

In Re:

MEMORANDUM AND ORDER

██████████ ("Petitioner") seeks review of the final decision of the Director of the Office of Enrollment and Discipline ("OED Director") dated November 13, 2014, denying Petitioner's application to sit for the registration examination. (Ex. 5). In that decision, the OED Director found that Petitioner had not met her burden of establishing that she presently possesses the scientific and technical qualifications necessary for her to render applicants valuable service, as required by 37 C.F.R. § 11.7. (Ex. 5). Petitioner submitted a letter to the Director of the U.S. Patent and Trademark Office ("Director") dated December 10, 2014, asking for "review of the OED Director's decision to deny admission to the examination." ("Petition") (Ex. 7). For reasons set forth herein, the Petition is denied and the decision of the OED Director is affirmed.

I. BACKGROUND

No individual will be registered to practice before the U.S. Patent and Trademark Office (“USPTO” or “Office”) unless he or she has applied to the USPTO Director in writing by completing an application for registration and establishing to the OED Director’s satisfaction that he or she meets all of the requirements to practice in patent matters before the Office. 37 C.F.R. § 11.7. Among the showings an applicant must make is that she possesses the “legal, scientific, and technical qualifications necessary for him or her render applicants valuable service.” 37 C.F.R. § 11.7(a)(2)(ii). An individual failing to file a complete application for registration will not be admitted to the examination and will be notified of the incompleteness. 37 C.F.R. § 11.7(b)(2).

Petitioner's Application

Petitioner filed an "Application For Registration To Practice Before the United States Patent and Trademark Office" on August 18, 2014. (Ex. 1). Along with her application, she submitted her official transcripts, undergraduate and graduate course descriptions, and her resume. (Exs. 1).

On September 9, 2014, OED staff issued a "Notice of Incompleteness and Denial of Admission." (Ex. 2). This notice concluded that Petitioner's application was incomplete, and thus denied Petitioner's admission to the examination, and was predicated on Petitioner lacking the scientific and technical training qualifications required under § 11.7. (Ex. 2). Specifically, the notice stated that Petitioner failed to show that she was "qualified for admission to the registration examination under Category A or Category B or Category C" of the General Requirements Bulletin ("Bulletin"). (Ex. 2). The Bulletin is USPTO guidance that sets forth the kinds of credentials that may be used to demonstrate possession of the required technical and scientific training. (Ex. 2).

Petitioner responded to the Notice of Incompleteness and Denial of Admission on September 16, 2014. (Ex. 3, attachment). However, OED Staff again concluded that Petitioner's application was incomplete and denied her admission to the examination. (Ex. 3, attachment).

OED Director's Decision

Petitioner then sought the OED Director's review of the determination to deny her admission to the examination on the basis of an incomplete examination on September 29, 2014. Therein, Petitioner asserted that her Master's degree, combined with other objective evidence of her technical qualifications, is sufficient to establish that she possesses the requisite scientific and technical training for purposes of filing a complete application and qualifying for the registration examination. (Ex. 3). Petitioner also provided, in correspondence dated November 5, 2014, additional information showing her authorship of various articles for scientific journals. (Ex. 4).

The OED Director denied applicant's petition in a decision dated November 13, 2014, stating that Petitioner failed to satisfy the criteria under Category A, Category B, or Category C of the Bulletin. (Ex. 5). In addition, though the OED Director acknowledged that other factors will be considered on a case-by-case basis with respect to scientific and technical training, he noted that applicants must provide objective evidence demonstrating that training is equivalent to training received in courses accepted under Category A to establish such equivalency. (Ex. 5) (citing Bulletin, at 7). Noting that Petitioner failed to proffer such objective evidence showing that her training is equivalent to training received in courses accepted under Category A, the OED Director concluded that Petitioner failed to establish that she possesses the necessary technical and scientific qualifications and disapproved her application to sit for the registration examination. (Ex. 5).

