

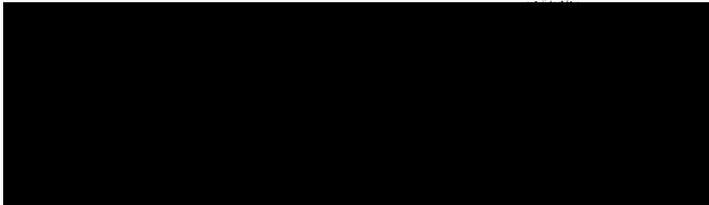


U.S. Citizenship
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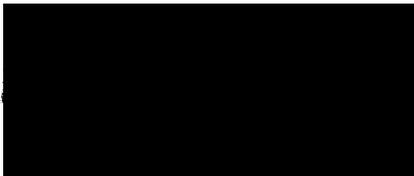


FILE: WAC 03 167 50490 Office: CALIFORNIA SERVICE CENTER Date: FEB 16 2005

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

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

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 director of the service center 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 food manufacturer that seeks to employ the beneficiary as a business development strategist. The petitioner, therefore, 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 proffered position. On appeal, counsel states that the beneficiary is qualified for the proffered position.

Section 214(i)(2) of 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. The AAO reviewed the record in its entirety before issuing its decision.

The petitioner is seeking the beneficiary's services as a business development strategist. In its document entitled "Job Opening for Business Development Strategist," the petitioner indicated that a candidate must

possess a bachelor's degree in business administration, management, or a related field with experience in marketing, financial analysis, or market research.

The director determined that the beneficiary was not qualified for the proffered position. The director referred to the Department of Labor's *Occupational Outlook Handbook* (the *Handbook*) to state that it reveals that the proffered position's duties are performed by a market research analyst, an occupation that usually requires a master's or graduate degree. Because the credentials evaluator concluded that the beneficiary holds the equivalent of a bachelor's degree in business administration, the director found the beneficiary unqualified for the proffered position.

In the appeal brief, counsel contends that the beneficiary is qualified for the proffered position. Counsel states that the petitioner's operation needs an entry-level business development strategist, not a market research analyst. Counsel states that the beneficiary will analyze data already compiled by professional market researchers, and explains that the beneficiary will perform in-store surveys, but will not perform market research analyst duties such as designing and formulating surveys or devising research methods and procedures. Counsel attests that the *Handbook* reveals that a bachelor's degree is sufficient for an entry-level market research analyst, and that job postings for market research analyst or related jobs indicate that employers require only a bachelor's degree in business, marketing, or a related field. Counsel claims that organizations seeking business development officers or parallel positions require a bachelor's degree, and states that job postings show that a bachelor's degree in business, marketing, or a related field is sufficient for the proffered position. Finally, counsel states that a credentials evaluation service has determined that the beneficiary's baccalaureate degree in commerce is equivalent to a bachelor's degree in business administration from a regionally accredited institution of higher education in the United States; that the beneficiary's coursework relates to the proffered position; and that the beneficiary has six years of experience in the field. As such, counsel asserts that the combination of the beneficiary's education and experience qualify him for the proffered position.

Upon review of the record, the petitioner has failed to establish that the beneficiary is qualified to perform the duties of the proffered position.

The beneficiary does not hold a baccalaureate degree from an accredited U.S. college or university in any field of study; however, the beneficiary does hold a foreign degree determined to be equivalent to a bachelor's degree in business administration earned at a regionally accredited institution of higher education in the United States. As stated by the court in *Matter of Ling*, 13 I&N Dec. 35 (Reg. Comm. 1968):

"Business administration" is a broad field, a field which contains various occupations and/or professions, all of which are related to the world of business but each requiring a different academic preparation and experience peculiar to its needs. The OCCUPATIONAL OUTLOOK HANDBOOK, also published by the Department of Labor, shows that business administration is a general term and includes various occupations such as accountant, advertising workers, industrial traffic manager, marketing research workers, personnel workers, and purchasing agents; thus, including both professional and nonprofessional

activities. Careful review of the discussion of these occupations shows that while all are related to the world of business, each has its own emphasis on the academic training and experience required for qualification in that occupation. It is evident that while a person may have a degree in business administration, such degree may qualify him for some but not all of the occupations included in the broad field of business administration. For example, a person with a degree in business administration, major in accounting, would not qualify as a public relations man or personnel manager and vice versa. Therefore, a petitioner with a business administration degree must clearly establish a particular area and occupation in the field of business administration in which he is engaged or plans to be engaged and must also establish that he meets the special academic and experience requirements of that designated activity, as a prerequisite to a determination as to professional status.

Based on the evidence in the record, the beneficiary's baccalaureate degree does not have a particular emphasis in the field of business administration. Because of this, the petitioner fails to establish that the beneficiary is qualified for the proffered position.

Beyond the decision of the director, the proffered position fails to qualify as a specialty occupation as outlined in 8 C.F.R. § 214.2(h)(4)(iii)(A). CIS interprets the term "degree" in the criteria at 8 C.F.R. § 214.2(h)(4)(iii)(A) to mean not just any baccalaureate or higher degree, but one in a specific specialty that is directly related to the proffered position. The court's decision in *Matter of Michael Hertz Assocs.*, 19 I&N Dec. 558, 560 (Comm. 1988) stated that for a position to qualify as a specialty occupation:

A petitioner must establish that the position realistically requires knowledge, both theoretical and applied, which is almost exclusively obtained through studies at an institution of higher learning. The depth of knowledge and length of studies required are best typified by a degree granted by such institution at the baccalaureate level. It must be demonstrated that the position requires a precise and specific course of study which relates directly and closely to the position in question. Since there must be a close corollary between the required specialized studies and the position, the requirement of a degree of generalized title, such as business administration or liberal arts, without further specification, does not establish eligibility.

The evidentiary record reveals that the petitioner is willing to accept candidates possessing a bachelor's or higher degree in business administration, management, or a related field with experience in marketing, financial analysis, or market research. We point out that the petitioner does not indicate that the baccalaureate degree in business administration requires a specific field of concentration. Because of this, the petitioner cannot establish that any of the of the four criteria outlined in 8 C.F.R. § 214.2(h)(4)(iii)(A).

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.

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.