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U.S. Department of Justice

Immigration and Naturalization Service

preventing clearly unwarranted  
invasion of personal privacy

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



File: EAC-00-265-53976 Office: Vermont Service Center Date: 14 FEB 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:  
[Redacted]

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, Vermont Service Center, and is now before the Associate Commissioner for Examinations on appeal. The appeal will be dismissed.

The petitioner is a software development and support business with 65 employees and an approximate gross annual income of \$6 million. It seeks to employ the beneficiary as an account manager 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 brief and additional 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 denied the petition because the petitioner had failed to establish that the beneficiary qualifies to perform services in a specialty occupation. Specifically, the director noted that the petitioner had not established that the beneficiary's work experience, in combination with her formal education, is the equivalent of a bachelor's degree in human resources management. On appeal, counsel argues that the beneficiary qualifies to perform services in a specialty occupation by virtue of her documented and evaluated formal education as well as her nine years of work experience, including four years of experience in the occupation of human resources manager.

The record indicates that the beneficiary received a Bachelor of Applied Science degree from the Royal Melbourne Institute of Technology in Australia. The beneficiary also received a Graduate

Diploma in Education from the Melbourne College of Advanced Education in Australia.

The beneficiary does not hold a United States baccalaureate or higher degree or a foreign degree which is equivalent to a United States baccalaureate or higher degree in human resources management from an accredited college or university. Nor does the beneficiary hold an unrestricted State license, registration, or certification which authorizes her to fully practice the specialty occupation and be immediately engaged in that specialty in the state of intended employment.

Pursuant to 8 C.F.R. 214.2(h)(4)(iii)(D), equivalence to completion of a United States baccalaureate or higher degree shall mean achievement of a level of knowledge, competence, and practice in the specialty occupation that has been determined to be equal to that of an individual who has a baccalaureate or higher degree in the specialty and shall be determined by 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 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 . . .

The record contains an evaluation report from [REDACTED] Credentials Evaluator for e-ValReports. [REDACTED] finds that the beneficiary has the equivalent of a bachelor's degree in education with a concentration in applied chemistry from an accredited university in the United States. [REDACTED] further notes that the beneficiary has four years of work experience in the field of human resources management and concludes that she also has the equivalent of a bachelor's degree in human resources management.

In response to a Service request for additional evidence, the petitioner submitted an additional evaluation report from [REDACTED] [REDACTED] Director of Admissions and Evaluations for The City University of New York and Chief Evaluator for Culture House, Inc. [REDACTED] finds the beneficiary's educational credentials to be equivalent to a bachelor of science degree in applied science with a double major: applied chemistry and education. [REDACTED] further finds the beneficiary's work experience in the field of human resources management and business consulting to be the equivalent of an additional major in human resources management and business consulting.

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, no evidence has been provided to establish that either 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. Accordingly, the finding by both evaluators that the beneficiary's work experience and formal education are equivalent to a bachelor's degree in human resources management is accorded little weight.

There is no indication in the record that the beneficiary has completed recognized college-level equivalency examinations or special credit programs, such as CLEP or PONSII. Additionally, the petitioner has not submitted 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.

Pursuant to 8 C.F.R. 214.2(h)(4)(iii)(D)(5), the Service may determine that equivalence to completion of a baccalaureate degree in a 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 for expertise in the specialty occupation as a result

of such training and experience. . . . 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 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, 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 shows that the beneficiary has four years of work experience as a Consultant/Senior Account Manager for Icon Recruitment in Melbourne, Australia. The record contains a letter from Peter Hood, an official of Icon Recruitment. [REDACTED] states that the beneficiary developed and managed an extensive contractor and client base and placed permanent candidates in Information Technology positions. The record also contains a letter from [REDACTED] Chief Operating Officer of Icon Recruitment. [REDACTED] states that the beneficiary made quality placements into the accounts that she was responsible for and achieved in excess of her target as set each year. However, neither [REDACTED] nor [REDACTED] provides a detailed description of the duties performed by the beneficiary during her employment for that company. In view of the foregoing, it is concluded that the record does not contain sufficient evidence to show that the beneficiary's claimed four years of work experience required the theoretical and practical application of specialized knowledge required by the specialty occupation and 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.

Neither counsel nor the petitioner has submitted any evidence to demonstrate recognition of the beneficiary's expertise in the specialty occupation by recognized authorities in the same

specialty occupation. No published material by or about the alien in professional publications, trade journals, or major newspapers has been submitted. Nor has any evidence been submitted to show that the beneficiary holds licensure or registration to practice the specialty occupation in a foreign country or that the beneficiary has membership in a recognized foreign or United States association or society in the specialty occupation. Furthermore, neither counsel nor the petitioner has submitted any documentation from a recognized authority stating that the beneficiary has made significant contributions to the field of human resources management.

In view of the foregoing, it is concluded that the record does not contain sufficient documentation to show that the beneficiary qualifies to perform services as a human resources manager.

Beyond the decision of the director, it is noted that the proffered position of accounts manager, which parallels that of a human resources manager, does not qualify as a specialty occupation. A review of the Department of Labor's Occupational Outlook Handbook (Handbook), 2000-2001 Edition, at pages 59-60 finds no requirement of a baccalaureate degree in a specialized area for employment as a human resources manager. The Handbook states:

Because of the diversity of duties and level of responsibility, the educational backgrounds of human resources ... managers vary considerably. In filling entry-level jobs, employers usually seek college graduates. Many employers prefer applicants who have majored in human resources, personnel administration, or industrial and labor relations. Others look for college graduates with a technical or business background or a well-rounded liberal arts education.

However, as this matter will be dismissed on the grounds discussed above, 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.

**ORDER:** The appeal is dismissed.