

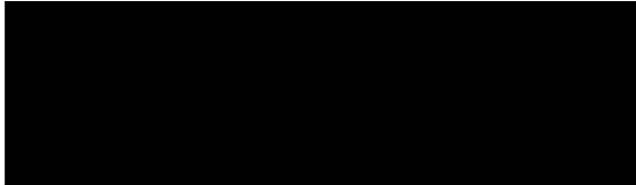
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U.S. Department of Homeland Security
20 Mass. Ave., N.W., Rm. 3000
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U.S. Citizenship
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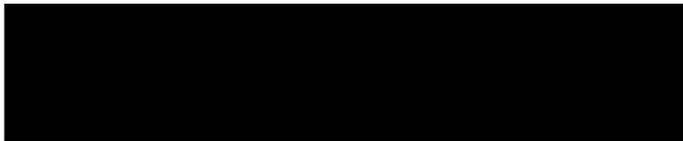
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FILE: WAC 07 148 54946 Office: CALIFORNIA SERVICE CENTER Date: OCT 17 2008

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

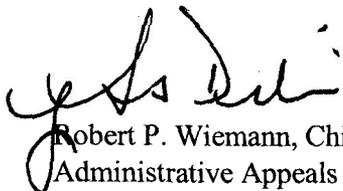
PETITION: Petition for a Nonimmigrant Worker Pursuant to Section 101(a)(15)(H)(i)(b) of the
Immigration and Nationality Act, 8 U.S.C. § 1101(a)(15)(H)(i)(b)

ON BEHALF OF PETITIONER:



INSTRUCTIONS:

This is the decision 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 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 involved in the production, import/export, marketing and distribution of ready-made apparel. It seeks to employ the beneficiary as a merchandising analyst 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 was not qualified to perform the duties of the proffered position. On appeal, the petitioner states that the beneficiary is qualified to perform the duties of the proffered position and submits documentation in support of the appeal.

The issue before the AAO 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)(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 petitioner seeks the beneficiary's services as a merchandising analyst and requires a bachelor's degree in marketing or merchandising for entry into the proffered position. In order to establish the beneficiary's qualifications for entry into the proffered position, the petitioner submitted the following credentials evaluations:

- An evaluation from [REDACTED] Adjunct Instructor, the Fashion Institute of Technology (FIT). Ms. [REDACTED] states that based upon the beneficiary's work experience, he "has attained a level of professional competence equivalent to a bachelor's degree in the field of Fashion Merchandising Management."

Ms. [REDACTED] evaluation does not establish that the beneficiary is qualified to perform the duties of a specialty occupation. Evaluations of work experience for degree equivalence purposes may only be made by 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. 8 C.F.R. § 214.2(h)(4)(iii)(D)(1). The record does not establish that Ms. [REDACTED] has authority to grant college-level credit for training and/or experience, nor does the record establish that Ms. [REDACTED]'s employer, FIT, has a program for granting such credit. As such, her evaluation is of little evidentiary value. CIS may, in its discretion, use as advisory opinion statements submitted as expert

testimony. However, where an opinion is not in accord with other information or is in any way questionable, CIS is not required to accept, or may give less weight, to that evidence. *Matter of Caron International*, 19 I&N Dec. 791 (Comm. 1988).

- An evaluation dated October 25, 2007, from Dr. [REDACTED] Professor of Marketing, Pace University. Dr. [REDACTED]'s evaluation does not establish that the beneficiary is qualified to perform the duties of a specialty occupation. Again, evaluations of work experience for degree equivalence purposes may only be made by 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. 8 C.F.R. § 214.2(h)(4)(iii)(D)(I). The record does not establish that Dr. [REDACTED] has authority to grant college-level credit for training and/or experience. As such, his evaluation is of little evidentiary value. CIS may, in its discretion, use as advisory opinion statements submitted as expert testimony. However, where an opinion is not in accord with other information or is in any way questionable, CIS is not required to accept, or may give less weight, to that evidence. *Matter of Caron International*, 19 I&N Dec. 791 (Comm. 1988).

