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Citizenship and Immigration Services

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ADMINISTRATIVE APPEALS OFFICE
CIS, AAO, 20 Mass, 3/F
425 I Street, N.W.
Washington, D.C. 20536

File: WAC-02-113-53382

Office: CALIFORNIA SERVICE CENTER

Date: DEC 01 2003

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)

ON BEHALF OF PETITIONER:

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 Citizenship and Immigration Services (CIS) 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.


Robert P. Wiemann, Director
Administrative Appeals Office

DISCUSSION: The nonimmigrant visa petition was denied by the director and is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed.

The petitioner is a messenger and courier delivery service with 10 employees and an undisclosed gross annual income. 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 is qualified to perform the duties of a specialty occupation.

On appeal, counsel submits a brief.

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 director denied the petition because the petitioner had not demonstrated that the beneficiary holds a baccalaureate degree or an equivalent that qualifies her to perform the duties of the specialty occupation. On appeal, counsel states, in part, that the beneficiary's educational and employment backgrounds are the equivalent of a master's degree in marketing. Counsel further states that the record contains two letters from recognized experts to support his assertion. Counsel additionally states that the beneficiary is a member of two professional organizations, which further qualifies her for the proffered position.

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.

Pursuant to 8 C.F.R. § 214.2(h)(4)(iii)(D), 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)
- (3) An evaluation of education by a reliable credentials evaluation service which specializes in evaluating foreign educational credentials;

- (4)
- (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

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.

The record contains the following:

- Diploma, issued in December 1990, reflecting that the beneficiary graduated from a communications and design institution with a major in publicity science (a curriculum that included some marketing-related courses);

- Credentials evaluation, dated February 12, 2002, concluding that the beneficiary's graduation diploma conferred by a Peruvian institution is the equivalent of three years of undergraduate study in advertising from an accredited institution in the United States;
- Letter, dated May 14, 2002, from Phyllis Ball, Principal, Ball Marketing Strategies, who states, in part, that the beneficiary's approximate 10 years of applicable marketing experience qualifies her for a market research analyst position;
- Second letter, dated July 17, 2002, from [REDACTED] Principal, Ball Marketing Strategies, who states, in part, that the beneficiary has expertise as a market research analyst because of her university courses in marketing and her approximate 10 years of progressively responsible experience in the marketing field, which included serving "as a Marketing Research Analyst from 1992 until 1996 and as a Marketing Strategist from 1996 until 2002";
- Letter, dated May 14, 2002, from [REDACTED] Principal, MarketKeen, who states, in part, that the proffered position requires a "B.A. coupled with several years of marketing experience" and that the beneficiary's experience fully qualifies her to perform the role of a market research analyst;
- Second letter, dated July 16, 2002, from [REDACTED] Principal, MarketKeen, who states, in part, that the beneficiary has expertise as a market research analyst because of her university courses in marketing and her approximate 10 years of progressively responsible experience in the marketing field, which included serving "as a Marketing Research Analyst from 1992 until 1996 and as a Marketing Strategist from 1996 until 2002";
- Letter, dated November 5, 2001, from Mr. [REDACTED] [REDACTED] from the Peruvian company, Transporte Trujillo S.R.L., who states, in part, that the beneficiary was employed from 1992 through 1996 as a "Marketing Communication Specialist," and her duties included "developing all of our marketing materials and oversees [sic] the development of our on-line marketing campaign";

- Second letter, dated July 15, 2002, from [REDACTED] Manager, from the Peruvian company, Transportes Trujillo, who states, in part, that the beneficiary was employed as a market research analyst from January 1, 1992 through January 1, 1996, whose duties included "marketing materials and oversee [sic] the development of our on-line marketing campaign" and ultimately "focusing on new business development by creating partnerships with marketing vendors," "conducted market analysis for business positioning" and "provided lead generation for inside sales and telemarketing efforts.";
- Letter, dated November 16, 2001, from Ms. [REDACTED] (employment title not disclosed) from the Peruvian company, Loncarich S.R.L., who states, in part, that the beneficiary was employed from August 1996 through February 2000, as an office manager, whose duties included: "daily administration and running of the office" and "[p]lan and prepare work schedules and assigns [sic] employees to specific duties." The writer also states that the beneficiary was "promoted and recruited business for our company.";
- Second letter, dated July 15, 2002, from Ms. [REDACTED] Manager, from the Peruvian company, Loncarich S.R.L.tda., who states, in part, that the beneficiary was employed from August 1, 1996 through February 1, 2002, as a marketing strategist (whose internal title was "office manager"), whose duties during the first three years included: "execute[d] strategic programs to increase sales and market share," "[d]eveloped programs for partners and various sales channels," and "oversaw all marketing activities from market research to marketing communications." During her second three years, her duties included: "daily administration and running of the office," "planned and prepared work schedules and assigned employees with specific duties," and "continued to promote and recruit business for our company.";
- Certificates reflecting the completion of micro-processing and computer training;
- Letter, dated July 17, 2002, from the customer relations representative of the American Marketing Association who states, in part, that the beneficiary "is a Professional Member in good standing of the American Marketing Association (Silicon Valley Chapter)."; and

