U.S. Citizenship and Immigration Services

Non-Precedent Decision of the Administrative Appeals Office

In Re: 26529938

Date: APR. 21, 2023

Appeal of California Service Center Decision

Form I-129, Petition for a Nonimmigrant Worker (H-1B)

The Petitioner seeks to temporarily employ the Beneficiary 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 for entry into the position.

The Director of the California Service Center denied the petition, concluding the record did not establish that the Beneficiary has education, specialized training, and/or progressively responsible experience that is equivalent to completion of a United States bachelor's or higher degree required for the specialty occupation and has recognition of expertise in the specialty through progressively responsible position directly related to the specialty. 8 C.F.R. § 214.2(h)(4)(iii)(C)(*4*). The matter is now before us on appeal. 8 C.F.R. § 103.3.

The Petitioner bears the burden of proof to demonstrate eligibility by a preponderance of the evidence. *Matter of Chawathe*, 25 I&N Dec. 369, 375-76 (AAO 2010). We review the questions in this matter de novo. *Matter of Christo's, Inc.*, 26 I&N Dec. 537, 537 n.2 (AAO 2015). Upon de novo review, we will dismiss the appeal.

I. LAW

Long standing legal standards require that the Director first determine whether the proffered position qualifies for classification as a specialty occupation and then move to determine whether the Beneficiary was qualified for the position at the time the nonimmigrant petition was filed. *Cf. Matter of Michael Hertz Assocs.*, 19 I&N Dec. 558, 560 (Comm'r 1988). The Director appears to have concluded that the proffered position here is a specialty occupation, and we see no error in that apparent determination.

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 license if it is required for the occupation, have earned a bachelor's or higher degree in a specific specialty related to the job duties, or have earned the

equivalent of a bachelor's or higher degree in a specific specialty related to the job duties based on having experiences in the specialty equivalent to the completion of the degree and recognition of expertise in the specialty through progressively responsible positions relating to the specialty.

The supplementing regulations at 8 C.F.R. § 214.2(h)(4)(iii)(C) require meeting one of four criteria to qualify to perform services in a specialty occupation. The fourth of these criteria, 8 C.F.R. § 214.2(h)(4)(iii)(C)(*4*), states that a beneficiary must:

> 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.

The regulation at 8 C.F.R. § 214.2(h)(4)(iii)(D) provides five methods by which a petitioner can satisfy 8 C.F.R. § 214.2(h)(4)(iii)(C)(*4*):

(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 result 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 experiences in areas related to the specialty and that the noncitizen has achieved recognition of expertise in the specialty occupation as a result of such training and experience.

II. ANALYSIS

The Beneficiary earned a U.S. bachelor's degree in business administration from the University of [redacted] California in [redacted] California.[1] We agree with the Director that the Petitioner has not established the Beneficiary's qualifications for the proffered specialty occupation under 8 C.F.R. § 214.2(h)(4)(iii)(C)(*1*)-(*3*).[2] The Beneficiary does not hold a United States bachelor's or higher degree required by the specialty occupation from an accredited college or university. They likewise do not hold a foreign degree determined to be equivalent to a United States bachelor's or higher degree required for the specialty occupation from an accredited college or university. The Petitioner has also not demonstrated that the Beneficiary holds an unrestricted State license, registration, or certification

[1] As an enrollee in the World Bachelor In Business (WBB), the Beneficiary was simultaneously enrolled at and earned a bachelor of business administration in world business from the [redacted] University of Science and Technology in [redacted] People's Republic of China and a bachelor of science in business from [redacted] University in [redacted] Italy.
[2] The Petitioner does not contest these findings on appeal.

which authorizes them to fully practice the specialty occupation and be immediately engaged in that specialty in the state of intended employment.

When the occupation does not require a license and the Beneficiary does not have the required U.S. degree or foreign degree equivalent, our analysis revolves around whether the Petitioner established that the Beneficiary possesses the education, specialized training and/or progressively responsible experience in the specialty equivalent to the completion of the required U.S. degree or its foreign degree equivalent and has progressively responsible experience in job position in the specialty constituting a recognition of expertise as required by 8 C.F.R. § 214.2(h)(4)(iii)(C)(*4*). That criterion is the sole remaining path available to the Beneficiary, and it is the criterion under which the Petitioner focuses its efforts on appeal.

