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U.S. Citizenship
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FILE: WAC 02 230 52043 Office: CALIFORNIA SERVICE CENTER Date:

MAY 16 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 materials 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 service center director denied the nonimmigrant visa petition. The matter is now on appeal before the Administrative Appeals Office (AAO). The appeal will be dismissed. The petition will be denied.

The petitioner is an adult residential facility for the developmentally disabled. It seeks to employ the beneficiary as a management analyst and 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 on the ground that the beneficiary is not qualified to perform services in the 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.

Section 214(i)(2) of the Act, 8 U.S.C. § 1184(i)(2), provides that an alien must have the following credentials to be qualified to perform the services of a specialty occupation:

- (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.

As further explained in 8 C.F.R. § 214.2(h)(4)(iii)(C), an alien must meet one of the following criteria to qualify to perform the services of 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.

For the purpose of deciding whether the beneficiary is qualified under 8 C.F.R. § 214.2(h)(4)(iii)(C)(4), 8 C.F.R. § 214.2(h)(4)(iii)(D) provides that the determination shall be based on 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 [CIS] 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. 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 ¹ 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 record of proceeding before the AAO contains: (1) Form I-129 and supporting documentation; (2) the director's request for evidence (RFE); (3) the petitioner's response to the RFE; (4) the notice of decision; and (5) Form I-290B (Notice of Appeal). The AAO reviewed the record in its entirety before issuing its decision.

As evidence of the beneficiary's qualifications to perform the services of a management analyst position, which normally requires a master's degree in business administration or a related field, according to the Department of Labor (DOL)'s *Occupational Outlook Handbook (Handbook)*, the petitioner submitted evidence of the beneficiary's academic degrees in the Philippines – which include a bachelor of science in biological science in 1979, a doctor of veterinary medicine in 1984, and a master of science in agriculture in 1992 – and of her employment at the Department of Agriculture in the Philippines from 1981 to 2001, the last twelve as a supervisor/center chief. The petitioner also submitted two evaluations of the beneficiary's education and work experience which concluded that the beneficiary had the equivalent of a master's degree in business administration or of business administration and management. Based on this evidence the petitioner asserted that the beneficiary was qualified to perform the services of the proffered position under 8 C.F.R. § 214.2(h)(4)(iii)(C)(4).

In his decision the director first determined that the beneficiary did not qualify to perform the services of a management analyst under 8 C.F.R. § 214.2(h)(4)(iii)(C)(1) because she does not have a master's degree in business administration from a U.S. university, or under 8 C.F.R. § 214.2(h)(4)(iii)(C)(2) because none of her Filipino degrees is equivalent to a master's degree in business administration from a U.S. university, or under 8 C.F.R. § 214.2(h)(4)(iii)(C)(3) because she does not have a license to practice the specialty occupation in California, her intended state of employment. The director then determined that the beneficiary also did not qualify to perform the services of a management analyst under 8 C.F.R. § 214.2(h)(4)(iii)(C)(4) because the record failed to establish that she had the requisite progressively responsible work experience in the specialty to compensate for her lack of an academic degree in the field. The director also declared that the credential service(s) used to evaluate the beneficiary's degrees and work experience did not have the authority to grant college level credit for training and/or experience in the specialty, as required in the regulations.

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 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 appeal counsel asserts that the director erred in determining that the evaluators of the beneficiary's education and work experience did not have the authority to grant college-level credit for specialized work experience. Counsel also asserts that the letter from the Philippine Department of Agriculture demonstrates that the beneficiary's work involved great responsibility and sophistication in business management and that this employment, together with the beneficiary's academic coursework, is comparable to a master's degree in business administration, thus qualifying the beneficiary to perform the services of the specialty occupation under 8 C.F.R. § 214.2(h)(4)(iii)(C)(4).

The record indicates that one of the evaluators does have authority to award academic credit for business-related work experience. No such evidence is on record for the other evaluator. Thus, only one of the evaluations can be considered by the AAO in determining whether the beneficiary's education and work experience is equivalent to a master's degree in business administration under 8 C.F.R. § 214.2(h)(4)(iii)(D)(1). The record does not support that evaluator's conclusion that the beneficiary's employment experience and academic coursework is comparable to a master's degree in business administration. None of the beneficiary's three degrees in the Philippines is in a business-related field, and her college and university transcripts do not indicate any significant business-related coursework. It is clear that the evaluator based his conclusion that the beneficiary had the equivalent of a master's degree in business administration almost exclusively on the "certification of employment" by the regional technical director of Regional Field Unit IV of the Philippine Department of Agriculture, who confirms that the beneficiary was employed from June 1, 1981 to December 31, 2001 as part of the technical staff, for the last twelve years as supervisor/center chief. The letter describes the beneficiary's duties as follows:

