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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: SRC 02 048 50531 Office: TEXAS SERVICE CENTER Date: 31 JAN 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
Robert P. Wiemann, Director
Administrative Appeals Office

DISCUSSION: The Director of the Texas Service Center approved the nonimmigrant visa petition and certified his decision to the Associate Commissioner for Examinations for review. The decision of the director will be withdrawn and the matter remanded to him for entry of a new decision.

The petitioner is a new company that was formed to purchase and develop bakery franchises in South Florida. It does not have any employees or a projected gross annual income; however, it claims to have a capitalization of \$200,000. The petitioner seeks to employ the beneficiary as a market research analyst for a period of three years. The director approved the petition finding that the petitioner met the definition of *United States employer* outlined in 8 C.F.R. 214.2(h)(4)(ii).

Counsel has not submitted any additional evidence on notice of certification.

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 the classification of qualified nonimmigrant aliens who are coming temporarily to the United States to perform services in a specialty occupation.

8 C.F.R. 214.2(h)(4)(ii) states, in pertinent part:

United States employer means a person, firm, corporation, contractor, or other association, or organization in the United States which:

- (1) Engages a person to work within the United States;
- (2) Has an employer-employee relationship with respect to employees under this part, as indicated by the fact that it may hire, pay, fire, supervise, or otherwise control the work of any such employee; and
- (3) Has an Internal Revenue Service Tax identification number.

Evidence in the record indicates that the petitioner is a limited liability company that was organized under the laws of the State of Florida in 2001. According to the Articles of Organization, the beneficiary is the president and treasurer of the petitioner and the beneficiary's wife is the petitioner's vice president and secretary. The Articles of Incorporation also indicate that the beneficiary and the beneficiary's wife each own 50 units of membership interest in the petitioner, and that the petitioner is a "member-managed company," with both the beneficiary and the beneficiary's wife being the only members.

On notice of certification, the director noted that the beneficiary was one owner of the petitioner. The director approved the petition based upon a July 29, 1993 memorandum from Jacquelyn A. Bednarz, Chief, Non-immigrant Branch, of the Immigration and Naturalization Service, who stated that:

. . . Petitions may be filed by the owner of a sole proprietorship or a partner in a partnership provided the petitioner meets the definition of the term "United States employer."

The director's finding that the petitioner met the definition of *United States employer* was reasonable, as a corporation is a separate and distinct legal entity from its owners or stockholders. Matter of M, 8 I&N Dec. 24 (BIA 1958; AG 1958); Matter of Aphrodite Investments Limited, 17 I&N Dec. 530 (Comm. 1980); and Matter of Tessel, 17 I&N Dec. 631 (Act. Assoc. Comm. 1980). Therefore, the beneficiary's ownership of membership interest in the petitioner does not preclude the petitioner from being able to file this nonimmigrant petition in the beneficiary's behalf. Thus, the director's finding that the petitioner was eligible as a United States employer is affirmed.

Despite this finding, however, the petition cannot be approved. As shall be discussed, the beneficiary does not have the credentials necessary to perform the duties of the proffered specialty occupation.

Section 214(i)(1) of the Act, 8 U.S.C. 1184(i)(1), defines the term "specialty occupation" as an occupation that requires:

- (A) theoretical and practical application of a body of highly specialized knowledge, and
- (B) 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.

According to the record, the petitioner entered into a franchise agreement with DPI [REDACTED] to develop Don Pan International Bakery franchises in the South Florida market. Counsel notes that the petitioner's principal activity will consist of market research to determine where to locate each bakery unit. The beneficiary, therefore, is being offered a position to ". . . research market conditions with the Development Area to determine the most appropriate location for each unit." The beneficiary would also be required to ". . . gather data on competitors, prices, and distribution," and direct the petitioner's growth.

The duties described are the responsibilities of a market research

analyst. According to the Department of Labor's (DOL) Occupational Outlook Handbook (Handbook), 2000-2001 edition:

Market, or marketing, research analysts are concerned with the potential sales of a product or service. They analyze statistical data on past sales to predict future sales. They gather data on competitors and analyze prices, sales, and methods of marketing and distribution. . . . After compiling the data, market research analysts evaluate it and make recommendations to their client or employer based upon their findings. They provide a company's management with information needed to make decisions on the promotion, distribution, design, and pricing of products or services. The information may also be used to determine the advisability of adding new lines of merchandise, opening new branches, or otherwise diversifying the company's operations. . . .

