

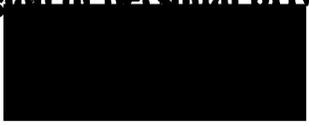


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U.S. Department of Justice

Immigration and Naturalization Service

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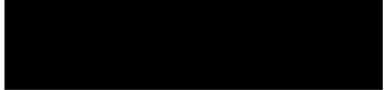


OFFICE OF ADMINISTRATIVE APPEALS
425 Eye Street N.W.
ULLB, 3rd Floor
Washington, D.C. 20536

File: EAC-00-261-50338 Office: Vermont Service Center

Date: OCT 10 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:



PUBLIC COPY

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

The petitioner is a performing arts and film management consulting business with one employee and a stated gross annual income of \$250,000. It seeks to employ the beneficiary as an international market research 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 photocopies of previously submitted documentation.

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 failed to submit sufficient evidence establishing that the beneficiary's education, specialized training, and experience were the equivalent of a United States baccalaureate or higher degree. The director based this determination on the fact that the evaluation of the beneficiary's foreign education and work experience had not been performed by an individual who currently possesses the 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. On appeal, counsel argues that the credentials and expertise of the evaluator of the beneficiary's education and experience are more than sufficient to determine whether such education and experience were the equivalent of the degree required to perform the specialty occupation.

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 either a foreign degree or a United States baccalaureate degree in any field of study. Clearly the beneficiary is not qualified to perform the services of a specialty occupation based upon her education alone.

The record reflects that the petitioner has submitted an evaluation of the beneficiary's foreign education and experience. The evaluator, Carl H. Walther, Ph.D., Professor, California State University Sacramento, indicated that the beneficiary attended the Notley High School in Braintree, England from 1980 to the date of her graduation in 1985, and then subsequently completed two years of post-secondary university level studies in social studies at the Colchester Institute in Colchester, England. Professor Walther noted that the record contained a Certificate of Completion of Approved Course of Practical and Theoretical Training in the Care of Young Children from the National Nursery Examination Board in England that was awarded to the beneficiary in 1987. While Professor Walther concluded that the beneficiary's studies at Notley High School were the equivalent of an U.S. high school degree, he stated that a lack of information relating to the intensity, hours of instruction, and subject matter of the beneficiary's studies at the Colchester Institute prevented him from making any conclusions about the U.S. equivalent of these particular studies.

Professor Walther continued his evaluation by noting that the beneficiary had completed over thirteen years of professional work experience in marketing research and business development in the following positions: research assistant and research analyst at

Robert Reizouw Associates from June 1987 to June 1993; market researcher with Portfolio Projects from July 1993 to January 1996; and, research manger at Acoustec Ltd. from February 1996 to August 6, 2000, the date the evaluation was executed. Professor Walther stated that the beneficiary's work experience was equal to:

"...two years of lower-level and two years of upper-level university-level studies in marketing with concentration in market research and business development toward a four year degree at an accredited college or university in the United States (1st and 2nd year, and 3rd and 4th year of the four year bachelor degree).

Professor Walther concluded that the combination of the beneficiary's education and experience are the equivalent of a bachelor of arts degree in marketing with concentration in market research and business development issued by an accredited American college or university.

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).

Professor Walther stated that the beneficiary's studies at Notley High School were the equivalent of an U.S. high school degree. However, the record does not contain any documentation such as transcripts or a diploma that would tend to corroborate that the beneficiary attended and graduated from this high school as claimed. Furthermore, it must be noted that the record contains no evidence other than the child-care certificate discussed above, to establish that the beneficiary has participated in any type of formal education program. Professor Walther indicated that the beneficiary possessed over thirteen years of professional work experience in marketing research and business development in his evaluation dated August 6, 2000. However, it must be noted that the three employment letters submitted on the beneficiary's behalf as evidence of her work experience are dated January 18, 2001, January 22, 2001, and January 24, 2001, more than five and one half months after Professor Walther evaluated her education and work experience.

