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U.S. Department of Justice

Immigration and Naturalization Service

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



File: WAC 97 183 50863

Office: California Service Center

Date: 15 FEB 2002

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:



ADJUDICATED

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 initially denied by the director, California Service Center. That decision was withdrawn and remanded to the director for further consideration by the Associate Commissioner for Examinations. The director again denied the visa petition and has certified her decision to the Associate Commissioner for Examinations for review. The director's decision will be affirmed.

The petitioner is a manufacturer and seller of "HPOS Infinity units" which seeks to employ the beneficiary as a marketing 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 certification, counsel resubmits educational and employment documents for the beneficiary and argues that she qualifies for the offered position.

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.

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 beneficiary does not hold a United States baccalaureate degree in any field of study. The beneficiary's foreign education has been found by a credentials evaluation service to be the "U.S. equivalent of ninety semester units (three years) of undergraduate coursework in Physics." The evaluation appears reasonable and will be accepted. Nevertheless, the petitioner has not established that this education is relevant to the duties of the offered position. Based on the record, it is determined that the petitioner has not established that the beneficiary's attainment of a three years of undergraduate work in physics qualifies her for employment as a marketing analyst.

The record indicates that the beneficiary was a teaching assistant at Beijing Institute of Technology from January 1979 through March 1983, a clerk in the general manager's office at the [REDACTED] from March 1983 through January 1986, and the manager of the jewelry department in China [REDACTED] from January 1986 through April 1990. She was the office director and manager of the marketing department at [REDACTED] from May 1990 through May 1991, and the manager of the marketing department and chief representative in the Cobell International Company, Beijing Office from May 1991 through December 1995. She was a business manager for the [REDACTED] Beijing import & Export Co., Ltd. from January 1996 through August 1996.

For the purpose of determining equivalency to a baccalaureate degree in a field related to the job offered in this case, three years of specialized training and/or work experience must be demonstrated for each year of college-level training that the alien lacks. 8 C.F.R. 214.2(h)(4)(iii)(D)(5). Here, the beneficiary needs at least 12 years of experience in the specialty occupation to qualify for the equivalence of a baccalaureate degree.

For equivalence to an advanced (or Masters) degree, which is the minimum educational requirement for a marketing analyst position, the alien must have a baccalaureate degree followed by at least

five years of experience in the specialty. Review of the record indicates that even if she had been given full credit for her work experience, she would have fallen short of having attained the required qualifying experience for a baccalaureate and a masters degree.

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 director's order of April 20, 2000 denying the visa petition is affirmed.