

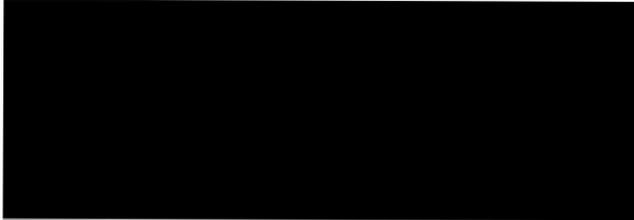
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U.S. Citizenship  
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FILE: WAC 04 026 52190 Office: CALIFORNIA SERVICE CENTER Date: MAR 07 2006

IN RE: Petitioner:  
Beneficiary:



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 nonimmigrant visa petition was denied by the Director, California Service Center. The Administrative Appeals Office (AAO) dismissed the subsequent appeal. The matter is now before the AAO on motion to reconsider. The motion will be granted. The previous decision of the AAO will be withdrawn, the appeal will be sustained, and the petition will be approved.

The petitioner is a flower sales and distribution business that seeks to hire the beneficiary as a full-time market research analyst. The director denied the petition because the beneficiary is not qualified to perform the duties of a specialty occupation. On appeal before the AAO, counsel submitted a brief with additional documentation, including the following: evidence of the beneficiary's membership in the American Management Association; copies of previously submitted certificates from the Chamber of Commerce in Bogotá, Columbia; a new academic opinion; and foreign employment letters. On motion to reconsider, counsel submits a brief and additional documentation.

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; (5) Form I-290B and supporting documentation, (6) the decision from the AAO; and (7) motion to reopen 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 market research analyst. The petitioner indicated in its October 15, 2003 letter that the position requires at least a bachelor's degree in business administration and at least two years of experience in the field of international marketing or finance.

The director denied the petition because the beneficiary is not qualified to perform the duties of a specialty occupation. On appeal before the AAO, counsel submitted a brief and additional documentation, including the following: evidence of the beneficiary's membership in the American Management Association; copies of previously submitted certificates from the Chamber of Commerce in Bogotá, Columbia; a new academic opinion; and foreign employment letters. The AAO determined that the petitioner failed to establish that the beneficiary is qualified to perform an occupation that requires a baccalaureate degree in a marketing-related field. The AAO noted that the beneficiary does not hold a baccalaureate degree from an accredited U.S. college or university in any field of study, or a foreign degree determined to be equivalent to a baccalaureate degree from a U.S. college or university in any field of study. The AAO stated that 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.

The AAO noted that on appeal, counsel submitted an academic opinion, dated June 15, 2005, from an assistant professor of an accredited business school at a U.S. university, who states, in part, that the beneficiary's educational background and approximately fourteen years and one month of professional training and work experience in business management, and related areas, are equivalent to a U.S. Bachelor's

degree in business administration with a concentration in business management. The AAO noted that the writer of the letter based his conclusions regarding the beneficiary's foreign employment on the beneficiary's resume and letters from two of the beneficiary's foreign employers. The AAO noted that both of the letters appeared to be authored by former employees of the two Columbian businesses where the beneficiary worked for more than nine years performing business related duties. The AAO noted that neither letter appeared to be on official letterhead or appeared to be authored by an authorized representative of the respective business. The AAO noted that the record contained no evidence of the beneficiary's employment as a private consultant for the city of Bogota, though the writer bases his conclusion in part upon such employment.

Additionally, the AAO reviewed the beneficiary's qualifications under 8 C.F.R. § 214.2(h)(4)(iii)(D)(5). 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 occupation<sup>1</sup>;
- (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 AAO found that the record contained evidence of the three years of course work related to mechanical engineering. The AAO determined that the record establishes that the beneficiary has two years of general university-level studies toward a degree and thus the beneficiary would need to establish six years of related work experience requiring the theoretical and practical application of a body of highly specialized knowledge. The AAO determined that the petitioner failed to establish that the beneficiary is qualified to perform the duties of the proffered position.

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<sup>1</sup> *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).

On motion to reconsider, counsel asserts that the beneficiary has the equivalent of a bachelor's degree in business administration. Counsel notes that the AAO did not consider the letters sufficient because they were not on "official letterhead" or written by an "authorized representative" of either company. Counsel submits as Exhibit 1 a declaration written by the beneficiary explaining why he cannot obtain an experience verification letter written on company letterhead or from authorized representatives of the company. The beneficiary asserts that when he left his employment there were disputes over money and he is no longer in contact with the owners of the company. Additionally, the beneficiary explained that one of the companies is no longer doing business. Counsel asserts that these letters confirm that the beneficiary worked at [REDACTED] from October 1985 to March 1990 and at [REDACTED] from March 1990 to November 1994 in positions requiring extensive knowledge of business management, administration, marketing, finance, operations, export management, and related areas. Counsel asserts, as such the beneficiary has nine years of relevant experience, three more than required by the AAO to establish degree equivalency. Counsel points out that the beneficiary has more than enough experience to meet the three-for-one rule and that the beneficiary's experience as a consultant for the City of Bogotá does not need to be considered in establishing degree equivalency. Counsel also notes that the experience was gained 10 – 20 years ago and that it is not unreasonable to assume that individuals who had knowledge of the beneficiary's day-to-day responsibilities would also no longer be working for these companies.

Upon review of the record, the petitioner has established that the beneficiary has the equivalent of a bachelor's degree based on education and experience. The petitioner has established that the beneficiary is qualified to perform an occupation that requires a baccalaureate degree in a marketing-related field. The AAO acknowledges that the petitioner has met the terms of 8 C.F.R. § 214.2(h)(4)(iii)(D)(I) and has established that the beneficiary has the equivalent of a bachelor's degree in the specific specialty required by the specialty occupation. As the petitioner has established that the beneficiary is qualified to perform the duties of the proffered position, the previous decision of the AAO is withdrawn.

On motion, counsel also addresses whether the position of a market research analyst requires a bachelor's degree. The Department of Labor's *Occupational Outlook Handbook* (the *Handbook*), edition 2006-2007 indicates that a bachelor's degree is the minimum educational requirement for many market and survey research jobs. Therefore, this issue need not be addressed any further.

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 sustained that burden. Accordingly, the appeal will be sustained.

**ORDER:** The AAO decision dated, October 3, 2005 is withdrawn. The appeal is sustained. The petition is approved.