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ADMINISTRATIVE APPEALS OFFICE  
CIS, AAO, 20 Mass, 3/F  
425 Eye Street, NW  
Washington, D.C. 20536



POWAY, CA 92064

FILE: WAC 01 295 52567 Office: CALIFORNIA SERVICE CENTER

Date:

IN RE: Petitioner:  
Beneficiary:



DEC 03 2003

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:



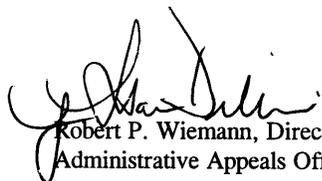
INSTRUCTIONS:

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, California Service Center, and the matter is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed.

The petitioner is a dental office. It employs 5 people and has a gross annual income of \$250,000. It seeks to temporarily employ the beneficiary as a business analyst for a period of three years. The director determined that the beneficiary is not qualified for a specialty occupation.

On appeal, counsel asserts that the director erred in determining that the beneficiary is not qualified for a specialty occupation.

The director determined that the duties of the proffered position of business analyst most closely resemble those of a market research analyst, a specialty occupation that requires a master's level of education. The AAO agrees with this characterization. Having established that the offered position is a specialty occupation within the meaning of the regulations, the issue in this proceeding is whether the beneficiary is qualified to perform this 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.

As the proffered position is a business analyst (market research analyst), the beneficiary must possess a master's degree, or its equivalent, in economics, business administration, marketing, statistics, or some closely related discipline.

**1. Hold a United States baccalaureate or higher degree required by the specialty occupation from an accredited college or university.**

The beneficiary holds a bachelor's degree from the University of Santo Tomas in the Philippines. The beneficiary does not meet this criterion.

**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.**

The proffered position is as a business analyst, although the position description most closely resembles that of a market research analyst. The beneficiary has a Bachelor of Science degree in commerce with a major in business administration.

Counsel submitted an assessment from James W. Foley, Ph.D., of Josef Silney & Associates, Inc. This assessment determined that the beneficiary has the equivalent of a bachelor of business administration degree from a United States institution. Additionally, Dr. Foley evaluated the beneficiary's 7 years of experience and determined that her education, training and employment experience are equivalent to a master of business administration degree.

Dr. Foley is qualified to make the determination that the beneficiary's degree is equivalent to a U.S. degree, but is not qualified to make the determination that her work experience is equivalent to academic study. The regulations state that such a determination must be made by:

[A]n 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. 8 C.F.R. § 214.2(h)(4)(iii)(D)(1).

The evaluator's resume indicates that he is the Associate Dean, School of Business Administration, University of Miami. On appeal, counsel submits a memorandum from the Vice Dean of the

School of Business Administration of the University of Miami, stating that Dr. Foley is a member of the faculty and associate dean at the school, and that the school is regionally accredited by the Southern Association of Colleges and Schools.

Dr. Foley indicated that he occasionally "grant[s] course waivers based upon work and professional experience." However, there is no confirmation from the university that Dr. Foley has the "authority to grant college-level credit for training and/or experience in the specialty," as required by the regulations; therefore, his evaluation of the beneficiary's work experience equivalency cannot be accepted by Citizenship and Immigration Services (CIS).

**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.**

This occupation does not require a State license, registration, or certification.

**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.**

This is the only criterion that the beneficiary could meet. In considering whether the beneficiary qualifies under this category by virtue of her education, practical experience, and/or specialized training, 8 C.F.R. § 214.2(h)(4)(iii)(D) states:

[E]quivalence 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);

(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. . . . 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.

Counsel has submitted one letter from the president of the beneficiary's prior employer, Magica Holdings, stating that the beneficiary worked for the company in a variety of roles from 1993-2000. The letter listed a range of duties performed by the beneficiary. This letter does indicate that the beneficiary has expertise in marketing, as required by the specialty occupation, but does not provide detail about how the skills were attained, nor does it state the writer's qualifications to make such an assessment; therefore, it does not meet the terms of 8 C.F.R. § 214.2(h)(4)(iii)(D)(5)(i). The only other documentation that has been submitted to support counsel's assertion that the beneficiary's education, training, and/or work experience are equivalent to a master's degree is the letter from the evaluation service, which has been previously discussed. The petitioner has not established that the beneficiary is qualified to perform the specialty occupation of a business analyst (market research analyst).

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 appeal will be dismissed.

**ORDER:** The appeal is dismissed.