In the first of these letters, Robert Riezouw, chief executive officer of Riezouw Associates GMBH, stated that the beneficiary had been employed by this enterprise as a project manager from June 1987 to June 1993. Mr. Riezouw declared that the beneficiary was responsible for overseeing the company's management of dance and music tours. The second employment letter was signed by Deidre Bane, treasurer/secretary of Portfolio Projects, Inc., who

indicated that the beneficiary had been employed as a research officer and project manager for the television documentary, Fighting the Tide, from July 1993 to January 1996. Ms. Bane recounted that the beneficiary was employed in the development of the film during the research phase in England. In the last of these letters, Stefano De Stabile, director of Acoustec Limited, stated that the beneficiary had been employed by this enterprise as a research manager from February 1996 to approximately January 22, 2001, the date the letter was executed. Mr. De Stabile declared that the beneficiary's responsibilities included market research and product positioning and that she had been instrumental in launching a new acoustic editing and simulation software package for use in the theater.

Clearly, the beneficiary's work experience for Riezouw Associates GMBH and Portfolio Projects, Inc., from June 1987 to January 1996, cannot be considered remotely related to either marketing research or business development. While the director of Acoustec Limited indicated that the beneficiary's responsibilities included market research during her period of employment with this enterprise as a research manager from February 1996 to January 2001, the description of the her duties is minimal considering she had purportedly worked for Acoustec Limited for just less than six years.

Professor Walther indicated that he relied upon representations put forth in the initial Form I-129 petition and supporting documents to reach his conclusions regarding the beneficiary's education and work experience. However, as noted above, the record is completely devoid of evidence to corroborate the claim that the beneficiary ever attended or graduated from Notley High School. In addition, the only evidence contained in the record to corroborate the beneficiary's work experience consists of three employment letters that were written well after Professor Walther concluded that she had thirteen years of professional work experience in marketing research and business development in his evaluation. The record contains insufficient evidence that the beneficiary's work experience was experience in a specialty occupation or that it is sufficient to overcome the beneficiary's lack of a degree in a specialized and related field of study. Professor Walther has failed to provide any explanation as how he arrived at his conclusions in this evaluation, without having access to and reviewing any documentary evidence other than the representations, descriptions, and statements of the petitioner and beneficiary. Moreover, no evidence has been submitted to demonstrate that Professor Walther is an official who currently 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 evaluation is accorded little weight.

Pursuant to 8 C.F.R. 214.2(h)(4)(iii)(D)(1), 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 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 of the date of this decision, the petitioner has failed to submit an evaluation of the beneficiary's training and work experience for the purpose of determining degree equivalence by an individual who currently possesses the authority to grant college-level credit for training and/or experience.

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. For purposes of determining equivalency to a baccalaureate degree, three years of specialized training and/or work experience must be demonstrated for each year of college-level training the alien lacks. 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.

While the employment letters discussed previously contain brief descriptions of the duties performed by the beneficiary in the three positions she held from 1987 to 2001, no evidence has been provided to establish that such work experience was relevant to the specialty occupation of a market research manager. Consequently, the petitioner has failed to demonstrate that the alien's work experience of approximately thirteen years included the theoretical and practical application of specialized knowledge required by the specialty occupation, or 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.

The record does not contain evidence establishing that the beneficiary has received recognition of expertise in market research analysis by at least two recognized authorities in the same specialty occupation. The beneficiary is not a member of any organizations whose usual prerequisite for entry is a baccalaureate degree in a specialized area. The record contains no evidence that the beneficiary holds a state license, registration, or certification which authorizes her to practice a specialty occupation in a foreign country. The record does not contain any published material by or about the beneficiary in professional publications, trade journals, or major newspapers. No evidence has been submitted to document any achievements which a recognized authority has determined to be significant contributions to the field of the software engineering. In view of the foregoing, it is concluded that the petitioner has not demonstrated that the beneficiary has the equivalent of a baccalaureate degree in any field of study. Therefore, the petitioner has failed to demonstrate that the beneficiary is qualified to perform services in the proffered position of international market research manager.

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 decision of the director will not be disturbed.

ORDER: The appeal is dismissed.