- Letter, dated July 16, 2002, from [REDACTED] VP Membership, SVAMA, of the Silicon Valley American Marketing Association (SVAMA), who states, in part, that the beneficiary is a member of SVAMA, and that its members hold bachelor and higher degrees in marketing, business, and related fields.

The beneficiary holds a diploma in publicity science conferred by a Peruvian institution. The beneficiary's educational background has been found by a credentials evaluation service to be equivalent to three years of undergraduate study in advertising from an accredited institution in the United States. As such, the petitioner has not demonstrated that the beneficiary is qualified to perform the duties of the proffered position based on education alone.

The record contains discrepancies regarding the length of the beneficiary's employment experience at the time of the filing of the petition. In the first letter from [REDACTED] of Loncarich S.R.L., she states that the beneficiary was employed from August 1996 through February 2000, as an office manager. In Ms. [REDACTED] second letter, however, she states that the beneficiary was employed at Loncarich S.R.L. from August 1, 1996 through February 1, 2002. Ms. [REDACTED] goes on to describe the beneficiary's duties during her first three years and the changes in her duties during the second three years of employment. The information provided by Ms. [REDACTED] in her second letter regarding the length of the beneficiary's employment conflicts with the information provided by the beneficiary on her resume, which reflects that from 1996 - 2000, she worked at Loncarich S.R.L. It is further noted that information on the petition indicates that the beneficiary entered the U.S. on September 7, 2000, and, therefore, could not have been performing the stated duties at Loncarich S.R.L. through 2002.

It is also noted that the duties of the beneficiary appear to be elevated in their complexity in the second letters from Mr. [REDACTED] and Ms. [REDACTED]. For example, in her first letter, Ms. [REDACTED] states that the beneficiary was employed as an office manager, but in her second letter, she states that the beneficiary was employed as a marketing strategist, a position whose internal title was "office manager." Both Mr. [REDACTED] and Ms. [REDACTED] provide a revised, more complex description of the beneficiary's duties in their second letters. As such, their authenticity is in question.

Doubt cast on any aspect of the petitioner's proof may, of course, lead to a reevaluation of the reliability and sufficiency of the remaining evidence offered in support of the visa petition. It is incumbent upon the petitioner to resolve any inconsistencies in the record by independent objective evidence, and attempts to explain or reconcile such inconsistencies, absent competent objective evidence pointing to where the truth, in fact, lies, will not suffice. *Matter of Ho*, 19 I&N Dec. 582, 591-92 (BIA 1988).

The record also contains letters from, according to counsel, "recognized experts," [REDACTED] dated July 17, 2002, and May 14, 2002, respectively, who conclude that the beneficiary has expertise as a market research analyst because of her university courses in marketing and her approximate 10 years of progressively responsible experience in the marketing field, which included serving "as a Marketing Research Analyst from 1992 until 1996 and as a Marketing Strategist from 1996 until 2002. Again, the record contains no evidence that the beneficiary was employed in Peru until 2002 as a marketing strategist. For this reason, the letters from Ms. Ball and Ms. Lazich are accorded little weight.

The record does not contain any evidence in support of the claim that the beneficiary holds the equivalent of a baccalaureate degree as a market research analyst, such as an evaluation from an official who has 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, as required by C.F.R. § 214.2(h)(4)(iii)(D)(1). Furthermore, the record contains no evidence that the beneficiary meets any of the requirements of C.F.R. § 214.2(h)(4)(iii)(C).

The beneficiary is not a member of any organizations whose usual prerequisite for entry is a baccalaureate degree in a specific specialty. The beneficiary's memberships in the American Marketing Association (Silicon Valley Chapter) and in SVAMA are noted. The record, however, contains no evidence that such memberships require a baccalaureate degree in a specific specialty. The record contains no evidence that the beneficiary holds a state license, registration, or certification that authorizes her to practice a specialty occupation. In view of the foregoing, it is concluded that the petitioner has not demonstrated that the beneficiary is qualified to perform services in a specialty occupation.

Beyond the decision of the director, the record contains insufficient evidence to demonstrate that the proffered position is a specialty occupation. 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. Accordingly, the decision of the director will not be disturbed.

ORDER: The appeal is dismissed.