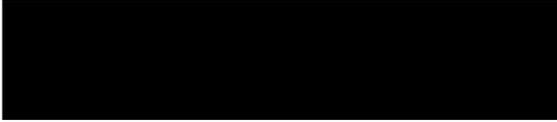




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U.S. Department of Justice
Immigration and Naturalization Service

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



Public Copy

File: WAC 00 025 51306 Office: California Service Center Date: OCT 23 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:

Identifying data deleted to prevent clearly unwarranted invasion of personal privacy

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.

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 that 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 that 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, Acting Director
Administrative Appeals Office

DISCUSSION: The nonimmigrant visa petition was denied by the director and is now before the Associate Commissioner for Examinations on appeal. The appeal will be dismissed.

The petitioner is a scuba diving equipment and training firm with three employees and an approximate gross annual income of \$125,000. It seeks to employ the beneficiary as management analyst for a period of three years. The director determined that the petitioner had not established that the beneficiary qualifies to perform services in a specialty occupation.

On appeal, counsel submits a statement in response to the director's denial.

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 issue to be examined in this proceeding is whether the beneficiary is qualified to perform the services of a specialty occupation, which the director concluded was the position of a market research analyst.

On appeal, counsel states that the director erred in determining that the proffered position requires a master's degree. Counsel states that some employers require a master's degree while others do not.

The beneficiary does not hold a baccalaureate degree in any field of study. The record contains no evidence that the beneficiary ever attended a college, university, or comparable institution of learning. Accordingly, it is concluded that the petitioner has not demonstrated that the beneficiary qualifies to perform services in a specialty occupation based upon education alone.

Counsel has provided an evaluation of the beneficiary's employment experience by a credentials evaluation service which indicates that the beneficiary's background is equivalent to a bachelor's degree in business administration with a major in management. 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).

Here, the evaluation of the beneficiary's foreign credentials is based on education and experience. The evaluator has not demonstrated specifically how the evaluation was made nor the basis for making it (including copies of the relevant portions of any research materials used). In addition, neither the evaluator nor the petitioner has demonstrated that the beneficiary's experience was experience in a specialty occupation. Finally, the evaluator has not demonstrated how various aspects of the beneficiary's employment history correspond to the elements comprising the requirements for a degree in business administration. Accordingly, the evaluation is accorded little weight.

The beneficiary is not a member of any organizations whose usual prerequisite for entry is a baccalaureate degree in a specialized field of study. The record contains no evidence that the beneficiary holds a state license, registration, or certification which authorizes him 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.

The duties of the proffered position are described in pertinent part as follows:

Management analyst and consultant for development and implementation of new management systems including e-commerce and accounting in a fully automated system. Direction of expansion of operations for national and international sales using the internet and expanded advertising.

The duties described are the responsibilities of a management analyst. According to the Department of Labor's (DOL) Occupational Outlook Handbook (Handbook), 2000-2001 edition, at page 69, a management analyst analyzes and proposes ways to improve an organization's structure, efficiency, or profits. Therefore, as the job meets the requirements of the specialty occupation of a management analyst, the beneficiary's educational and employment experience must meet the minimum requirements for a management analyst.

At page 70 of the Handbook, the DOL states the following about the level of training required for management analysts:

Educational requirements for entry-level jobs vary widely between private industry and government. Employers in private industry generally seek individuals with a master's degree in business administration or a related discipline and at least five years of experience in field in which they plan to consult

In the instant case, the beneficiary is seeking employment as a management analyst in the private sector and claims a bachelor's degree in business administration. The beneficiary does not hold a master's degree, which the DOL indicates is generally the minimum requirement for a management analyst job in the private sector. Furthermore, even if the Service were to conclude that a bachelor's degree is sufficient for a market research analyst position within the petitioner's industry, the beneficiary would still not be eligible to perform the duties of the offered position because the petitioner has not demonstrated that the beneficiary's employment experience is equivalent to a baccalaureate degree in a specialized and related field of study.

The petitioner has not persuasively established that the offered position can be classified other than as a management analyst, or that the minimum requirement for the position that the petitioner is offering is a bachelor's degree in business administration. Accordingly, the decision of the director will not be disturbed.

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.

ORDER: The appeal is dismissed.