As the job meets the requirements of the specialty occupation of a market research analyst, the beneficiary's qualifications must meet the minimum requirements for a market research analyst position. In the Handbook, the DOL states the following about the level of training required for market research analysts:

Graduate education is required for many private sector economist and market and survey research jobs, and for advancement to more responsible positions. . . . Market and survey researchers may earn advanced degrees in economics, business administration, marketing, statistics, or some closely related discipline. . . . Whether working in government, industry, research organizations, marketing, or consulting firms, economists and market and survey researchers with bachelor degrees usually qualify for most entry-level positions as a research assistant, administrative or management trainee, marketing interviewer, or any of a number of professional sales jobs. A master's degree usually is required to qualify for more responsible research and administrative positions.

The DOL indicates that individuals who work as market research analysts in the private sector usually hold a graduate degree in economics, business administration, marketing statistics, or a closely related discipline. The DOL further indicates that individuals with only a bachelor's degree are not qualified for a market research analyst position, as their qualifications would only be sufficient for an entry-level position, such as a research assistant, management trainee or market interviewer. Therefore, in order to be found qualified to perform the duties of the proffered position, the petitioner must demonstrate that the beneficiary holds a graduate degree, or its equivalent, in the

area of economics, business administration, marketing statistics, or a closely related discipline.¹

According to the record, the beneficiary holds a degree in electrical engineering from the University of Carabobo. A credentials evaluation service has determined that this degree is equivalent to a bachelor of science degree in electrical engineering awarded by a regionally accredited university in the United States. Therefore, the beneficiary is not qualified to perform the duties of the proffered position based upon his education alone.

8 C.F.R. 214.2(h)(4)(iii)(C)(4) states that a beneficiary may be qualified to perform services in a specialty occupation if the beneficiary has "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."

8 C.F.R. 214.2(h)(4)(iii)(D) also states, in pertinent part:

Equivalence to completion of a college degree. For purposes of paragraph (h)(4)(iii)(C)(4) of this section, 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);

¹ It is noted that counsel claimed in the petition filing that "[t]he minimum requirement for a Market Research Analyst is a Bachelor's Degree or its equivalent in Business Administration." However, counsel's opinion is not supported by evidence from the DOL, and counsel does not identify from what source, if any, he derived this information.

- (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. For purposes of determining equivalency to a baccalaureate degree in the specialty, three years of specialized training and/or work experience must be demonstrated for each year of college-level training the alien lacks. For equivalence to an advanced (or Masters) degree, the alien must have a baccalaureate degree followed by at least five years of experience in the specialty. If required by a specialty, the alien must hold a Doctorate degree or its foreign equivalent. 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, books, 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.

In the initial petition filing, counsel stated that the beneficiary was qualified for the proffered position based upon his "education and work experience in the field of business administration." Counsel noted that the beneficiary had worked throughout his career as a project manager for development projects which, counsel stressed, involved the planning and management of development projects over a sixteen-year period. In support of counsel's claims, the petitioner submitted a copy of the beneficiary's resume. Additionally, counsel stated that the beneficiary had completed some studies in business administration including courses in Managerial Applications, Cash Management, and Organizational Leadership, among others.

Here, counsel claims that the beneficiary's qualifications for the proffered position are based upon the beneficiary's education in addition to his training and work experience. However, the petitioner has only submitted a credentials evaluation for the beneficiary's education. The petitioner has not submitted 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, as stipulated in 8 C.F.R. 214.2(h)(4)(iii)(D)(1).

Furthermore, the regulations permit the Service to determine a beneficiary's qualifications pursuant to 8 C.F.R. 214.2(h)(4)(iii)(D)(5). However, the Service is unable to determine whether the beneficiary is qualified for the proffered position. The petitioner submitted the beneficiary's resume which, by itself, is insufficient evidence for meeting the burden of proof in these proceedings.

The petitioner has not submitted documentary evidence from the beneficiary's past employers in order to establish that the beneficiary's training and/or work experience included the theoretical and practical application of specialized knowledge required by the specialty occupation; and that the beneficiary's experience was gained while working with peers, supervisors, or subordinates who have a degree or its equivalent in the specialty occupation. The petitioner has also not submitted evidence that the beneficiary has recognition of expertise in the specialty.

Therefore, the case will be remanded to the director to determine whether the beneficiary is qualified to perform the duties of the proffered position. The director may request any additional evidence deemed necessary to assist him with his determination. As always in these proceedings, the burden of proof rests solely with the petitioner. Section 291 of the Act, 8 U.S.C. 1361.

ORDER: The decision of the director, dated December 20, 2001, is withdrawn. The petition is remanded to the director for entry of a new decision in accordance with the foregoing.