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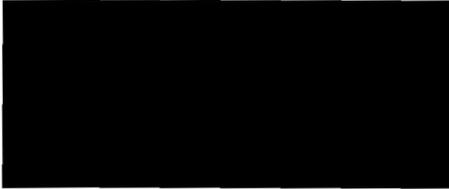
U.S. Department of Homeland Security
20 Mass. Ave., N.W., Rm. 3000
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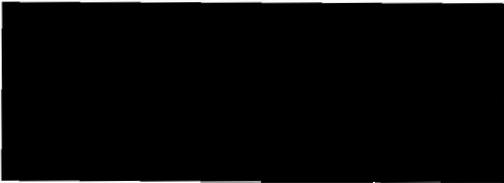


FILE: EAC 04 252 51846 Office: VERMONT SERVICE CENTER Date: SEP 18 2006

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, Chief
Administrative Appeals Office

DISCUSSION: The Director, Vermont 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 travel agency with 200 employees and a claimed gross annual income of five million dollars. It seeks to employ the beneficiary as a business analyst. Accordingly, 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).

On March 3, 2005, the director denied the petition determining that the record did not establish that the beneficiary is qualified to perform services in a specialty occupation. On appeal, counsel for the petitioner asserts that the nature of the petitioner's business requires that it employ a business analyst "whose professional/Specialty Knowledge is in field of its business niche of Travel and Tourism."

The record includes: (1) the Form I-129 and supporting documents; (2) the director's October 18, 2004 request for further evidence (RFE); (3) the petitioner's January 7, 2005 response to the director's RFE; (4) the director's March 3, 2005 denial decision; and (5) the Form I-290B and counsel's brief in support of the appeal. The AAO reviewed the record in its entirety before issuing its decision.

The issue in this matter is whether the petitioner has established that the beneficiary is qualified to perform the duties of a specialty occupation.

Section 101(a)(15)(H)(i)(b) of the Act, 8 U.S.C. § 1101(a)(15)(H)(i)(b), provides, in part, for the classification of qualified nonimmigrant aliens who are coming temporarily to the United States to perform services in a specialty occupation.

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:

- (A) full state licensure to practice in the occupation, if such licensure is required to practice in the occupation,
- (B) completion of the degree described in paragraph (1)(B) for the occupation, or
- (C) (i) experience in the specialty equivalent to the completion of such degree, and
(ii) 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, the 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.

In a September 3, 2004 letter appended to the petition, the petitioner listed the beneficiary's duties as an "Account Representative" from February 2003 to present as:

- (a) [S]erving as a liaison to major corporate clients and designing tour and ticketing programs to meet their particular business needs. This has included understanding their operations, evaluating and estimating business travel needs, developing budgets and contract; and making proposals. She has been involved in managing customer relations, resolving issues, and ensuring customer satisfaction[;]
- (b) Serving as a liaison to major airlines. She has been instrumental in developing business relationships; designing and implementing ticketing programs between major airlines and ██████████ negotiating deals; analyzing and evaluating costs and budgets; and implementing management controls;
- (c) Developing and implementing marketing programs and strategies; and
- (d) Handling related financial and accounting issues.

The petitioner provided a second letter dated August 19, 2004 from the beneficiary's foreign employer. The employer, ██████████ stated that the beneficiary had been employed as a "manager" in the tour department from 1995 to 2000. The foreign employer indicated that the beneficiary's duties and responsibilities included:

[M]anaging and supervising operations and staff in the Company's Tour department; formulating and adhering to budgets; having responsibility for the Department's profit and loss; designing and implementing marketing and sales strategies; coordinating hotel and other ground reservations for group[s] and corporate visitors to Syria. She also served as [liaison] to large European travel agencies; had direct contact with airlines and dealt with ticket consolidators. In carrying out the foregoing duties, she applied principles of business, marketing, management, accounting, [finance,] and sales.

The record also contains a translation of an "Attestation of Graduation" stating that the beneficiary had completed "theoretical and practical study at the [REDACTED] during the period between 15 September 1992 till 16.10.1994."

On October 18, 2004 the director requested, among other things, evidence that the beneficiary qualifies to hold a specialty occupation pursuant to the requirements listed at 8 C.F.R. § 214.2(h)(4)(iii)(C).

In a January 7, 2005 response, the petitioner stated that the beneficiary is qualified for the proffered position, based upon a combination of academic training and experience. The petitioner provided an October 18, 2004 evaluation prepared by Foreign Credential Evaluations, Inc. The evaluator noted that she had reviewed the confirmation of graduation from the [REDACTED], Syria attesting to the beneficiary's completion of a two-year course of study. The evaluator determined that the beneficiary's two-year course of study is equivalent to the degree, Associate of Arts in Travel-Tourism Management, from a regionally accredited college or university in the United States. The evaluator also noted that she had reviewed statements from [REDACTED] and [REDACTED] regarding the beneficiary's subsequent work experience for six years and seven months. The evaluator concluded, based on the beneficiary's two years of university-level study and six years and seven months of professional experience in travel-tourism management that the beneficiary had achieved the equivalent to the degree, Bachelor of Arts in Travel-Tourism Management.