The petitioner, on appeal, submitted with the statement of Dr. [REDACTED] a letter from [REDACTED] Associate Dean, Lubin School of Business, Pace University, dated October 23, 2003. Mr. [REDACTED] states in that document that Pace University has a program through which college-level credit may be issued based on a candidate's foreign academic studies, training, and professional experience. He then states that Dr. [REDACTED] has authority to "make recommendations" regarding the granting of college-level credit for experience. Mr. [REDACTED] does not state that Dr. [REDACTED] has authority to grant college-level credit for experience, but may make recommendations as to whether such credit should be granted. This statement is consistent with a statement of record dated December 9, 2003 wherein [REDACTED], Director of Admissions, Graduate and Undergraduate Programs, Pace University, states that professors at the university have authority to make determinations regarding the issuance of credit for academic studies and/or professional experience, but that the issuance of the credit is actually made by the Office of Admissions and the Office of the Registrar. Dr. [REDACTED] per the letters of [REDACTED] and [REDACTED], may make recommendations as to whether certain experience may qualify for college-level credit, but the decision to grant the credit would ultimately be made by the Office of Admissions and the Office of the Registrar.

It should further be noted that the record contains two additional letters from [REDACTED], one dated October 29, 2003, and another dated June 2, 2003. Each states that [REDACTED] has authority to grant college-level credit for experience. The three statements from [REDACTED], and that of [REDACTED], are in conflict, and do not permit a conclusive determination, based on the record, as to whether Dr. [REDACTED] has the requisite authority to grant college-level credit for experience, or merely has the authority to recommend that such credit be granted. The conflict is not resolved in the record. Simply going on the record without supporting documentary evidence is not sufficient for purposes of meeting the burden of proof in these proceedings. *Matter of Soffici*, 22 I&N Dec. 158, 165 (Comm. 1998) (citing *Matter of Treasure Craft of California*, 14 I&N 190 (Reg. Comm. 1972)). As such, the credentials evaluation of [REDACTED] is of little evidentiary value.

Citizenship and Immigration Services (CIS), may itself determine whether the beneficiary is qualified to perform the duties of the specialty occupation. That determination may be made pursuant to 8 C.F.R. § 214.2 (h)(4)(iii)(D)(5), which provides:

For purposes of determining equivalency to a baccalaureate degree in the specialty, three years of specialized training and/or work experience must be demonstrated for each year of college-level training the alien lacks. For equivalence to an advanced (or Masters) degree, the alien must have a baccalaureate degree followed by at least five years of experience in the specialty. . . . 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;
- (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 documentation referencing the beneficiary's work experience is insufficient in detail to determine that: the beneficiary's past work experience included the theoretical and practical application of specialized knowledge required by the specialty occupation; the beneficiary's experience was gained while working with peers, supervisors, or subordinates who have a degree or its equivalent in the specialty occupation; or that the beneficiary has recognition of expertise in the specialty. CIS cannot, therefore, determine that the beneficiary is qualified to perform the duties of the specialty occupation.

Beyond the decision of the director, the record does not establish that the position is a specialty occupation. The duties of the proffered position, as described by the petitioner, appear to fall within the duties normally performed by advertising, marketing, promotions and sales managers. The Department of Labor's *Occupational Outlook Handbook (Handbook)* notes that a wide range of educational backgrounds is suitable for entry into advertising, marketing, promotions, and sales manager 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. The *Handbook* notes that most advertising, marketing, promotions, 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. The petitioner has failed to establish that a degree in a specific educational discipline is normally the minimum requirement for entry into the position. Thus, the position doesn't qualify as a specialty occupation under 8 C.F.R. § 214.2(h)(4)(iii)(A)(1). The record does not establish that the position qualifies as a specialty occupation under any of the remaining criteria at 8 C.F.R. § 214.2(h)(4)(iii)(A). For this additional reason the petitioner may not be approved.

For reasons related in the preceding discussion, the petitioner has not established that the beneficiary is qualified to perform the duties of a specialty occupation requiring a bachelor's degree in a specific educational discipline closely related to the duties of the proffered position. Accordingly, the AAO shall not disturb the director's decision 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 failed to sustain that burden and the appeal shall accordingly be dismissed.

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