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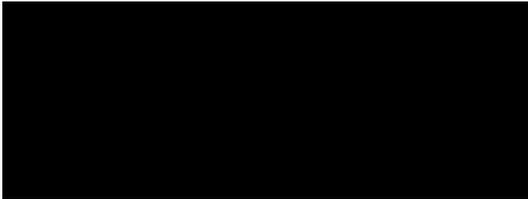
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Washington, DC 20536



**U.S. Citizenship
and Immigration
Services**



FILE: WAC 01 192 53486 **Office:** CALIFORNIA SERVICE CENTER **Date:** FEB 04 2004

IN RE: Petitioner: [Redacted]
Beneficiary: [Redacted]

PETITION: Petition for a Nonimmigrant Worker Pursuant to Section 101(a)(15)(H) of the Immigration and Nationality Act, 8 U.S.C. § 1101(a)(15)(H)

ON BEHALF OF PETITIONER:



INSTRUCTIONS:

This is the decision of the Administrative Appeals Office in your case. All documents have been returned to the office that originally decided your case. Any further inquiry must be made to that office.

Robert P. Wiemann, Director
Administrative Appeals Office

DISCUSSION: The service center director denied the nonimmigrant visa petition and the matter is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed. The petition will be denied.

The petitioner is a professional personnel-staffing business that seeks to employ the beneficiary as its budget analyst. The petitioner endeavors to classify the beneficiary as a nonimmigrant worker in a specialty occupation pursuant to section 101(a)(15)(H)(i)(b) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1101 (a)(15)(H)(i)(b).

The director denied the petition because the beneficiary is not qualified to perform the duties of a specialty occupation. On appeal, counsel submits a brief.

Section 214(i)(2) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1184(i)(2), states that an alien applying for classification as an H-1B nonimmigrant worker must possess full state licensure to practice in the occupation, if such licensure is required to practice in the occupation, and completion of the degree in the specialty that the occupation requires. If the alien does not possess the required degree, the petitioner must demonstrate that the alien has experience in the specialty equivalent to the completion of such degree, and recognition of expertise in the specialty through progressively responsible positions relating to the specialty.

Pursuant to 8 C.F.R. § 214.2(h)(4)(iii)(C), to qualify to perform services in a specialty occupation, an alien must meet one of the following criteria:

- (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
- (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.

The record of proceeding before the AAO contains, in part: (1) Form I-129 and supporting documentation; (2) the director's request for additional evidence; (3) the petitioner's response to the director's request; (4) the director's denial letter; and (5) Form I-290B and supporting documentation. The AAO reviewed the record in its entirety before issuing its decision.

The petitioner is seeking the beneficiary's services as a budget analyst. The petitioner indicated in its May 2, 2001 letter that the beneficiary is qualified for the proffered position because she holds a Bachelor of Arts degree and has vast experience in international relations.

The director found that the beneficiary was not qualified for the proffered position because the beneficiary's degree in international studies does not qualify her for a budget analyst position. On appeal, counsel states that the beneficiary is qualified for the position because her international studies curriculum included courses such as mathematics, statistics, and economics. Counsel further states that the beneficiary also has vast, relevant work experience. Counsel also submits a credentials evaluation from e-Val Reports to demonstrate that the beneficiary holds the equivalent of a bachelor's degree in international relations with a minor in business.

The record includes the following documentation related to the beneficiary's educational and employment backgrounds:

- Credentials evaluation, dated August 26, 2002, from [REDACTED] of e-Val Reports, who concludes that the beneficiary's educational background and 11 ½ years of employment experience are the equivalent of a bachelor's degree in international relations with a minor in business;
- Undated credentials evaluation from [REDACTED] of Universal Credential Evaluators, who concludes that the beneficiary's foreign degree is the equivalent of a Bachelor of Arts degree in international studies awarded by regionally accredited colleges and universities in the United States;
- Certification, dated July 10, 1989, from the president of the Filipino business, Makati Trading & Industrial Services, who states that the beneficiary was employed from August 1985 until July 1989 as a financial assistant with the following duties: assisted in reviewing, consolidating, and entering of financial data; helped in preparing budgetary requirements; and researched economic and financial data;
- Letter, dated August 3, 2000, from the director of the International Labour Organization in the Philippines, who states that the beneficiary was employed from April 19, 1999 to August 15, 2000, as a secretary with the following duties: liaison with government, non-government, and international organizations;
- Certificate of Service, dated December 28, 1998, from the United Nations High Commissioner for Refugees, reflecting that the beneficiary was employed from May 2, 1997 to December 31, 1998, as a senior legal staff/secretary;
- Copy of the beneficiary's Bachelor of Arts degree in international studies, and transcripts, from a Filipino institution; and
- Beneficiary's resume.