The petitioner also submitted an October 10, 2001 expert letter by [REDACTED] describing the petitioner's position of business analyst for another H-1B applicant. The October 10, 2001 letter explained that a candidate for a business analyst position in a medium to large size-travel company must have financial, accounting, management, and business skills to prepare reports, prepare business plans, analyze financial information, forecast trends, and analyze opportunities to increase market share, reduce costs, implement better management procedures, etc.

The record also contains: (1) a December 8, 2003 letter authored by a business analyst for the New York travel agency, [REDACTED] stating: "It has been my experience that tour operators customarily employ Business Analysts as professional workers; that the positions are regarded as professional in nature, scope, and complexity; and that tour operators routinely require such business analysts to have the professional equivalent to an undergraduate degree in a related field of study;" (2) a November 24, 2003 letter authored by a product development director for a New Jersey travel agency, indicating that a baccalaureate degree in economics, marketing or a related field of study is the minimum requirement in the travel industry for a business analyst position; and (3) a November 21, 2003 letter authored by the executive assistant of a Maine travel agency also indicating that a baccalaureate degree in economics, marketing or a related field of study is the minimum requirement in the travel industry for a business analyst position.

The record further contains evidence of the approvals and education evaluations of two of the petitioner's employees who held the position of business analyst: (1) one employee completed a four and one-half year program in Poland majoring in economics; a credentials service evaluated this individual's education as U.S. equivalent to a bachelor's and master's degree in economics; and (2) the second employee's academic coursework at the American University in Beirut in business administration was evaluated as the equivalent of U.S. bachelor's degree in business administration.

On March 3, 2005, the director denied the petition determining that the beneficiary's degree in tourism did not qualify the beneficiary for the proffered position of business analyst. The director noted that the record contained approvals and educational evaluations for other candidates for the proffered position of business analyst, but that the beneficiaries in the other approvals were evaluated to hold at least a bachelor's degree in business administration and/or economics. The director concluded that the evidence in the record did not establish that the beneficiary is qualified to perform services in a specialty occupation pursuant to section 101(a)(15)(H)(i)(b) of the Act.

On appeal, counsel for the petitioner asserts that the nature of the petitioner's business requires that it employ a business analyst "whose professional/Specialty Knowledge is in [the] field of its business niche of Travel and Tourism." Counsel points out that the petitioner requires, not only a travel-tourism degree, but also a management element that is intertwined with the petitioner's business and the proffered position. Counsel also observes that it has long been held that Citizenship and Immigration Services (CIS) should respect the petitioner's determination of the necessity for a particular degree, as long as the requirement has a rational basis.

The AAO acknowledges that a petitioner may request consideration of its requirements for a degree in a specialty occupation and in some instances a travel agency may require its business analyst to have a degree in tourism management, as well as in business administration. However, in this instance, the petitioner has not provided evidence that the beneficiary is qualified to perform the services of a specialty occupation or that the position it is offering to the beneficiary requires a four-year degree.

First, the petitioner in this matter has not provided evidence that the beneficiary holds a United States baccalaureate or higher degree in any field, a foreign degree determined to be equivalent to a United States baccalaureate or higher degree, or that the State requires or that the beneficiary has an unrestricted license, registration, or certification to practice as a business analyst in the travel/tourism field. The petitioner has not established that the beneficiary is qualified to perform services in a specialty occupation pursuant to 8 C.F.R. §§ 214.2(h)(4)(iii)(C)(1) through (3).

Therefore to establish the beneficiary's qualifications to perform the duties of a specialty occupation, the petitioner must prove that the beneficiary's combined education, training, and employment experience provide her with the equivalent of a baccalaureate or higher degree required by the specialty occupation. To determine eligibility under 8 C.F.R. § 214.2(h)(4)(iii)(C)(4), the AAO relies upon the five criteria set forth at 8 C.F.R. § 214.2(h)(4)(iii)(D). A beneficiary who does not have a degree in the specific specialty may still qualify for H-1B status based on:

- (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.

Although the petitioner has submitted an evaluation of the beneficiary's academic training and work experience, that evaluation does not come 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 that has a program for granting such credit based on an individual's training and/or work experience. When attempting to establish that a beneficiary has the equivalent of a degree based on his or her combined education and employment experience under the criterion at 8 C.F.R. § 214.2(h)(4)(iii)(C)(4), a petitioner may not rely on a credentials evaluation service to evaluate a beneficiary's work experience. A credentials evaluation service may evaluate only a beneficiary's educational credentials. *See* 8 C.F.R. § 214.2(h)(4)(iii)(D)(3). To establish an academic equivalency for a beneficiary's work experience, a petitioner must submit an evaluation of such experience from an official who has the authority to grant college-level credit for training and/or experience in the specialty at an accredited college or university that has a program for granting such credit. *See* 8 C.F.R. § 214.2(h)(4)(iii)(D)(1). The October 18, 2004 Foreign Credential Evaluations, Inc. evaluation establishes only that the beneficiary's two years of education in Syria is the equivalent of a U.S. associate's degree in tourism management. Thus, the record fails to demonstrate that the beneficiary holds the equivalent of a baccalaureate degree in a field directly related to the proffered position.

