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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

[redacted]

File: WAC 00-003-52803 Office: California Service Center Date: OCT 07 2002

IN RE: Petitioner:
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)

PUBLIC COPY

IN BEHALF OF PETITIONER:

[redacted]

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, who subsequently affirmed this previous decision in response to the petitioner's motion to reopen and reconsider. The matter is now before the Associate Commissioner for Examinations on appeal. The appeal will be dismissed.

The petitioner is a real estate brokerage and property management company with forty employees and an approximate gross annual income of $1.54 million. It seeks to employ the beneficiary as a real estate broker/market analyst for a period of three years. The director determined that the petitioner had not established that the beneficiary qualifies to perform services in the proffered position.

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 issue to be examined in this proceeding is whether the beneficiary is qualified to perform the services of a specialty occupation, which the director concluded was the position of a market analyst.

On appeal, counsel argues that the director erred in determining that the proffered position requires a master's degree. Counsel asserts that it was inappropriate to apply an industry standard in determining that the proffered position was not professional in nature.

The beneficiary holds a bachelor of arts degree in English language and literature conferred by the Kawamura Gakuen Womens' University in Chiba, Japan. In addition, the beneficiary's resume lists

further education in international business at Tokyo YWCA College in Tokyo, Japan from April 1992 to March 1993, and a secretarial course at El Dorado College in San Diego, California from December 1993 to August 1994. However, the record does not contain an evaluation of the beneficiary's credentials from a service which specializes in evaluating foreign educational credentials as required by 8 C.F.R. 214.2(h)(4)(iii)(D)(3). While the record does contain a diploma written in Japanese and a certified translation relating to the beneficiary's foreign bachelor of arts degree, the record does not contain any documentation such as transcripts, certificates or diplomas that would corroborate her claims of additional education.

The duties of the beneficiary in the proffered position are described in pertinent part as follows:

> ...[the beneficiary] will function as a full service broker as well as a market analyst for the Asian market (with an emphasis on the Japanese market). This job involves the active marketing of real estate, both residential and commercial, as well as actively seeking property listings. Her duties will also include assisting clients to qualify and obtain real estate loans at the best possible rates, terms, etc. This requires a constant awareness of current interest rates and knowledge of the most favorable lenders at any given time. She will also advise clients as to the benefits and pitfalls of conventional loans, FHA and VA loans as well as other available loan opportunities based on her review and analysis of the client's financial history, income, expenses, cash flow, etc. Her duties will also include assisting clients in preparing offers and counter-offers, engaging in negotiations (often protracted) between buyers and sellers and advising clients as to the various procedural and practical requirements of California real estate transactions. She will review title reports and advise clients as to any title problems, including outstanding loans, liens and encumbrances and how to deal with them to allow the transaction to close.
>
> [The beneficiary] will also concentrate on the development of and service to the large Japanese community located in the San Diego South Bay area, as well as the Asian population generally. This area has a Japanese school as well as being located close to Tijuana with its large number of Japanese maquiladores. There are also large Taiwanese and Chinese populations along the U.S./Mexican border, as well as other Asian communities in Mexico[.] [The beneficiary] is bilingual in Japanese and English and will be a valuable link to the Japanese community. She will analyze and develop this market with

> an eye to business expansion and promotion. Many of these Japanese nationals are active real estate investors. It will be [the beneficiary's] task to analyze, promote and develop this market.

The director determined that the duties described are the responsibilities of a market analyst/property manager/ broker. According to the Department of Labor's (DOL) Occupational Outlook Handbook (Handbook), 2002-2003 edition, at pages 239-241, a market research analyst is concerned with the potential sales of a product or service, and he or she analyzes data and information to predict future sales. Therefore, as the director has determined that the job meets the requirements of the specialty occupation of a market research analyst, the beneficiary's educational and employment experience must meet the minimum requirements for a market research analyst.

At page 240 of 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....
>
> Market and survey researchers may earn advanced degrees in economics, business administration, marketing, statistics or some closely related discipline. Some schools help graduate students find internships or part-time employment in government agencies, economics consulting firms, financial institutions, or marketing research firms prior to graduation....
>
> Whether working in government, industry, research organizations, marketing, or consulting firms, economists and market and survey researchers with bachelor's 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. (Emphasis added.) A master's degree is usually required to qualify for more responsible research and administrative positions.

In the instant case, the director has determined the beneficiary is seeking employment as a market research analyst in the private sector. While the record does not contain an evaluation of the beneficiary's foreign education as required by regulation, she does possess what appears to be the equivalent of a bachelor's degree in English language and literature. The beneficiary does not hold a master's degree in economics, business administration, marketing, statistics or some closely related field, which the DOL indicates is generally the minimum requirement for a market research analyst job in the private sector. Even if the Service were to conclude

that a bachelor's degree is sufficient for a market analyst position within the petitioner's industry, the beneficiary would still not be eligible to perform the duties of the offered position because she does not possess a bachelor's degree in any of the academic disciplines cited above.

The fact that the beneficiary possesses a current California real estate brokers agents license and that she qualifies for that state's real estate brokers license (with the exception of the appropriate work visa) is acknowledged. However, the Service is not persuaded by the argument that the beneficiary is qualified to fill the proffered position as a result of her education and work experience in a variety of positions in Japan and in the United States. While the petitioner has provided a copy of the beneficiary's resume, the record does not contain any evidence such as affidavits or letters of employment, to corroborate any of her employment and work experience in Japan. In addition, the record does not contain any evaluation of the beneficiary's purported 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. Even if the beneficiary had worked as claimed, the petitioner has not shown that the beneficiary's work experience is the equivalent of formal graduate education, that such work experience was experience in a specialty occupation, or that it is sufficient to overcome the beneficiary's lack of a master's degree in economics, business administration, marketing, statistics or some closely related area.

Counsel asserts that it was inappropriate to apply an industry standard in determining that the proffered position was not professional in nature. However, these proceedings are not concerned with membership in the professions, but rather membership in a specialty occupation. While these terms are similar, they are not synonymous. The term "specialty occupation" is specifically defined in section 214(i) of the Act. That statutory language effectively supersedes any prior statutes, regulations, and case law relating to characterization of a position as a profession.

The beneficiary is not a member of any organizations whose usual prerequisite for entry is a master's degree in a specialized field of study. The record contain no evidence that the beneficiary holds as state license, registration, or certification which authorizes her to practice a specialty occupation. In view of the foregoing, the petitioner has not persuasively established that the beneficiary qualifies to perform services in a specialty occupation. Accordingly, the decision of the director will not be disturbed.

Beyond the decision of the director, it appears the record contains insufficient evidence to support the conclusion that the proffered position is that of a market analyst, a position normally considered by the Service to be a specialty occupation. The duties of the offered job as described by the petitioner appear to combine the duties of a real estate broker and property manager with those of a marketing manager. Information contained in the Handbook does not indicate that any of these positions require a bachelor's degree in a specific field of study. As this matter will be dismissed on the grounds discussed, 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.