U.S. Citizenship and Immigration Services

Non-Precedent Decision of the Administrative Appeals Office

In Re: 26530729

Date: JUN. 14, 2023

Appeal of Nebraska Service Center Decision

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

The Petitioner seeks to temporarily employ the Beneficiary as an applications software developer 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 of the Nebraska Service Center denied the petition, concluding that the record did not establish that the Beneficiary was qualified to perform services in a specialty occupation. 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

Section 214(i)(2) of the Act, 8 U.S.C. § 1184(i)(2), states that a beneficiary 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,
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> (B) completion of the degree described in paragraph (1)(B) for the occupation, or
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> (C) (i) experience in the specialty equivalent to the completion of such degree, and
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> (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 the 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
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> (*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.

In addition, 8 C.F.R. § 214.2(h)(4)(v)(A) states:

> General. If an occupation requires a state or local license for an individual to fully perform the duties of the occupation, an alien (except an H-1C nurse) seeking H classification in that occupation must have that license prior to approval of the petition to be found qualified to enter the United States and immediately engage in employment in the occupation.

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 license or, if none is required, that the beneficiary has completed a degree in the specialty that the occupation requires. Alternatively, if a license is not required and if the 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;

(*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:
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> (*i*) Recognition of expertise in the specialty occupation by at least two recognized authorities in the same specialty occupation;[1]
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> (*ii*) Membership in a recognized foreign or United States association or society in the specialty occupation;
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> (*iii*) Published material by or about the alien in professional publications, trade journals, books, or major newspapers;
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> (*iv*) Licensure or registration to practice the specialty occupation in a foreign country; or

[1] *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.*

(*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) to determine, 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. ANALYSIS

The Petitioner asserts that that the Beneficiary earned a foreign bachelor's degree in mechanical engineering and provides documentation about his work history dating to 2008. The record also contains three evaluations which collectively address various aspects of his academic endeavors and work experience. Upon review of the evaluations and the record in its entirety, we concur with the Director that the evidence of record does not satisfy any of the regulatory criteria set forth above.[2]

The record does not satisfy 8 C.F.R. § 214.2(h)(4)(iii)(C)(*1*) because the Beneficiary does not possess a U.S. degree. It does not satisfy 8 C.F.R. § 214.2(h)(4)(iii)(C)(*2*) because the evidence of record does not demonstrate that Beneficiary's foreign degree, considered alone, is equivalent to a U.S. bachelor's degree. The Petitioner initially provided an education credential evaluation issued by World Education Services [W-] in 2013, which concludes the Beneficiary's foreign bachelor's degree is equivalent to an unspecified bachelor's degree obtained in Canada, not a U.S. bachelor's degree in the specialty.

Importantly, the Director issued a request for evidence (RFE) asking for an education evaluation based solely on the Beneficiary's education credentials. In response to the Director's RFE, the Petitioner provided an evaluation from [redacted] [Dr. L-], who is a computer science professor at the University of [redacted] Dr. L- opined that the combination of the Beneficiary's foreign degree and work experience equates to a U.S. bachelor's degree in mechanical engineering and a U.S. bachelor's degree in computer information systems. Dr. L- did not discuss or analyze the Beneficiary's academic coursework within his evaluation or render an opinion based solely on the Beneficiary's foreign academic program of study to education obtained at an accredited institution of higher learning in the United States. The Director denied the petition, in part, because the record did not establish the Beneficiary's eligibility 8 C.F.R. § 214.2(h)(4)(iii)(C)(*2*). "Failure to submit requested evidence which precludes a material line of inquiry shall be grounds for denying the [petition]." 8 C.F.R. § 103.2(b)(14).

On appeal, the Petitioner provides a partial copy (pages two and three of what appears to be a three-page document) of a 2023 credential evaluation issued by W-, which lists the coursework that the Beneficiary undertook to obtain his foreign degree and notes the "U.S. semester credits" that each course is equivalent to. Though the Director requested a copy of the Beneficiary's university transcripts in his RFE, the Petitioner has not provided this corroborative documentary evidence, either in the RFE response or on appeal. *Id.* Further, the submitted partial copy of W-'s evaluation does not

[2] While we may not discuss every document submitted, we have reviewed and considered each one.

reflect the evaluator's determination, regarding the equivalency of the Beneficiary's foreign degree, if any, to a U.S. degree "in *the* specific specialty." Section 214(i)(1)(B) of the Act.

For the reasons discussed, we find that the evaluations provided lend little probative value to the matter here. The Petitioner must support its assertions with relevant, probative, and credible evidence. *See Matter of Chawathe*, 25 I&N Dec. at 376. As a matter of discretion, we may 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, we will reject an opinion or give it less weight if it is not in accord with other information in the record or if it is in any way questionable. *Id.* As an exercise of our discretion, we decline to accord these evaluations probative weight with respect to establishing the Beneficiary's eligibility under 8 C.F.R. § 214.2(h)(4)(iii)(C)(*2*) and we incorporate our analysis of this material into our discussion of the Beneficiary's eligibility under 8 C.F.R. § 214.2(h)(4)(iii)(C)(*4*).