The AAO also notes that the record contains letters from an "expert" and several travel agencies. However, the individual identified as an "expert" indicates that a business analyst for a medium to large size-travel agency must have financial, accounting, management, and business skills, skills that relate to a business administration degree and not to a degree in tourism management. Moreover, the travel organizations speak generally regarding the travel industry's custom to hire business analysts as professionals who have a degree in economics, marketing, or a related field of study. Neither the "expert" nor the travel agencies speak to the beneficiary's competence, or certify or register the beneficiary as an individual possessing a certain level of competence in the travel industry as required by 8 C.F.R. § 214.2(h)(4)(iii)(D)(4).

Thus, the AAO must consider whether the beneficiary's work experience coupled with her education is sufficient to establish that she is qualified to perform the duties of a specialty occupation. In this matter it is not. When evaluating a beneficiary's qualifications under the fifth criterion, CIS considers three years of specialized training and/or work experience to be the equivalent of one year of college-level training. In addition to documenting that the length of the beneficiary's training and/or work experience combined with

any advanced education credentials is the equivalent of four years of college-level training, the petitioner must also establish that the beneficiary's training and/or work experience has included the theoretical and practical application of the specialized knowledge required by the specialty occupation, and that the experience was gained while working with peers, supervisors, or subordinates who have degrees or the equivalent in the specialty occupation. The petitioner must also document recognition of the beneficiary's expertise in the specialty, as evidenced by one of the following: recognition of expertise in the specialty occupation by at least two recognized authorities in the same specialty occupation; membership in a recognized foreign or U.S. association or society in the specialty occupation; published material by or about the alien in professional publications, trade journals, books or major newspapers; licensure or registration to practice the specialty in a foreign country; or achievements which a recognized authority¹ has determined to be significant contributions to the field of the specialty occupation.

The record provides an evaluation of the beneficiary's degree in tourism management from the Foreign Credential Evaluations, Inc. which only establishes the beneficiary's two years of education in Syria as the equivalent of a U.S. associate's degree in tourism management. The various letters submitted on the beneficiary's behalf do not establish that her work in Syria and in the United States is equivalent to an additional two years of college-level education. The letters submitted simply describe the beneficiary's job duties but do not show how these duties contribute to the beneficiary's competency as a business analyst in a travel agency. Moreover, the petitioner's letter describing the beneficiary's duties suggests that the beneficiary has been primarily employed as a travel agent, an occupation that does not require degreed employment. Further, the letters submitted do not sufficiently describe the beneficiary's peers, supervisors, or her subordinates' credentials. Thus, the record is insufficient to establish that the beneficiary's training and/or work experience includes the theoretical and practical application of specialized knowledge required by a specialty occupation; that the beneficiary's experience was gained while working with peers, supervisors, or subordinates who have a degree or degree equivalent in a specialty occupation; or that the beneficiary's "expertise" in a specialty occupation has been recognized. Accordingly, the petitioner has not established the beneficiary's qualifications to perform the duties of a specialty occupation under the regulation at 8 C.F.R. § 214.2(h)(4)(iii)(C)(4).

The petitioner has not submitted argument or documentation on appeal sufficient to overcome the director's decision on this issue. The petitioner has not established that the beneficiary has the requisite qualifications to perform the duties of a specialty occupation. For this reason, the petition will not be approved.

Beyond the decision of the director, the AAO finds that the description of the duties of the proffered position in its January 7, 2005 response to the director's RFE does not establish that the proffered position is a business analyst position. The duties described are general and do not clarify what tasks the beneficiary would

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 opinion, 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)(i)(C)(ii).

perform for the petitioner on a daily basis. In light of the beneficiary's past duties for the petitioner, her lack of a degree or experience in business administration or a related field, and the generality of the described duties, the AAO questions whether the position described and the work the beneficiary will perform are the duties of a specialty occupation. The record does not establish that the actual duties associated with the proffered position fulfill the criteria to qualify as a specialty occupation. For this additional reason, the petition will be denied.

An application or petition that fails to comply with the technical requirements of the law may be denied by the AAO even if the Service Center does not identify all of the grounds for denial in the initial decision. *See Spencer Enterprises, Inc. v. United States*, 229 F. Supp. 2d 1025, 1043 (E.D. Cal. 2001), *aff'd*. 345 F.3d 683 (9th Cir. 2003); *see also Dor v. INS*, 891 F.2d 997, 1002 n. 9 (2d Cir. 1989)(noting that the AAO reviews appeals on a *de novo* basis).

The petition will be denied and the appeal dismissed for the above stated reasons, with each considered as an independent and alternative basis for the decision. 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. Accordingly, the AAO will not disturb the director's denial of the petition.

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