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U.S. Department of Justice

Immigration and Naturalization Service

Identification data deleted to prevent clearly unwarranted invasion of personal privacy

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

[redacted]

File: WAC-99-167-51094 Office: California Service Center Date: MAY 14 2002

IN RE: Petitioner: [redacted]
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)

PUBLIC COPY

IN BEHALF OF PETITIONER:

[redacted]

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

Linda for

Robert P. Wiemann, Director
Administrative Appeals Office

DISCUSSION: The nonimmigrant visa petition was denied by the Director, California Service Center. A subsequent appeal was dismissed by the Associate Commissioner for Examinations. The matter is now before the Associate Commissioner for Examinations on motion to reopen and reconsider. The motion will be granted. The previous decision of the Associate Commissioner will be affirmed.

The petitioner is a manufacturing business with 145 employees and a gross annual income in excess of $5 million. It seeks to employ the beneficiary as a market research analyst for a period of three years. The director determined the petitioner had not established that the beneficiary was qualified to perform services in the specialty occupation.

On appeal, counsel argued that the Service had erred in denying the petition because it had failed to consider evidence contained in the record which reflects that the beneficiary qualifies to perform the duties of a specialty occupation.

The Associate Commissioner dismissed the appeal reasoning that the petitioner had not established that the beneficiary was qualified to perform services in the specialty occupation. The Associate Commissioner also found, beyond the director's decision, that the petitioner had not demonstrated that the proffered position is a specialty occupation.

On motion, counsel reiterates the argument that the Service failed to consider evidence reflecting that the beneficiary qualifies to perform the duties of a specialty occupation and submits additional documentation.

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 shows that the beneficiary graduated from the Department of English Language and Literature of Dankook University in Seoul, Korea, holding a Bachelor of Arts degree. A credentials evaluation service found that the beneficiary's degree and diploma are equivalent to "...the degree of Bachelor of Arts, with a major in Foreign Languages (English) and a minor in Marketing, granted by regionally accredited colleges and universities in the United States."

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 solely upon his education. The evaluation service found the beneficiary's foreign education equivalent to a bachelor's degree in foreign language (English) and a minor in marketing conferred by a U.S. institution. However, a review of the beneficiary's transcripts from Dankook University reveal that he took only two courses specifically related to marketing while attending this academic institution. Although the beneficiary took four courses in subjects such as business, corporate law, and management, such course work would not typically result in the awarding of credits within an academic program for a minor in marketing. The evaluation service failed to provide a reasonable explanation as to how an individual would receive a minor in marketing after taking only two courses directly related to this particualr subject. Accordingly, the evaluation is accorded little weight.

The Department of Labor's Occupational Outlook Handbook (Handbook), 2002-2003 edition, finds that graduate training in such fields as economics, business administration, marketing, statistics, or some closely related discipline is required for many private sector marketing research analyst jobs. The Handbook specifically notes that:

> A bachelor's degree with a major in economics or marketing may not be sufficient to obtain some positions as an economist or marketing analyst, but is excellent preparation for many entry-level

> positions as a research assistant, administrative or management trainee, marketing interviewer, or any of a number of professional sales jobs.

The above description indicates that the minimum requirement for a marketing research analyst position is more than a bachelor's degree in economics or marketing. The record does not demonstrate that the beneficiary has at least a bachelor's degree in economics or marketing or a master's degree.

On motion, counsel reiterates the argument that the beneficiary's lack of a degree in economics is overcome by eleven years of employment in progressively more responsible positions directly related to the specialty of market research. In support of this argument, counsel submits two Career Certificates which reflect that the beneficiary had been employed as senior manager for overseas sales for a total of four years and ten months by two separate Korean companies. Counsel also submits a page from a Korean Register of Business, reflecting that the beneficiary had been self-employed while engaged in the business of wholesale trading in the period from March 20, 1993 to March 28, 1994. Counsel contends that the beneficiary remained in this position through March 1996.

The record does contain an evaluation of the beneficiary's work experience 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. Moreover, the documents counsel submits on motion merely list the beneficiary's title during each period of employment, without providing a detailed description of the beneficiary's specific duties and responsibilities in each position. Without this information, it is not possible to determine whether the beneficiary's prior work experience represents progressively responsible professional experience in the specialty of market research. Consequently, the petitioner has not shown that this experience was experience in a specialty occupation or that it is sufficient to overcome the beneficiary's lack of either a bachelor's degree in economics or marketing or a master's degree.

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 qualifies to perform services in a specialty occupation.

With respect to counsel's objection to denial of this petition in view of the previous approval of a similar petition filed on behalf of the beneficiary, this Service is not required to approve applications or petitions where eligibility has not been demonstrated. The record of proceeding, as presently constituted, does not contain a copy of the approved visa petition and its supporting documents. It is, therefore, not possible to determine definitively whether it was approved in error or whether the facts and conditions have changed since its approval. Determinations of eligibility are based on the totality of evidence available to this Service at this time. The Associate Commissioner, through the Administrative Appeals Office, is not bound to follow the contradictory decision of a service center. Louisiana Philharmonic Orchestra v INS, 2000 WL 282785 (E.D.La. 2000), aff'd, 248 F. 3d 1139 (5th Cir. 2001), cert. denied, 122 S. Ct.51 (U.S. 2001).

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. Accordingly, the previous decisions of the director and the Associate Commissioner will not be disturbed.

ORDER: The order of January 12, 2001, dismissing the appeal is affirmed.