h)(4)(iii)(D), for 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 and shall be determined by 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;
- (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.

Pursuant to 8 C.F.R. § 214.2(h)(11)(B)(iii)(5), the director may revoke an H-1B petition if approval of the petition violated paragraph (h) of 8 C.F.R. § 214.2, or involved gross error. In this instance, approval of the petition was in violation of paragraph (h) of the cited regulation in that the beneficiary did not qualify to perform the duties of the proffered position. 8 C.F.R. § 214.2(h)(4)(iii)(C). Approval of the petition constituted gross error, as the beneficiary admitted a lack of experience and/or knowledge related to the detailed duties of the position. The petitioner was given due and proper notice of the director's intent to revoke the petition. The director then appropriately revoked the Form I-129 petition on the above stated grounds.

The petitioner has not submitted any independent documentation on appeal to overcome the admissions by the beneficiary that he lacks the substantive requirements for the position listed on the Form I-129. While the petitioner submits a sworn statement asserting that the beneficiary is qualified for the position, the assertions are unsupported by objective documentation. Simply going on the 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. 1998) (citing *Matter of Treasure Craft of California*, 14 I&N 190 (Reg. Comm. 1972)).

The record contains an experiential evaluation from the Trustforte, Corp., a credentials evaluation service. That evaluation found that the beneficiary possessed the equivalent of a Bachelor of Science degree in Engineering Management based on his past education, training, and experience. It should be noted that a credentials evaluation service may only determine the equivalence of a beneficiary's foreign education to a United States education for the purpose of these proceedings. A beneficiary's past work experience may only be evaluated by 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. 8 C.F.R. § 214.2(h)(4)(iii)(D)(1). The Trustforte Corp. evaluation does not meet this requirement and is, therefore, of little evidentiary value. The statements set forth by the petitioner in support of its appeal of the CIS revocation do not overcome the basis of the revocation.

Beyond the decision of the director, the duties of the proffered position appear to be those of a construction manager as described in the Department of Labor's *Occupational Outlook Handbook (Handbook)*. The *Handbook* does not indicate that a degree requirement, in a specific specialty, is normally the minimum requirement for entry into the proffered position. Further, the record does not establish any of the remaining requirements of 8 C.F.R. § 214.2(h)(4)(iii)(A) for establishing the position as a specialty occupation. For this

additional reason, the revocation is sound.

The burden of proof in these proceedings rests solely with the petitioner. Section 291 of the Act, 8 U.S.C. § 1361. The petitioner has failed to sustain that burden and the appeal shall accordingly be dismissed.

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