Petitioner filed the instant Petition, seeking review of the OED Director's decision, on December 10, 2014, alleging that that "the [OED Director] abused his discretion by failing to fully consider Category A subsection ii – 'ii. Graduate Degrees:' and [her] overall education, training, and experience." (Ex. 7 at 1). In her view, Category A "warrant[s] case-by-case full consideration of an applicant's overall background, rather than merely undergraduate courses." (Ex. 7, p. 4). Petitioner claims that she has provided objective evidence of her qualifications, including her work in "a multidisciplinary field that spans across computer science, biology, and chemistry" and that this evidence shows a quantity and quality of her knowledge in multiple technical fields. (Ex. 7, p. 3-4). Further, she states that her "extensive science-and-technology-related work experience and training in biology and chemistry, satisfy at least the requirements of Category B subsection iv (Option 4) or in Category B subsection xii (Other Training)." (Ex. 7, p. 4). She also cites to multiple peer-reviewed publications that she authored or co-authored, as well as being asked to serve as a reviewer for the American Medical Informatics Association's Annual Symposium, as objective evidence of the depth and breadth of her scientific and technical qualifications under Category B. (Ex. 7, at 2-3). As discussed below, however, these showings are insufficient to overturn the OED Director's determination.

II. DISCUSSION

“Congress has “delegated plenary authority over PTO practice . . . to the Office.” *Hsuan-Yeh Chang v. Kappos*, 890 F.Supp.2d 110, 116 (D.D.C. 2012); *Leeds v. Mosbacher*, 732 F.Supp. 198,200 (D.D.C. 1990); *Premysler v. Lehman*, 71 F.3d 387, 389 (Fed.Cir. 1995) (“Title 35 vests the [Director of the USPTO] . . . with the responsibility to protect [US]PTO proceedings from unqualified practitioners.”) This includes the “broad authority to govern . . . the recognition and conduct of attorneys” who practice before the Office. *See Chang*, at 116. Section 2(b)(2)(D) states that the Director may establish regulations which:

may govern the recognition and conduct of agents, attorneys, or other persons representing Petitioners or other parties before the Office, and may require them, before being recognized as representatives of Petitioners or other persons, to show that they are of good moral character and reputation and are possessed of the necessary qualifications to render to Petitioner or other persons valuable service, advice, and assistance in the presentation or prosecution of their applications or other business before the Office.

Pursuant to this authority, the USPTO promulgated 37 C.F.R. § 11.7, which states that “[n]o individual will be registered to practice before the Office unless he or she has . . . applied to the USPTO Director in writing by completing an application for registration form” and established to the OED Director’s satisfaction that he or she meets all of the requirements to practice before the Office. 37 C.F.R. § 11.7(a)(1) and (a)(2). Among the showings that applicants must make is that he or she possesses the “legal, scientific, and technical qualifications necessary for him or her render applicants valuable service.” 37 C.F.R. § 11.7(a)(2)(ii). *See also Premysler*, 71 F.3d at 389-90.

The USPTO General Requirements Bulletin for Admission to the Examination for Registration to Practice in Patent Cases Before the United States Patent and Trademark Office (issued in June 2004, as updated in May 2014) (“Bulletin”) is a USPTO publication that provides information and requirements to, in part, describe criteria that are generally sufficient to establish scientific and technical competence for admission to the examination under 37 C.F.R. § 11.7(a)(2)(ii). *See Tech. Dec. 10* (citing *Premysler*, 71 F.3d at 388). The Bulletin is not dispositive of determining whether an applicant may sit

for the PTO examination and thus is not subject to the rule-making procedures under 5 U.S.C. § 553. *Premysler*, 71 F.3d at 390. However, the Bulletin has been held to reasonably interpret qualification requirements. *See Lacavera v. Dudas*, 441 F.3d 1380, 1383 (Fed.Cir. 2006) (finding that the Bulletin “reasonably interprets” the previous version of § 11.9); *Premysler v. Lehman*, 71 F.3d at 389-90 (finding that the PTO could rely on the Bulletin as guidance for what kinds of credentials typically demonstrate “technical competence” under an agency regulation prohibiting the PTO from registering an individual to practice before it unless he is “possessed of the legal, scientific, and technical qualifications necessary to enable him or her to render applicants for patents valuable service”).

