



U.S. Department of Justice
Immigration and Naturalization Service

Identifying data deleted to
prevent identity information
invasion of personal privacy

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



File: LIN-01-272-54878 Office: Lincoln Service Center Date: 18 DEC 2002

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)

IN BEHALF OF PETITIONER:



PUBLIC COPY

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, 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 The decision of the director will be withdrawn and the petition will be remanded for further consideration and action.

The petitioner is a business providing transportation-related training simulation products. It has forty employees and a stated gross annual income of \$7.3 million. It seeks to employ the beneficiary as its president 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 submits a brief and documentation.

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 director determined that the beneficiary's education, training, and employment experience were not the equivalent of a baccalaureate or higher degree as awarded in the United States. On appeal, counsel argues that the beneficiary does possess the equivalent of U.S. bachelor's degree in business administration as reflected within the two evaluations contained in the record.

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.

The record contains sufficient evidence to establish that the beneficiary has held a variety of managerial and executive positions with a range of corporate entities since 1979 through the present. This represents approximately 22 years of relevant employment experience. The record also contains two evaluations that find the combination of the beneficiary's foreign education, training, and employment experience to be the equivalent of a bachelor of arts degree in business administration from an accredited university in the United States. While neither of the evaluators appears to be 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, the evaluations appear reasonable and the conclusions stated therein are accepted.

In addition, the Department of Labor's (DOL) Occupational Outlook Handbook (Handbook), 2002-2003 edition, at pages 86-89, indicates that a wide variety of educational backgrounds are suitable for employment in a top executive position such as a president. Degrees in business and in liberal arts fields appear equally welcome. In addition, certain personal qualities and participation in in-house training programs are often considered as important as a specific formal academic background. Accordingly, it is concluded that the petitioner has shown that the beneficiary qualifies to perform the duties of the proffered position as the petitioner's president.

The petition may not be approved, however, because the director has not determined whether the proffered position is a specialty occupation. Accordingly, the matter will be remanded to make such a determination and to review all relevant issues. It is noted that in the Handbook, at pages 87-88, the DOL lists no requirement of a baccalaureate or higher degree in a specific specialty for employment in a top executive position such as a president. The director may request any additional evidence he deems necessary. The petitioner may also provide additional documentation within a reasonable period to be determined by the director. Upon receipt of all evidence and representations, the director will enter a new decision.

ORDER: The decision of the director is withdrawn. The matter is remanded for further action and consideration consistent with the above discussion and entry of a new decision which, if adverse to the petitioner, is to be certified to the Associate Commissioner for review.