

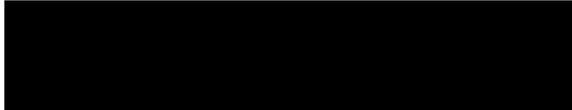


D2

U.S. Department of Justice

Immigration and Naturalization Service

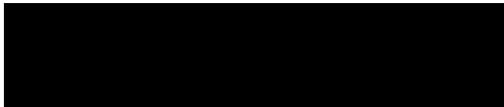
OFFICE OF ADMINISTRATIVE APPEALS  
425 Eye Street N.W.  
ULLB, 3rd Floor  
Washington, D.C. 20536



File: WAC-99-136-50144 Office: California Service Center

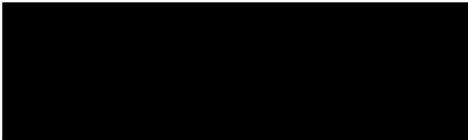
Date: NOV 27 2001

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)

IN BEHALF OF PETITIONER:



Public Copy

INSTRUCTIONS:

This is the decision in your case. All documents have been returned to the office which originally decided your case. Any further inquiry must be made to that office.

If you believe the law was inappropriately applied or the analysis used in reaching the decision was inconsistent with the information provided or with precedent decisions, you may file a motion to reconsider. Such a motion must state the reasons for reconsideration and be supported by any pertinent precedent decisions. Any motion to reconsider must be filed within 30 days of the decision that the motion seeks to reconsider, as required under 8 C.F.R. 103.5(a)(1)(i).

If you have new or additional information which you wish to have considered, you may file a motion to reopen. Such a motion must state the new facts to be proved at the reopened proceeding and be supported by affidavits or other documentary evidence. Any motion to reopen must be filed within 30 days of the decision that the motion seeks to reopen, except that failure to file before this period expires may be excused in the discretion of the Service where it is demonstrated that the delay was reasonable and beyond the control of the applicant or petitioner. Id.

Any motion must be filed with the office which originally decided your case along with a fee of \$110 as required under 8 C.F.R. 103.7.

FOR THE ASSOCIATE COMMISSIONER,  
EXAMINATIONS

Robert P. Wiemann, Director  
Administrative Appeals Office

**DISCUSSION:** The nonimmigrant visa petition was denied by the Director, California Service Center. A subsequent appeal was dismissed by the Associate Commissioner for Examinations. The matter is now before the Associate Commissioner for Examinations on motion to reopen and reconsider. The motion will be granted. The previous decision of the Associate Commissioner will be affirmed.

The petitioner imports and distributes musical instruments. It has 25 employees and a gross annual income of \$5,905,054.70. It seeks to employ the beneficiary as a market analyst for a period of three years. The director determined the petitioner had not established that the beneficiary qualifies to perform services in a specialty occupation.

On appeal, counsel had provided additional information in support of the appeal.

The Associate Commissioner dismissed the appeal reasoning that the beneficiary had no master's degree in any field of study nor a degree in either economics or marketing. The Associate Commissioner further found, beyond the decision of the director, that the proffered position appeared to combine the duties of a general manager or executive and a marketing manager and did not require a baccalaureate degree in a specialized area.

On motion, counsel submits an expanded description of the proposed duties and a new credentials evaluation indicating that the beneficiary holds the equivalent of a master's degree conferred by a regionally accredited U.S. academic institution. Counsel states that the Associate Commissioner's decision is inconsistent with prior Service decisions and improperly discusses whether the proffered position is a specialty occupation, an issue which was not raised by the director.

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), provides in part for nonimmigrant classification to qualified 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 a "specialty occupation" as an occupation that requires theoretical and practical application of a body of highly specialized knowledge, and 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.

Pursuant to section 214(i)(2) of the Act, 8 U.S.C. 1184(i)(2), to qualify as an alien coming to perform services in a specialty occupation the beneficiary must hold full state licensure to practice in the occupation, if such licensure is required to practice in the occupation. In addition, the beneficiary must have

completed the degree required for the occupation, or have experience in the specialty equivalent to the completion of such degree and recognition of expertise in the specialty through progressively responsible positions relating to the specialty.

The petitioner asserts that the proffered position is that of a market analyst. At page 149 of the Occupational Outlook Handbook, 2000 - 2001 edition, the DOL states the following about the level of training required for market research analysts:

Graduate training is required for many private sector economist and marketing research analyst jobs...A bachelor's degree with a major in economics or marketing may not be sufficient to obtain some positions as an economist or marketing analyst, but is excellent preparation for many entry-level positions....

In the instant case, the record indicates that the beneficiary holds a bachelor's degree in computer data processing management conferred by a university in the Philippines. The record contains evaluations from two different credentials evaluation services. The first evaluator evaluated the beneficiary's foreign baccalaureate degree only and found it to be equivalent to a bachelor of science degree in computer data processing management conferred by an accredited U.S. institution. The petitioner has not established, however, that this education is relevant to the duties of the proffered position.

The second evaluator found the beneficiary's foreign baccalaureate degree to be equivalent to a bachelor of science degree in computer science with a major in computer data processing management. The second evaluator also evaluated the beneficiary's foreign baccalaureate degree in combination with her foreign graduate courses in business administration (no degree attained) as well as her employment experience. The second evaluator found such education and experience to be equivalent to a master's degree in business administration conferred by a regionally accredited academic institution in the United States.

This Service uses an independent evaluation of a person's foreign credentials in terms of education in the United States as an advisory opinion only. Where an evaluation is not in accord with previous equivalencies or is in any way questionable, it may be rejected or given less weight. See Matter of SEA, Inc., 19 I&N Dec. 817 (Comm. 1988).

The second evaluation of the beneficiary's foreign credentials is based on education and experience. The record, however, does not contain any evidence that the evaluator is 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. In addition, neither the evaluator nor the petitioner have shown that the beneficiary's employment experience was experience in a specialty occupation. Accordingly, the evaluation is accorded little weight.

Furthermore, even if the Service were to conclude that the beneficiary holds the equivalent of a master's degree in business administration, the beneficiary would still not be eligible to perform the duties of a market research analyst position because she does not possess any degree in the specific field of either economics or marketing. Rather, the beneficiary's bachelor's degree is in a computer-related field and her claimed master's degree equivalency is in business administration, which although related to the industry in which the beneficiary works, do not qualify her for a market research analyst position.

The beneficiary is not a member of any organizations whose usual prerequisite for entry is a baccalaureate degree in a specialized area. The record contains no evidence that the beneficiary holds a state license, registration, or certification which authorizes her to practice a specialty occupation. In view of the foregoing, it is concluded that the petitioner has not demonstrated that the beneficiary is qualified to perform services in a specialty occupation.

With respect to counsel's objection to denial of this petition in view of the approval of similar petitions in the past, this Service is not required to approve applications or petitions where eligibility has not been demonstrated. The record of proceeding, as presently constituted, does not contain copies of the previously approved petitions and their supporting documentation. It is, therefore, not possible to determine definitively whether they were approved in error or whether the facts and conditions have changed since their approval.

Beyond the decision of the director, the record contains insufficient evidence to demonstrate that the proffered position is a specialty occupation. As this matter will be dismissed on the grounds discussed, this issue need not be examined further.

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 decision of the director will not be disturbed.

**ORDER:** The decision of the Associate Commissioner dated February 2, 2000, is affirmed.