



U.S. Citizenship
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Services

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PETITION NUMBER



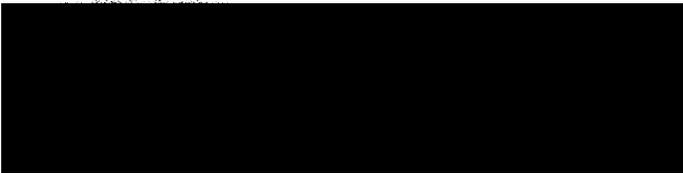
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FILE: WAC 03 151 54230 Office: CALIFORNIA SERVICE CENTER Date: 4/15/2005

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 professional construction management and consultancy firm. In order to employ the beneficiary as an in-house management analyst, 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).

The director denied the petition on the basis that the petitioner had failed to establish that the beneficiary was qualified to serve the specialty occupation position of management analyst. Upon review of the entire record, including all the documentation and other information submitted in the record from the filing of the Form I-129 through the appeal, the AAO finds that the director was correct.

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.

The degree referenced by section 214(i)(1)(B) of the Act means one in a specific specialty that is characterized by a body of highly specialized knowledge that must be theoretically and practically applied in performing the duties of the proffered position.

In implementing 214(i)(2) of the Act, 8 U.S.C. § 1184(i)(2), the regulation at 8 C.F.R. § 214.2(h)(4)(iii)(C) states that an alien must meet one of the following criteria in order to qualify to perform services in a specialty occupation:

- (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 his decision the director acknowledged that the beneficiary holds the foreign equivalent of a U.S. bachelor's degree in hotel and restaurant management. However, the director found that "Management Analysts typically have a master's degrees in Business Management," and he also noted that the beneficiary does not possess licensure or certification establishing her qualifications to serve as a management analyst. The director also determined that the evidence of record did not establish work experience for which, in conjunction with the beneficiary's baccalaureate degree, Citizenship and Immigration Services (CIS) could recognize the equivalent of a master's degree.

On appeal, the petitioner does not contest the director's determination that the evidence of the beneficiary's experience is insufficient to establish the equivalent of a U.S. master's degree. Rather, the petitioner contends that the beneficiary's U.S.-equivalent bachelor's degree in hotel and restaurant management is sufficient to qualify the beneficiary for the proffered position. Thus, only the criterion at 8 C.F.R. §214.2(h)(4)(iii)(C) is an issue here.

The petitioner (at pages 2 and 3 of its Appeal Brief) states:

In the case at hand, the petitioner, an engineering and construction consultancy firm, desires the hiring of a full-time Management Analyst who will conduct analysis of work-related problems and procedures; research and project management; as well as the recommendatory functions that aim to supply management with sound business recommendations. These functions can be performed by someone with educational training not only in business management but in other areas of management as well, like institution management or organization management. These courses train their graduates in areas of analyses, research, project management, and other enterprise administration concerns.

The petitioner further states that the beneficiary's college transcript and the educational credentials evaluation show that she attended and completed courses relevant to the proffered position, and the petitioner provides the following list:

- (1) Purchasing management;
- (2) Marketing management;
- (3) Human Resources Management;
- (4) Finance Management;
- (5) Facilities Design and Building Engineering Systems[;]

- (6) Facilities Design and Building Engineering Systems Laboratory[:]
- (7) Entrepreneur Franchising and Small Business Management.

The petitioner's course listing fails to include the full course designations for the first four courses, which indicate that they were limited to the operations of restaurant and hotels, and not construction management and consulting, which are the areas in which the petitioner works.¹

The petitioner presents no witnesses or documents to support its contention that the beneficiary's coursework is sufficient to equip a person to serve in the position of management analyst, and the petitioner's argument is not substantiated by the evidence of record. Going on 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 Dec. 190 (Reg. Comm. 1972)). Furthermore, it is not evident in the beneficiary's transcript or the related educational credentials evaluation that the beneficiary's hotel and restaurant management coursework equipped her to perform highly specialized theoretical and practical work in management analysis –the work for which she would be hired - and the record of proceeding lacks a persuasive explanation of how that coursework would be sufficient.

The record provides no basis for disturbing the director's decision. The petitioner failed to establish that the beneficiary is qualified to perform services in a specialty occupation according to the standards of 8 C.F.R. §§ 214.2(h)(4)(iii)(C) and (D).

As always, the burden of proving eligibility for the benefit sought remains entirely with the petitioner. Section 291 of the Act, 8 U.S.C. § 1361. The petitioner has not met that burden.

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

¹ The full title of these courses are: Purchasing Management and the Hospitality Industry; Marketing Management for the Hospitality Industry; Human Resources Management for the Hospitality Industry; and Financial Management for the Hospitality Industry.