

ATTORNEYS AT LAW AND ASSOCIATES

Attorneys at Law

*Attorneys are licensed in Commonwealth of Pennsylvania and Federal District Courts in Pennsylvania, Ohio and New Jersey.

September 12, 2018

USCIS
Attn: 290B
1820 E. Skyharbor Circle S
Suite 100
Phoenix, AZ 85034

Re: Petitioner: COMPANY, Inc.
Beneficiary: JOHN SMITH
Receipt Number: ABC-XX-XXX-XXXXX

MTR & APPEAL OF DENIAL OF H1B PETITION

Dear Director:

Our client, COMPANY, Inc. received a Denial dated August 17, 2018 regarding an H1B Petition filed on behalf of the Beneficiary, Mr. SMITH. We have reviewed the Service's Denial and would like to submit additional evidence to prove the beneficiary is qualified to perform the duties of the proffered position in the original H-1B Petition. Accordingly, to contest the Denial and to rightly secure the Beneficiary's H1B for COMPANY, Inc., we submit this appeal brief.

ISSUE PRESENTED: BENEFICIARY'S QUALIFICATIONS

As the Service stated, the instant petition was denied by the Service because of the determination that the beneficiary has recognition of expertise in the specialty through progressively responsible positions relating to the specialty. However, Mr. SMITH does meet at least one of the requirements at 8 CFR § 214.2(h)(4)(iii)(C) and is qualified to perform the duties of the proffered position. In this appeal brief, we will present evidence that Mr. SMITH has progressively responsible experience that is equivalent to the completion of a United States bachelor's or higher degree in the specialty occupation and has recognition of expertise in the specify through progressively responsible positions directly related to the specialty.

Below we fully explain this issue in support of our position. With this appeal, we respectfully request *de novo* reconsideration and reassessment of the instant H1B Petition in accordance with binding regulating authority.

Issue I: Beneficiary's Qualifications

In order to qualify to perform services in a specialty occupation (the requirements of which are defined at INA § 214(i)(2)), we must show that the beneficiary has met one of the requirements at 8 CFR § 214.2(h)(4)(iii)(C):

- 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 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.

Mr. SMITH meets the fourth criterion, and, by virtue of the beneficiary's practical experience as assessed 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 (defined in 8 CFR § 214.2(h)(4)(iii)(D)(1) through (iii)(D)(1)), **has earned the equivalent to a United States Bachelor of Science in Industrial Management.**

As per the guidance USCIS follows in the regulations at 8 CFR § 214.2(h)(4)(iii)(D)(5), we have provided the Service with recognition of expertise in the specialty occupation by at least two recognized authorities in the same specialty occupation.

Please see attached as **Exhibit 1** an Expert Opinion Evaluation for Mr. SMITH, from Professor LEARNED MAN of PRESTIGIOUS UNIVERSITY's Mechanical and Aeronautical Engineering Department. Professor LEARNED MAN reviews academic and professional credentials of international students' applications, as well as prospective faculty for open positions in the department. He further reviews credentials in the fields of Aeronautical Engineering/Technology, Mechanical Engineering, Engineering, and related Engineering areas. PRESTIGIOUS UNIVERSITY is an accredited US university authorized to grant baccalaureate degrees. **Professor LEARNED MAN's evaluation of Mr. SMITH's credentials equates Mr. SMITH's more than thirteen years of progressive work experience to a Bachelor of Science in Industrial Management, and that his qualifications are comparable to university level-training in Industrial Management.**

Please see attached as **Exhibit 2** an Evaluation of Experience from Professor OTHER LEARNED MAN of the FANCY UNIVERSITY's Department of Fire Protection Engineering, Clark School of Engineering. Professor OTHER LEARNED MAN reviews the academic and professional credentials of prospective students, staff, and faculty, both domestic and international, for the FANCY UNIVERSITY. He reviews credentials in the fields of Mechanical

Engineering, Aerospace Engineering, Fire Protection Engineering, Engineering Management, and related fields. The FANCY UNIVERSITY is an accredited US university, authorized to confer bachelor's degrees, and also has programs that award credit based on work experience. **Professor OTHER LEARNED MAN's evaluation of Mr. SMITH's credentials equates Mr. SMITH's more than thirteen years of progressive experience to a Bachelor of Science in Industrial Management from an accredited institution of higher education in the United States.**

Both professors meet the criteria of a "recognized authority," as per 8 CFR § 214.2(h)(4)(ii), wherein a recognized authority means a person or an organization with expertise in a particular field, special skills or knowledge in that field, and the expertise to render the type of opinion requested. Both opinions 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.

Mr. SMITH's two credentials evaluations clearly demonstrate that his thirteen years of work experience equate to a Bachelor's Degree in the specialty occupation, and that the beneficiary has progressively responsible experience that is equivalent to the completion of a United States bachelor's degree or higher in the specialty, and that the beneficiary has recognition of expertise in the specialty through progressively responsible positions relating to the specialty. Pursuant to 8 CFR § 214.2(h)(4)(iii)(C), Mr. SMITH **fully** qualifies to perform services in a specialty occupation.

Conclusion

In this case, the Applicant has met the burden of establishing eligibility for H-1B status, by the preponderance of evidence standard, which requires that the evidence prove that the petitioner's claim is "more likely than not," "probably true," or has a greater than fifty percent probability of occurring. See Matter of Chawathe, 25 I&N Dec. 369 (AAO 2010); See Aytes Memorandum, USCIS, HQ 70/33.1 AD06-12 (January 11, 2006) ("Aytes Memo"). This standard is established precedent under AAO case law, and has been adopted by USCIS as well. See Chawathe, at 369; Aytes Memo, at 3. Thus, "even if the director has some doubt as to the truth, if the petitioner submits relevant, probative, and credible evidence that leads the director to believe that the claim is 'probably true' or 'more likely than not,' the applicant or petitioner has satisfied the standard of proof." Aytes Memo, at 2.

In conclusion, we have shown that the beneficiary meets at least one of the requirements at 8 CFR § 214.2(h)(4)(iii)(C), and that Mr. SMITH is clearly qualified to perform the duties of the proffered position. We kindly request that the Service consider the evidence and reassess Mr. SMITH's clear qualifications to perform the duties of a QA Engineer – Industrial Engineer.

Substantial and meaningful documentation has been provided to evidence our client's rightful position and purpose in obtaining this H-1B approval for Mr. JOHN SMITH. We presented our case for Appeal thoroughly and demonstrated the need for a reconsideration and reassessment of the instant petition. Accordingly, we respectfully request that you review favorably and grant approval for the H1B Petition submitted by COMPANY, Inc. on behalf of Mr. SMITH so that he may expeditiously resume his work at COMPANY, Inc.

Should you require any additional information, do not hesitate to contact me. Thank you for your kind review and consideration of this matter.

Sincerely,

ATTORNEYS AT LAW AND ASSOCIATES

Esther Q Law
Attorney at Law