The record does not satisfy 8 C.F.R. § 214.2(h)(4)(iii)(C)(*3*) because there is no indication the Beneficiary holds an unrestricted State license, registration, or certification which authorizes him to fully practice the specialty occupation and be immediately engaged in that specialty in the state of intended employment. This leaves 8 C.F.R. § 214.2(h)(4)(iii)(C)(*4*) as the Petitioner's only remaining path.

There are five alternative methods by which to satisfy 8 C.F.R. § 214.2(h)(4)(iii)(C)(*4*), and those methods are set forth at 8 C.F.R. §§ 214.2(h)(4)(iii)(D)(*1*)-(*5*). The record, however, satisfies none of them.

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*). Though we acknowledge the credential evaluation by Dr. L-, who concludes that the Beneficiary's combined education and work experience equate to U.S. bachelor's degrees in mechanical engineering and computer information systems, without more, Dr. L-'s evaluation is insufficient to meet the Petitioner's burden.

The regulation at 8 C.F.R. § 214.2(h)(4)(iii)(D)(*1*) requires "[a]n 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." The Director denied the petition, in part, concluding that the Petitioner had did not adequately demonstrated that Dr. L- has authority to grant college-level credit because the record lacked evidence about the nature of his university's programs for granting college-level credit based on an individual's training and/or work experience.

On appeal, the Petitioner submits a letter from the university's registrar where Dr. L- is employed, who states that he has the "authority to grant college-level credit for training and/or experience." For the following reasons, this letter is insufficient to substantiate that the university operates such a program. For instance, the registrar explains in her letter that the university's "program is conducted in work study fashion for matriculated students." We have reviewed both the information submitted by the Petitioner as well as the university's website and determined that the record does not establish that the university has a program for granting college-level credit based on an individual's training and/or work experience. There is no specific discussion or description on the university's website of a program that grants college-level credit "based on an individual's training and/or work experience

in the particular specialty," as required by the plain language of the criterion at 8 C.F.R. § 214.2(h)(4)(iii)(D)(*1*). At best, the registrar's letter suggests that matriculated students enrolled at the university may, in some instances, earn undergraduate credit for work performed within its work study programs.

In evaluating the evidence, eligibility is to be determined not by the quantity of evidence alone but by its quality. *Matter of Chawathe*, 25 I&N Dec. at 376. Absent additional documentary evidence corroborating Dr. L-'s claims that a program for granting college-level credit-based training and/or work experience exists at his university, and that he has authority to grant college-level credit through such a program, his evaluation is insufficient to satisfy this criterion. For the sake of brevity, we will not address other deficiencies within Dr. L-'s evaluation.

Nor is there sufficient probative evidence in the record to satisfy 8 C.F.R. §§ 214.2(h)(4)(iii)(D)(*2*), (*3*), or (*4*). We will therefore turn to 8 C.F.R. § 214.2(h)(4)(iii)(D)(*5*), which grants us the authority to make our own determination on the Beneficiary's qualifications.

First, the pertinent statute and regulation require the Petitioner to demonstrate that the Beneficiary has obtained "progressively responsible" positions and experience in or related to the specialty. Section 214(i)(2) of the Act; 8 C.F.R. § 214.2(h)(4)(iii)(C).

The Petitioner submitted evidence about the Beneficiary's work history, including a letter from the Beneficiary's prior employer [H-], an offer of employment and two months of payroll records from another employer, and a copy of the Beneficiary's resume. We conclude that the submitted evidence does not adequately detail the "progressively responsible" nature of the Beneficiary's positions. They also do not contain sufficient information to "clearly" demonstrate that the Beneficiary meets the requirements imposed by 8 C.F.R. § 214.2(h)(4)(iii)(D)(*5*). For example, the letter from the H- does not describe the duties performed by the Beneficiary during the course of his employment there, but merely states:

> This is to certify that [the Beneficiary] was an employee of [H-] from [04/10/2008 until 11/05/2021]. As per our records, his last designation at the time of exit was Senior Test Engineer. We wish [the Beneficiary] all the best in his future endeavors.

H-'s letter does identify the job titles and dates of employment for the positions held by the Beneficiary during his tenure with the organization, nor does it discuss the job duties he performed therein to demonstrate his level of responsibility within each position, the difficulty of the tasks he performed, or the bodies of knowledge required in their performance. Neither this letter nor the other submitted evidence shows that the Beneficiary's work experience was gained while working with peers, supervisors, or subordinates who have a degree or its equivalent in the specialty occupation. *Id.* Based on the limited evidence of record, the Petitioner has not demonstrated 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.

While the record contains some information about the Beneficiary's work history, it does not establish what his actual work experience entailed. The evidence submitted does not establish that this work experience included the theoretical and practical application of specialized knowledge required by the

proffered position; that it was gained while working with peers, supervisors, or subordinates who held a bachelor's degree or its equivalent in the field; and that the Beneficiary achieved recognition of his expertise in the field as evidenced by at least one of the five types of documentation delineated in 8 C.F.R. §§ 214.2(h)(4)(iii)(D)(*5*)(*i*)-(*v*).

Without more, the evidence of record is not sufficiently reliable to conclude, through a USCIS evaluation, that the Beneficiary is qualified to perform the duties of the proffered position. The Petitioner, therefore, has not demonstrated that the Beneficiary qualifies to perform the duties of a specialty occupation.

III. CONCLUSION

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. The Petitioner has not met that burden.

ORDER: The appeal is dismissed.