MATTER OF O-A-, INC.

DATE: JULY 31, 2018

APPEAL OF CALIFORNIA SERVICE CENTER DECISION

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

The Petitioner, a computer software company, seeks to employ the Beneficiary temporarily as a "product manager" 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 California Service Center denied the Form I-129, Petition for a Nonimmigrant Worker, concluding that the record did not establish that the Beneficiary was qualified to perform services in a specialty occupation. On appeal, the Petitioner asserts that the Beneficiary is qualified for the position.

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

I. LEGAL FRAMEWORK

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,
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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 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;
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> (*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 order to equate a beneficiary's credentials to a U.S. baccalaureate or higher degree, the Petitioner must satisfy at least one of the provisions at 8 C.F.R. § 214.2(h)(4)(iii)(D). We determine the following provisions to apply to the present case:

> (*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;
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> . . . .
>
> (*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;[1]

(*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 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. BENEFICIARY QUALIFICATIONS

The Petitioner stated that the position requires a bachelor's degree, or the equivalent, in computer science or a related field. Accompanying the petition, the Petitioner submitted a February 17, 2015 Evaluation of Education, Training, and Experience from [redacted] a professor in the computer science department at [redacted] The Director issued a request for evidence (RFE) and in response, the Petitioner submitted an Evaluation of Education, Training, and Experience from [redacted] an associate professor at [redacted]

[1] The term "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.*

Additionally in response to the RFE, the Petitioner changed its degree requirements to a bachelor's degree, or equivalent, in computer science, engineering, or a related field.[2] The Director determined the Beneficiary's employment verification letters lacked sufficient detail to support the professors' conclusions. Now on appeal, the Petitioner offers another opinion letter from , a faculty member at the of Liberal Studies.

The Beneficiary does not possess:

- A U.S. baccalaureate or higher degree required by the specialty occupation under 8 C.F.R. § 214.2(h)(4)(iii)(C)(*1*);
- A foreign degree determined to be similarly equivalent according to 8 C.F.R. § 214.2(h)(4)(iii)(C)(*2*); or
- An unrestricted State license, registration or certification which authorizes him or her to fully practice the specialty occupation found at 8 C.F.R. § 214.2(h)(4)(iii)(C)(*3*).

The only remaining possibility exists under the education, specialized training, and/or progressively responsible experience provision of 8 C.F.R. § 214.2(h)(4)(iii)(C)(*4*). Two methods exist for equating the Beneficiary's education, specialized training, and/or progressively responsible experience to a U.S. baccalaureate or higher degree required by the specialty occupation. The first consists of an evaluation from a qualified official with the authority to grant college-level credit for training and/or experience, while the second is a USCIS determination.[3]

A. Evaluation from a Qualified Official

We conclude that each of the Evaluation of Education, Training, and Experience letters bear little to no evidentiary weight, and will not serve to demonstrate the Beneficiary's eligibility. As a general concept, when a petitioner has provided correspondence from different persons, but the language and structure contained within the material is strikingly similar, the trier of fact may treat those similarities as a basis for questioning the claims within the documentation.[4] All three letters share extensive identical or virtually identical analysis and language.[5] Though each letter reflected that "[t]he

[2] The changed degree requirements appear to be in response to the Director concluding within the RFE that the Beneficiary's chemical engineering degree did not meet the Petitioner's degree requirements. If this was the reasoning behind the amended degree requirements, it would constitute a material change to the petition. A Petitioner may not make material changes to a petition that has already been filed in an effort to make an apparently deficient petition conform to USCIS requirements. *See Matter of Izummi*, 22 I&N Dec. 169, 175 (Assoc. Comm'r 1998).

[3] *See* 8 C.F.R. § 214.2(h)(4)(iii)(D)(*1*) and (*5*), respectively. The Petitioner does not claim, and the record does not demonstrate, the Beneficiary may qualify under the remaining provisions at 8 C.F.R. § 214.2(h)(4)(iii)(D)(*2*)-(*4*).

[4] *Cf. Surinder Singh v. Board of Immigration Appeals*, 438 F.3d 145, 148 (2d Cir. 2006). When correspondence contains such similarities, it is reasonable to infer that the person or entity who submitted the strikingly similar documents is the actual source from where the suspicious similarities derive. *Cf. Mei Chai Ye v. U.S. Dept. of Justice*, 489 F.3d 517, 519 (2d Cir. 2007).