Most relevantly, the record of proceeding contains:

- An evaluation submitted with the RFE response from [redacted] professor of computer science, [redacted] University, concluding that the Beneficiary's education and work experience is equivalent to a U.S. bachelor's degree in computer information systems;
- An evaluation submitted with the appeal by [redacted] professor in the computer science department, [redacted] University, concluding that the Beneficiary's education, training and/or experience is equivalent to a United States bachelor of science degree with a dual major in computer information systems and business administration; and
- Letters from the Beneficiary's employer.

The evaluations are also accompanied by either the writer's curriculum vitae; a self-authored statement of "expertise," letter(s) from their employing institutions attesting to their authorization to grant college-level credit or training and/or work experience in the specialty at an accredited college or university which has a program for granting such credit based on an individual's training/work experience, and/or documentation either from an internal policy document or printed from publicly available internet sources describing the institution's policy for granting academic credit.

The Director based their decision on the insufficiency of the evaluation of the Beneficiary's education and work experience provided by the Petitioner in response to their request for evidence (RFE). Specifically, the Director concluded that the evidence the Petitioner submitted did not establish that the Beneficiary had earned progressively responsible work experience in progressively responsible positions.

As noted, 8 C.F.R. § 214.2(h)(4)(iii)(D) provides five methods by which a petitioner can satisfy 8 C.F.R. § 214.2(h)(4)(iii)(C)(*4*). The current record satisfies none of them.

The evaluations submitted by the Petitioner are insufficient to support the Beneficiary's claimed qualifications. Each evaluation submitted by the Petitioner at each stage of this case introduces questions and doubts about the Beneficiary's qualifications and does not fit into the requirements of the regulations at 8 C.F.R. § 214.2(h)(4)(iii)(D)(*1*). We may exercise our discretion and consider opinion statements like the evaluations submitted by the Petitioner as advisory. *Matter of Caron Int'l*, 19 I&N Dec. 791, 795 (Comm'r. 1988). But opinion statements like evaluations hold less weight

where there is cause to question or doubt the opinion, or if the opinion is not in accord with other information in the record as is the case here.

The regulation at 8 C.F.R. § 214.2(h)(4)(iii)(D)(*1*) requires that an evaluation to document eligibility under 8 C.F.R. § 214.2(h)(4)(iii)(C)(*4*) be issued 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.

[redacted] employer, [redacted] University [redacted], is an accredited university without a program to grant college-level credit for work experience. The letters from [redacted] executive dean, industrial enterprise and dean of engineering, and [redacted] provost, attest to the existence of a program to grant credit to students for specific industry related experience and training. But the printouts [redacted] submits from [redacted] website dated July 7, 2014 contradict those letters. These printouts describe two methods by which a matriculated [redacted] student can seek college-level credit. [redacted] University may provide college-level credit for professional training or for "life-learning"/ "prior learning credit."[3] [redacted] "life-learning" or "prior learning credit" appears to contemplate a scenario where an individual's non-traditional experiences can be evaluated for the "lessons" that the experiences provided. [redacted] lists "marriage certificates, newspaper clippings, photographs, letters from individuals involved in the experience, etc." as documentation to support "life-learning" or "prior-learning." Neither method provides an avenue for the evaluation of work experience as required by regulation. So, [redacted] does not appear to have a program to grant college-level credit for work experience. And since [redacted] does not have a program for granting credit based on work experience it follows that [redacted] is not an official with authority to grant credit based on work experience. So [redacted] evaluation does not satisfy the requirements of 8 C.F.R. § 214.2(h)(4)(iii)(D)(*1*) to establish the Beneficiary's qualifications under 8 C.F.R. § 214.2(h)(4)(iii)(C)(*4*).

