

No College Degree, no H-1B --- NOT!
Substitutes for Formal Education

By

Alice Yardum-Hunter

It is common knowledge in the U.S. immigration world that H-1B positions are those which typically require a minimum of a baccalaureate degree to perform. And generally, aliens qualify for this status by virtue of their baccalaureate or higher degrees. But fret not those who never complete, or ever step foot in a U.S. or overseas college, for BCIS regulations permit even those informally educated to be H-1B caliber.

Before explaining how this is possible, the definition of baccalaureate is, according to Webster's New Collegiate Dictionary, a French term with the same meaning as bachelor's degree, however the term "bachelor" or "bachelor's" degree is not mentioned in the Immigration and Nationality Act (INA) or the Code of Regulations (CFR).

8 CFR 214.2(h)(4)(iii)(C) includes the three alternatives to the baccalaureate degree for aliens to qualify for H-1B status: a foreign degree which is equivalent to a U.S. baccalaureate or higher degree required by the specialty; or an unrestricted state license to fully and immediately practice the specialty; or education, specialized training and/or progressively responsible experience that is equivalent to completion of a U.S. baccalaureate or higher degree in the specialty plus recognition of expertise in the specialty.

While a person can be found to possess the equivalent in experience to higher than a baccalaureate degree, when a position requires a degree higher than the baccalaureate, then equivalent to the higher degree itself is not permissible: the alien must have the higher degree via education only. For example, the position of physician requires attendance at medical school (amongst other requirements), and experience in lieu of education is not possible. Who would want a doctor operating on them without this formal training? This requirement is very sensible. On the other hand, when a position requires a baccalaureate degree, for example in Economics, and the individual holds a bachelors degree in another field, and a Masters degree or experience equivalent to a Bachelors and/or Masters degree in Economics, the individual qualifies as an H-1B specialist.

Some licensed professionals are not college educated. Take for example, lawyers. Law is one of those disciplines that usually requires a post-baccalaureate level degree in order to qualify to take the bar examination and become licensed. Today the J.D. degree is the most common graduate degree found in the law field; formerly it was the L.L.B. degree. However, in lieu of education in some states including California, an individual can study under a licensed attorney for a period of years, skip formal education all together, qualify to take the bar exam, and after passage of which become a fully licensed attorney. Such an individual is H-1B caliber under 8 CFR 214.2(h)(4)(iii)(C)(3).

When an alien relies on equivalent to the baccalaureate degree by means of experiential evaluation, it is done in one of five ways under 8 CFR 214.2(h)(4)(iii)(D): by an official who has authority to grant college level credit for training and/or experience at an accredited college or university which has a program for granting such credit; passage of a standardized test; evaluation by a reliable credentials evaluation service specializing in foreign educational credentials; certification or registration in a nationally recognized professional organization known to grant certification or registration in the specialty; or a determination by the INS that the equivalent has been acquired through combination of education, specialized training, and/or work experience in areas related to the field, plus recognition in the specialty. The best strategy is to provide an evaluation to the BCIS rather than to allow the agency to determine whether or not the alien has the equivalent experience and/or training.

Those who qualify for H-1B caliber status based on experience and/or training in lieu of education, climb the ladder of success under the notion of the “three for one” rule which means that for every one year of education missing, three years of specialized training or experience substitutes. H-1B caliber training or experience must be in progressively more responsible positions that encompass the theoretical and practical application of the body of specialized knowledge in the field; when the person worked with, either as peer, subordinate or supervisor to individuals with minimum of baccalaureate degree in the field; and when s/he has receives recognition for achievement, as above mentioned. Documenting the equivalent training or experience is critical.

The alien should have a very detailed resume outlining the progress of his or her career, including an analysis of the theoretical and practical aspects of the work and how it is contained within a baccalaureate level program in the field, as well as an explanation of his position in the hierarchy of baccalaureate leveled employees. The resume should also be supported with letters of experience and records of relevant training. There are a number of reliable credential evaluation services which specialize in foreign education evaluations for purposes of entrance into institutions of higher education and U.S. immigration. Some even evaluate experience using the “three for one” rule which is reserved under the regulations for INS to use. Although the regulations do not specify reliable evaluators to use the “three for one” analysis, such evaluations serve as a basis for fulfilling the “three for one” rule utilized by the INS. Unless the assertions contained in a resume are supported by independent evidence though, BCIS could easily issue a Request for Evidence for proof of the alien’s background even when accompanied by a reliable evaluator’s evaluation because resumes themselves are self-serving. While some jurisdictions did not require back up letters of experience, in today’s immigration climate, one would be fool hearty to apply for H-1B status without objective evidence of the alien’s experience or training when formal education is missing.

The required recognition of the alien in the expertise is possible in a variety of ways: by the opinion of two authorities; membership in a recognized organization in the specialty; published material by or about the person; a foreign license; or achievements recognized by an authority as being significant. See 8 CFR 214.2(h)(4)(iii)(D). The simplest way for someone to secure recognition if there is no documentation of such when s/he hires an

attorney is to join an organization in their field and submit proof of membership. Joining most professional organizations is not time consuming to complete.

As you can see, just because a person lacks a baccalaureate degree, does not mean he should be discounted from H-1B qualification. Self-made individuals can be recognized as such under the Immigration and Nationality Act.