The Bulletin identifies three categories (A, B, and C) by which an applicant may establish that he or she meets the requirements of 37 C.F.R. § 11.7(a)(2)(ii). *See* Tech Dec. 12; (Ex. 8 at 4-8). If an applicant does not qualify under any of these three categories, the USPTO may conduct an independent review for compliance with the scientific and technical training requirements set forth in 37 C.F.R. § 11.7(a)(2)(ii). *See* Tech. Dec. 10 (citing *Premysler v. Lehman*, 71 F.3d at 390) (“The OED Director may, at his discretion, determine if any applicant possesses sufficient technical skills to take the examination”).¹ Applicants bear the burden of showing the requisite scientific and technical training. *See* 37 C.F.R. § 11.7(b)(1)(i)(C); (Ex. 8 at 4).

A party dissatisfied with a final decision of the OED Director regarding enrollment or recognition may seek review of that decision upon Petition to the USPTO Director, accompanied by payment of the appropriate fee. *See* 37 C.F.R. § 11.2(d). The decision may be overturned only where the deciding official abuses his discretion in denying a petitioner’s application. *See Premysler*, 71 F.3d at 389 (citing *Gager v. Ladd*, 212 F.Supp 671, 673 (D.D.C. 1963)).

Here, Petitioner requests reversal of the OED Director’s decision to deny her application for registration to practice in patent matters before the Office. In support of the Petition, Petitioner alleges that the OED Director abused his discretion by failing to fully consider under Category A of the Bulletin, her overall education, training, and experience. (Ex. 7 at 1). Further,

¹ The OED Director made no independent determination of the Petitioner’s qualifications here.

she claims that her “extensive science-and-technology-related work experience and training in biology and chemistry, satisfy at least the manner set forth in Category B subsection iv (Option 4) or in Category B subsection xii (Other Training).” (Ex. 7, p. 4). Petitioner claims that she has provided objective evidence of her qualifications, which includes her work in “a multidisciplinary field that spans across computer science, biology, and chemistry” and that this evidence shows a quantity and quality of her knowledge in multiple technical fields. (Ex. 7, pp. 3-4).

The Petition, however, does not present any evidence to disturb the OED Director’s conclusion that Petitioner does not currently possess the legal, scientific, and technical qualifications necessary for him or her render applicants valuable service. Rather, the record before the OED Director supports for the OED Director’s decision. Thus, as discussed further below, the OED Director’s decision is affirmed.

A. Petitioner Is Not Able to Satisfy the Requirements Stated in the Bulletin.

As stated, Petitioner bears the burden of proving that she possesses the necessary scientific and technical qualifications. *See* 37 C.F.R. § 11.7(b)(1)(i)(C); (Ex. 8 at 4) (“Applicants bear the burden of showing the requisite scientific and technical training.” *See also* Technical Decision 10 (2007). The Bulletin provides three categories (A, B, and C) by which an applicant may establish that he or she meets the requirements of 37 C.F.R. § 11.7(a)(2)(ii). (Ex. 8 at 4-8). Category A requires a Bachelor’s Degree in one of 32 scientific or technical subjects. (Ex. 8 at 4). Category B requires demonstrated scientific and technical training equivalent to that required by Category A by meeting one of four options consisting of different educational components. (Ex. 8 at 5). Finally, Category C allows applicants to rely on practical engineering or scientific experience, in lieu of satisfying Categories A and B, by taking and passing the Fundamentals of Engineering (FE) examination.² (Ex. 8 at 8). Petitioner cannot satisfy any of the three categories.

² Petitioner does not allege that she has taken the FE examination. As such, she cannot satisfy the requirements of Category C of the Bulletin.