[redacted] grounds their eligibility to render their opinion evaluating the Beneficiary's education and experience in their purported authorization to grant college-level credit on behalf of their employer [redacted] University. Specifically, [redacted] refers to their authorization to grant college-level credit under [redacted] University's Experiential Learning Assessment (ELA) program. However, inconsistencies in the record cast doubt on whether [redacted] is in fact authorized to grant college-level credit under the program they specify. Undated documentation submitted in the appeal and present in the record states that [redacted] University's ELA program awards limited (15 or 36 credit hours depending on degree category) college-level credits for "college-level learning that has been attained outside of a credit-bearing institution." The record reflects that ELA eligibility is limited to adult students over the age of 24 accepted into a degree program at [redacted] University after a period in the workforce of about 3-5 years concurrent with doing volunteer work, being active in political campaigns, performing in public or being "responsible for training programs or written company manuals." An individual seeking credit under the ELA program prepares and submits a portfolio documenting their eligibility for the credit based on their experiential learning. The near identical letters of the dean and the senior associate registrar at [redacted] University indicate that college-level credit for "current university courses"

[3] The Petitioner does not argue, nor does the record contain applicable evidence such as documentation of seat hours, syllabus or table of contents, verification of completion, etc. that the Beneficiary has any training which could be awarded credit under [redacted] University's policy.

may be awarded in wide fields of study in computer science, software engineering, information systems. However, publicly available [redacted] University ELA program information in the [redacted] University Student Handbook states that credit only "may be applied to the following degrees: Bachelor of Science in Professional Studies, Bachelor of Arts in Liberal Studies, Bachelor of Science in Professional Computer Studies, and Bachelor of Business Administration in Business Studies." *See* [redacted] University, Student Handbook, Experiential Learning Assessment (ELA), https:[redacted]. This list does not include the computer and information systems bachelor of science to which [redacted] equated the Beneficiary's education and experience. And the near identical letters of the dean at [redacted] University's [redacted] School of Computer Science and Information Systems as well as the senior associate registrar in [redacted] University's registrar's office inconsistently describe a vastly different program for granting college-level credit. Both the dean and the senior associate registrar describe an unnamed and unspecified program which "does not mandate a particular floor or ceiling with regard to the amount of credit that may be granted." This is not congruent with the 15 or 36 credit hour limitation noted elsewhere in the record. And the near identical letters of the dean and the senior associate registrar alternatively describe the unnamed program as either giving credit for "prior-life or experiential learning" or training and/or employment experience. So it is not apparent whether [redacted] is authorized to grant college-level credit, either under the ELA program they mention in their opinion evaluation or the vastly different program described in the letters of the dean and senior associate registrar. The Petitioner has the burden to resolve inconsistencies of record with independent, objective evidence pointing to where the truth lies. *See Matter of Ho,* 19 I&N Dec. 582, 591 (BIA, 1988). So [redacted] evaluation does not satisfy the requirements of 8 C.F.R. § 214.2(h)(4)(iii)(D)(*1*) to establish the Beneficiary's qualifications under 8 C.F.R. § 214.2(h)(4)(iii)(C)(*4*).

And there is insufficient evidence in the record to satisfy 8 C.F.R. § 214.2(h)(4)(iii)(D)(*2*), (*3*), or (*4*). So we will turn to 8 C.F.R. § 214.2(h)(4)(iii)(D)(*5*) which grants USCIS the authority to make our own determination on the Beneficiary's qualifications. Specifically, we can evaluate that an individual has earned the equivalent of the degree required by the specialty occupation through a combination of education, specialized training and/or work experiences in areas related to the specialty and that the noncitizen has achieved recognition of expertise in the specialty occupation as a result of such training and experience. We may determine equivalency by accepting three years of specialized training and or work experience demonstrated by the individual for each year of college level training the noncitizen lacks. Additionally, the noncitizen must demonstrate recognition of expertise by one of the following:

> (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.

The record is not sufficient to satisfy 8 C.F.R. § 214.2(h)(4)(iii)(D)(*5*) either. The record of proceedings provides insufficient work-experience evidence for us to reasonably conclude that the Petitioner has satisfied any one of the requirements of 8 C.F.R. § 214.2(h)(4)(iii)(D)(*5*)(*i*)-(*v*).[4] So 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

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 (h)(4)(iii)(D).

ORDER: The appeal is dismissed.

[4] Though acknowledged, the letters regarding the Beneficiary's work experience lack the detail necessary to meet these requirements.