[5] When we refer to virtually identical content, we observe that simply paraphrasing a word or an expression does not remedy the fact that the bulk of the content and analysis remains identical.

foregoing is an opinion of the undersigned," it is apparent that another individual prepared them.[6] This calls into question each letter's independent and credible nature and we will not consider them as probative evidence. For the reasons discussed, we conclude that these evaluations are not sufficient to carry the Petitioner's burden. *Matter of Sea, Inc.*, 19 I&N Dec. 817, 820 (Comm'r 1988) (USCIS is not required to accept or may give less weight to an evaluation of a person's foreign education when it is not in accord with other information or is in any way questionable).[7] Moreover, doubt cast on any aspect of a Petitioner's material may undermine the reliability and sufficiency of the remaining evidence offered in support of the visa petition. *See Matter of Ho*, 19 I&N Dec. 582, 591 (BIA 1988).[8]

As a result, the Petitioner has not demonstrated the Beneficiary's eligibility relying on 8 C.F.R. § 214.2(h)(4)(iii)(D)(*1*).

B. USCIS Determination

Further, 8 C.F.R. § 214.2(h)(4)(iii)(D)(*5*) permits USCIS to determine the degree equivalence and whether the Beneficiary has attained a requisite level of recognition. This regulatory provision establishes the standards for such recognition requiring evidence showing compliance through at least one of five possible methods that include: recognition from at least two "recognized authorities," membership, published material, licensure or registration, or achievements. 8 C.F.R. § 214.2(h)(4)(iii)(D)(*5*)(*i*)-(*v*). We reiterate that for the Petitioner to establish the Beneficiary's eligibility under this provision, the Petitioner must meet all of the qualifying elements at 8 C.F.R. § 214.2(h)(4)(iii)(D)(*5*), and the inability to meet any portion of the requirements will result in an adverse determination.

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[6] The main notable difference in the letters is that two conclude the Beneficiary's on-the-job experience is equivalent to eight years and ten months of progressively responsible qualifying work experience, while the final letter indicated it equaled at least nine years. An apparent calculation error in the final letter does not redress the damage to the probative value of these opinion letters caused by the identical or virtually identical analysis and language.

[7] We hereby incorporate our analysis of these opinion letters into our discussion of the other criteria at 8 C.F.R. § 214.2(h)(4)(iii)(A).

[8] Even if we set this issue aside, we would still find these evaluations deficient. does not discuss his findings within the context of requirements of program which, we observe, has stringent requirements. For example, credit can only be awarded after the applicant has completed at least five courses "in residence," and no credit can be awarded during the applicant's final two semesters. It is not apparent that the Beneficiary meets these requirements. *See* https Moreover, the letter from associate dean states only that can *recommend* the awarding of credit. It does not indicate whether possesses, in the language of the regulation, "the authority to grant" such credit.

The same is true of the remaining two evaluations. The programs at and the have very specific requirements, and neither nor reference those requirements in their letters. *See* https: http: Thus, even if we considered these three evaluations on their merits we would still find them insufficient.

The Petitioner bases its claims of the Beneficiary's degree equivalency on his work experience between June 2004 and July 2013. The Petitioner provided three letters describing the Beneficiary's previous work experience. We conclude these letters are not sufficient to satisfy the regulation, and in turn do not meet the Petitioner's burden of proof. While these letters generally provide the duties the Beneficiary performed, they do not specify the bodies of knowledge required in their performance. In other words, they do not establish that the Beneficiary applied "the theoretical and practical application of specialized knowledge required by the specialty occupation." Moreover, the letters do not establish whether the Beneficiary gained his work experience while working with peers, supervisors, or subordinates who have a degree or its equivalent in the specialty occupation.[9] As a result, we conclude that the experience letters do not demonstrate that the Beneficiary's specialized training or work experience is equivalent to at least a U.S. bachelor's degree in the specific specialty.

Moreover, the Petitioner has not satisfied the recognition of expertise in the specialty requirement found at 8 C.F.R. § 214.2(h)(4)(iii)(D)(*5*). Documentation to satisfy this regulation may include "[r]ecognition of expertise in the specialty occupation by at least two recognized authorities in the same specialty occupation."[10] However, the Petitioner has not offered probative evidence from the required "recognized authority." Because the Petitioner has not made this threshold showing, it is unnecessary to discuss the remaining regulatory requirements.

III. CONCLUSION

For the reasons outlined above, the record does not sufficiently demonstrate that the Beneficiary is qualified to perform the duties of a specialty occupation.

ORDER: The appeal is dismissed.

Cite as *Matter of O-A-, Inc.*, ID# 1185778 (AAO July 31, 2018)

[9] *Id.*
[10] 8 C.F.R. § 214.2(h)(4)(iii)(D)(*5*)(*i*).