1. Petitioner Does Not Possess a Bachelor's Degree in a Recognized Technical Subject, as Required by Category A.

Category A requires a proof of an official transcript showing that an applicant possesses a Bachelor's Degree in one of 32 recognized scientific or technical subjects. (Ex. 8 at 4). Some, but not all, computer science degrees will satisfy Category A. "Acceptable Computer Science degrees must be accredited by the Computer Science Accreditation Commission (CSAC) of the Computing Sciences Accreditation Board (CSAB), or by the Computing Accreditation Commission (CAC) of the Accreditation Board for Engineering and Technology (ABET), on or before the date the degree was awarded." (Ex. 8 at 4). The Bulletin provides a link to a list of accredited computer science degrees. (Ex. 8 at 4).

Petitioner holds a Bachelor's Degree in computer science from [REDACTED] College. (Ex. 1). [REDACTED] College's computer science program is not an accredited program, as required by the Bulletin. Petitioner makes no attempt to claim that the program is accredited. Consequently, she is unable to satisfy Category A of the Bulletin on the basis of her Bachelor's degree.

Notwithstanding her Bachelor's degree, Petitioner claims that she possesses the requisite technical or scientific background based on her graduate degree, a master's degree in Computer science from the University [REDACTED] (Ex. 7, at 1). However, Category A, section ii addresses this point squarely. It states:

"ii. Graduate Degrees: An applicant who has a Master's or higher level degree in one of the subject areas listed above, but does not have a Bachelor's degree in such subject, must establish to the satisfaction of the OED Director that he or she possesses the necessary scientific and technical training. Possession of the necessary scientific and technical training may be satisfactorily established in the manner set forth under either Category B or Category C below." (Emphasis added).

Thus, Petitioner can rely in her graduate degree to establish that she possesses the necessary scientific and technical training for the criteria set forth under either Category B or C. (Ex. 8 at 4-5.)

2. Petitioner Does Not Possess 8 Semester Hours of Chemistry or Physics, as Required by Category B.

Category B of the Bulletin requires an applicant with a Bachelor's degree in a subject other than one of those listed in Category A to establish to the satisfaction of the OED Director that he or she possesses scientific and technical training equivalent to that received at an accredited U.S. college or university for a Bachelor's degree in one of the subjects listed in Category A. (Ex. 8 at 5). To establish such equivalence, an applicant may satisfy one of four options, consisting of evidence of various combinations of coursework. (Ex. 8 at 5). Official transcripts are required to establish completion of each course relied on to establish scientific and technical training in Category B. *Id.* An applicant may also establish such equivalence through "other training" and "other education." *Id.* at 6-7.

Petitioner first alleges that she is able to satisfy Category B, "option 4," which requires 40 semester hours in a combination of course work consisting of the following: "8 semester hours of chemistry or 8 semester hours of physics, and 32 semester hours of chemistry, physics, biology, botany, microbiology, molecular biology, or engineering." (Ex. 8 at 5) (Emphasis added). The 8 semester hours of chemistry or physics required by this option must be obtained in two sequential courses, each course including a lab. *Id.* at 5. An applicant may not substitute other course work for the required 8 hours of chemistry or physics. *Id.* at 6-7. For the 32-hour requirement under option 4, computer science courses that stress theoretical foundations, analysis, and design, and include substantial laboratory work, including software development are accepted. *Id.* at 6.

A review of Petitioner's application, including her official transcripts and course descriptions submitted with her application, plainly indicates that she lacks the requisite course work required by Category B, option 4. While she indisputably possesses at least 32 credits in qualifying computer science courses, she has not taken the 8 required semester hours of sequential chemistry or physics, with a corresponding lab. Indeed, a review of her application, transcripts, and course descriptions reveals that she has not taken 8 semester hours of *any* chemistry or physics courses. (Ex. 1). Thus, unequivocally, she cannot satisfy the requirements of Category B, option 4.

