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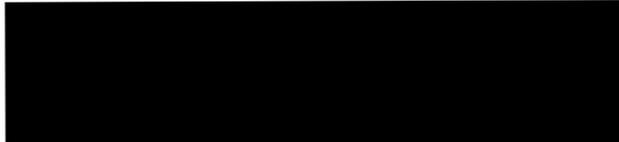
FILE: WAC 05 204 51979 Office: CALIFORNIA SERVICE CENTER Date: **NOV 25 2008**

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.

John Grissom, Acting Chief  
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 The director's decision will be withdrawn. The matter will be remanded to the director for entry of a new decision.

The petitioner is a textile importer and converter. It seeks to employ the beneficiary as a junior business analyst and endeavors to classify her 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 stating that it had not been established that the beneficiary was qualified to perform the duties of a specialty occupation. Specifically, the director held that the university transcripts submitted by the petitioner, and those submitted in response to the director's request for evidence, were inconsistent and without original documents it could not be determined that the beneficiary was qualified to perform the duties of a specialty occupation. On appeal, counsel submits a brief and additional information stating that the beneficiary is qualified to perform the duties of a specialty occupation.

The issue to be discussed in this proceeding is whether 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)(1) of the Act, 8 U.S.C. § 1184(i)(1), defines the term "specialty occupation" as an occupation that requires:

- (A) theoretical and practical application of a body of highly specialized knowledge, and
- (B) attainment of a bachelor's or higher degree in the specific specialty (or its equivalent) as a minimum for entry into the occupation in the United States.

The term "specialty occupation" is further defined at 8 C.F.R. § 214.2(h)(4)(ii) as:

[A]n occupation which requires theoretical and practical application of a body of highly specialized knowledge in fields of human endeavor including, but not limited to, architecture, engineering, mathematics, physical sciences, social sciences, medicine and health, education, business specialties, accounting, law, theology, and the arts, and which requires the attainment of a bachelor's degree or higher in a specific specialty, or its equivalent, as a minimum for entry into the occupation in the United States.

Pursuant to 8 C.F.R. § 214.2(h)(4)(iii)(A), to qualify as a specialty occupation, the position must meet one of the following criteria:

- (1) A baccalaureate or higher degree or its equivalent is normally the minimum requirement for entry into the particular position;

- (2) The degree requirement is common to the industry in parallel positions among similar organizations or, in the alternative, an employer may show that its particular position is so complex or unique that it can be performed only by an individual with a degree;
- (3) The employer normally requires a degree or its equivalent for the position; or
- (4) The nature of the specific duties are so specialized and complex that knowledge required to perform the duties is usually associated with the attainment of a baccalaureate or higher degree.

Citizenship and Immigration Services (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.

As previously stated, the first issue to be determined is whether the beneficiary is qualified to perform the duties of 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.

Pursuant to 8 C.F.R. § 214.2(h)(4)(iii)(D), for purposes of paragraph (h)(4)(iii)(C)(4) of this section, equivalence to completion of a United States baccalaureate or higher degree shall mean achievement of a level of knowledge, competence, and practice in the specialty occupation that has been determined to be equal to that of an individual who has a baccalaureate or higher degree in the specialty and 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 director had concerns about the beneficiary's qualifications to perform the duties of a specialty occupation. As such, the director issued a request for evidence asking that the petitioner submit original transcripts from the beneficiary's foreign university that are signed and dated by the university registrar in an unopened envelope that is signed and dated by the school registrar. The director also requested the beneficiary's original diploma. In response to that request, the petitioner submitted original transcripts that were signed and dated by the university registrar, and the envelope from the beneficiary's university. The envelope, however, was not sealed and had been opened. The petitioner states that the envelope was opened by FedEx pursuant to U.S. Customs regulations to ensure the safety of the mailing.

The documents submitted indicate that the beneficiary earned a bachelor's degree in business administration – management, from the University Of The East in the Philippines. The transcripts are original transcripts that have been signed by the university's registrar. The mailing envelope is included in the record, and documentation indicates that the documents cleared customs when entering the country. It is unclear why the university envelope (letter sized) would have been opened by customs agents, or even if it is the policy of customs agents to open such items. Taken as a whole, however, the submitted materials establish that the transcripts are original

transcripts signed by authorized representatives of the University Of The East. They will, therefore, for evidentiary purposes, be accepted as such and the petitioner has overcome the director's concerns in this regard.

The petitioner submitted a credentials evaluation from a credentials evaluation service which establishes that the beneficiary's foreign degree is equivalent to a Bachelor of Science Degree in Business Administration, with a major in Management, from an accredited university in the United States. The beneficiary is, therefore, qualified to perform the duties of a specialty occupation requiring a degree in business management. 8 C.F.R. § 214.2(h)(4)(iii)(C)(2). The director's decision to the contrary is withdrawn.

The petition, however, may not be approved because it does not appear that the proffered position qualifies as a specialty occupation. As detailed in the petitioner's letter of May 20, 2005, the duties of the beneficiary are generally described and appear to be those performed by advertising, marketing, promotions, public relations, and sales managers as described in the Department of Labor's *Occupational Outlook Handbook (Handbook)*. The beneficiary may also perform some additional managerial duties. The *Handbook* notes that a wide range of educational backgrounds is suitable for entry into the aforementioned positions, but that many employers prefer related experience plus a broad liberal arts background. Bachelor's degrees in sociology, psychology, literature, journalism, philosophy, or other subjects are suitable. Requirements will vary, however, depending on the duties of a particular position. For example, some employers prefer a bachelor's or master's degree in business administration with an emphasis in marketing, for marketing, sales, and promotion management positions. In highly technical industries such as computer and electronics manufacturing a degree in engineering or science combined with a business degree may be preferred. In public relations management positions some employers prefer a bachelor's or master's degree in public relations or journalism. The *Handbook* further notes that most advertising, marketing, promotions, public relations, and sales management positions are filled by promoting experienced staff or related professional or technical personnel. Many managers are former sales representatives, purchasing agents, or promotions specialists. A baccalaureate or higher degree in a specific specialty or its equivalent is not, therefore, the minimum requirement for entry into the position. A degree in a wide range of disciplines will suffice.

This matter is remanded to the director to determine if the proffered position qualifies as a specialty occupation. The director has not previously addressed this issue as the petition was denied on another ground. The director may request such additional evidence as he deems necessary in rendering his decision.

As always, the burden of proof in these proceedings rests solely with the petitioner. Section 291 of the Act, 8 U.S.C. § 1361.

**ORDER:** The director's decision is withdrawn. The petition is remanded to the director to enter a new decision commensurate with the directives of this opinion, which, if adverse to the petitioner, shall be certified to the AAO for review.