[P]lanning, implementing, coordinating, monitoring, and evaluating various programs, projects, and activities of the office; supervising procurement of related materials; establishing priorities and the sequence of specific work orders; preparing the office's annual budget; designating specific personnel for specific tasks; improvising, developing, or revising operational working practices; overseeing personnel's strict compliance with the functional operating standard; promoting projects through coordination with clients, campaigns, and advertisements; and representing the office at meetings, conferences, conventions, and other gatherings in relation to project planning, implementation, monitoring, and evaluation.

The foregoing description of the beneficiary's job duties is a series of broad generalities that provides little detail about the substance of her daily work and the scope of her responsibilities. There is no information about how many employees work in the regional field unit, how many employees the beneficiary directly supervised, and whether her supervisory duties were shared with other personnel. The job description gives little indication that the position required the theoretical and practical application of a body of highly specialized knowledge. The letter's general reference to the beneficiary having served in Regional Field Unit IV as technical staff and as supervisor/center chief for the last twelve years provides little concrete evidence that the beneficiary's tenure with the Department of Agriculture involved progressively responsible experience in business administration or a related specialty field, as required in the regulations. Based on the foregoing analysis, the AAO determines that the letter from the Philippine Department of Agriculture provides an insufficient evidentiary basis for the evaluation service to conclude that the beneficiary's experience in that government agency involved

highly specialized work and progressively responsible positions in business administration or a related specialty occupation.

CIS may, in its discretion, use as advisory opinions statements from universities, professional organizations, or other sources submitted in evidence as expert testimony. When an opinion is not in accord with other information or is in any way questionable, however, CIS is not required to accept or may give less weight to that evidence. *See Matter of Caron International, Inc.*, 19 I&N Dec. 791, 795 (Comm. 1988). In view of the evaluator's heavy reliance on the letter from the Philippine Department of Agriculture, the AAO concludes that the evaluation does not represent persuasive evidence that the beneficiary's work experience in the Philippine Department of Agriculture and unrelated educational background is equivalent to a master's degree in business administration, as required under 8 C.F.R. § 214.2(h)(4)(iii)(D)(1) for the beneficiary to be qualified to perform the services of the specialty occupation under 8 C.F.R. § 214.2(h)(4)(iii)(C)(4).

The regulation at 8 C.F.R. § 214.2(h)(4)(iii)(D)(5) requires three years of specialized work experience for each year of college-level training the alien lacks for equivalence to a baccalaureate degree, and another five years of specialized work experience for equivalence to a master's degree. The AAO will accept the beneficiary's first two years of university credit as general coursework preceding the specialization of a degree. The beneficiary's transcripts do not show any business- or management-related coursework. Therefore, the beneficiary must demonstrate eleven years of progressively responsible work experience in areas related to the specialty to have the equivalent of a master's degree in business administration or a related specialty. For the reasons previously discussed, however, the letter from the Philippine Department of Agriculture does not provide persuasive evidence that the beneficiary's tenure with that government agency involved specialized work and progressively responsible positions in business administration or a related field. Furthermore, there is no evidence that the beneficiary was working with peers, supervisors, or subordinates in the Philippines who have a master's degree or its equivalent in business administration or a related field, or documentation showing that the beneficiary has been recognized for her expertise in the specialty field. Thus, the record does not establish that any of the beneficiary's work at the Philippine Department of Agriculture qualifies as specialized work experience that can be counted toward master's degree equivalence in business administration or a related field. Accordingly, the beneficiary does not have eleven years of specialized and progressively responsible work experience in business administration or a related field, as required by 8 C.F.R. § 214.2(h)(4)(iii)(D)(5) for the beneficiary to be qualified to perform the services of the specialty occupation under 8 C.F.R. § 214.2(h)(4)(iii)(C)(4).

Based on the foregoing analysis, the AAO determines that the beneficiary does not qualify to perform the services of the specialty occupation under any of the criteria enumerated in 8 C.F.R. § 214.2(h)(4)(iii)(C) and 8 C.F.R. § 214.2(h)(4)(iii)(D).

The petitioner bears the burden of proof in these proceedings. *See* 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 decision denying the petition.

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