The AAO routinely consults the Department of Labor's (DOL) *Occupational Outlook Handbook (Handbook)* for its information about the duties and educational requirements of particular occupations. In its *Handbook*, 2002-2003 edition, the DOL finds that a baccalaureate degree is usually required for budget analyst positions. The DOL further states that because developing a budget requires strong analytical skills, courses in statistics and accounting are beneficial. In this case, the beneficiary holds a degree in international studies. The credentials

evaluation service, Universal Credential Evaluators, concludes that the beneficiary's foreign degree is the equivalent of a Bachelor of Arts degree in international studies awarded by regionally accredited colleges and universities in the United States. A review of the beneficiary's college transcripts finds no accounting courses and one "elementary statistics" course. As such, the petitioner has failed to establish that the beneficiary is qualified to perform in a budget analyst capacity based on her educational background alone. Therefore, the petitioner must demonstrate that the beneficiary meets the criterion at 8 C.F.R. § 214.2(h)(4)(iii)(C)(4).

Pursuant to 8 C.F.R. § 214.2(h)(4)(iii)(D), equating the beneficiary's credentials to a United States baccalaureate or higher degree shall be determined by 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.

On appeal, counsel submits an evaluation from e-Val Reports, a company that specializes in evaluating academic credentials. The evaluator concluded that the beneficiary's educational background and 11 ½ years of employment experience are the equivalent of a bachelor's degree in international relations with a minor in business. However, the evaluation is based upon the beneficiary's education, training and work experience. A credentials evaluation service may not evaluate an alien's work experience or training; it can only evaluate educational credentials. *See* 8 C.F.R. § 214.2(h)(4)(iii)(D)(3). Thus, the evaluation carries no weight in these proceedings. *Matter of Sea, Inc.*, 19 I&N Dec. 817 (Comm. 1988).

When CIS determines an alien's qualifications pursuant to 8 C.F.R. § 214.2(h)(4)(iii)(D)(5), 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 occupation¹;
- (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.

The beneficiary's resume lists various seminars and training courses attended by the beneficiary. The record, however, contains no evidence of such training. In addition, the petitioner did not submit any independent evidence to illustrate how such training relates to the completion of a baccalaureate degree in a field related to a budget analyst position. *See Matter of Treasure Craft of California*, 14 I&N Dec. 190 (Reg. Comm. 1972).

The AAO now turns to the beneficiary's prior work experience, and whether it included the theoretical and practical application of specialized knowledge required by the specialty. As described by each employer, the beneficiary's duties did not appear to involve the theoretical and practical application of budget analysis. Only one of the three employers assigns duties to the beneficiary that are relevant to the proffered position, such as "assisted in the review, consolidation, entry of financial data." The employers describe the beneficiary's duties generically; no specificity to the beneficiary's daily activities or her level of responsibility is provided. Thus, the AAO cannot conclude that the beneficiary's past work experience included the theoretical and practical application of a body of highly specialized knowledge, which in this case is budget analysis. Furthermore, neither employer indicates 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.

Finally, there is no evidence in the record that the beneficiary has recognition of expertise.

As related in the discussion above, the petitioner has failed to establish that the beneficiary is qualified to perform the duties of the proffered position. Accordingly, the AAO shall not disturb the director's denial of the petition.

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. 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. 8 C.F.R. § 214.2(h)(4)(ii).

The burden of proof in these proceedings rests solely with the petitioner. Section 291 of the Act, 8 U.S.C. § 1361. The petitioner has not sustained that burden.

ORDER: The appeal is dismissed. The petition is denied.