Notwithstanding the above, Petitioner alleges that she is able to satisfy Category B on the basis of her overall education, training, and experience. Petitioner is correct that an applicant may rely on “other training” and “other education” to show, under Category B, that she possesses expertise equivalent to that of a Bachelor’s degree in a subject listed in Category A. (Ex. 8, at 7). As an initial matter, however, her claims of other qualifying education is rejected. The Bulletin identifies the types of courses that would qualify to make the equivalency showing required (e.g. foreign education, military education, etc.) and Petitioner does not allege, and her application does not show, any such education. The Bulletin identifies very specific examples of the type of educational requirements that would demonstrate technical competence. (Ex. 8, p. 7-8). Claims of “overall education,” such as Petitioner makes here, simply do not satisfy those requirements.

With regard to “other training,” the Bulletin also allows that “other factors will also be considered on a case-by-case basis with respect to scientific and technical training.” (Ex. 8 at 7). Specifically, OED will consider expertise in scientific and technical training which is equivalent to that of a Bachelor’s degree in a subject listed in Category A. *Id.* at 7 (“an applicant without a degree listed in Category A has the burden of establishing possession of sufficient training and expertise in science or engineering to be equivalent to that of a Bachelor’s degree in a subject listed in Category A.”) Objective evidence demonstrating that training is equivalent to training received in courses accepted under Category A may establish such equivalency. *Id.* The OED Director concluded that Petitioner “has not demonstrated objective evidence showing that her training is equivalent to training received in courses accepted under Category A.” (Ex. 5, at 6-7). There is no basis to disturb that finding.

Petitioner’s states that her work in biomedical informatics, specifically a company called [REDACTED] has provided her with a good understanding of chemical compounds and their therapeutic intent. (Ex. 7 at 2). She claims that her full-time, 40-hour per week work as a research in biomedical informatics, which is a multidisciplinary field encompassing computer science, biology, and chemistry, equates 8 hours of chemistry or physics. (Ex. 7, at 2). Further, she cites to multiple peer-reviewed publication that she authored or co-authored, as well as being asked to serve as a reviewer for the

American Medical Informatics Association's Annual Symposium, as objective evidence of the depth and breadth of her scientific and technical qualifications. (Ex. 7, at 2-3).

Petitioner misunderstands the showing that she is required to make. When relying on "other training" as Petitioner does here, an applicant is required to objectively demonstrate equivalency to a Bachelor's degree in a subject listed in Category A, as opposed to some semester hour equivalent. (Ex. 8 at 7). Petitioner does not identify a Bachelor's degree in Category A for which she is attempting to establish equivalence. But, more important, her conclusory claims of some equivalency based on work experience simply do not amount to the type or amount of objective evidence required by the Bulletin. To accept such statements as objective evidence would render the Bulletin's standard a nullity.

With regard to her publications, while the peer-reviewed nature of the publications is arguably an objective measure as to the topic of the published article, such publications are not equivalent to the full course of study required by a Bachelor's degree program. Petitioner makes no attempt to provide support for her conclusory allegation that "journal paper assessment is as rigorous and objective as college or university course accreditation," which is rejected here. (Ex. 7, p. 2). Again, her unsupported claims cannot suffice as objective evidence sufficient to establish equivalency to a Bachelor's degree. The OED Director's decision is affirmed.

III. CONCLUSION

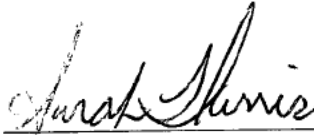
The Petition for review of OED Director's decision dated November 13, 2014, is denied. Petitioner has not shown that she currently possesses the requisite technical and scientific qualifications within the meaning of 37 C.F.R. §11.7. The OED Director considered the administrative record and appropriately denied the Petitioner's application for registration to practice before the Office in patent matters and his decision is Affirmed.

ORDER

Upon consideration of the Petition to the USPTO Director for review under 37 C.F.R. § 11.2(d), it is ORDERED that the Petition is Denied. The OED Director's November 13, 2014 decision is Affirmed.

APR - 6 2015

Date



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