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U.S. Department of Homeland Security
Citizenship and Immigration Services

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

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FILE: WAC 01 222 55373 OFFICE: CALIFORNIA SERVICE CENTER DATE:

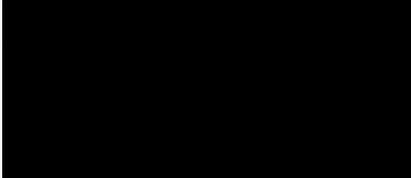
IN RE: Petitioner:
Beneficiary:



DEC 18 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)

IN BEHALF OF PETITIONER:



**Identifying data deleted to
prevent clearly unwarranted
invasion of personal privacy**

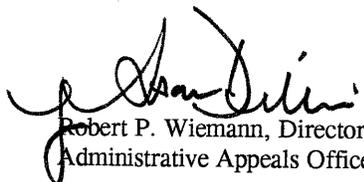
INSTRUCTIONS:

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 Director of the California Service Center denied the nonimmigrant visa petition and the matter is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed. The petition will be denied.

The petitioner is a travel agency and tour operator that employs fifteen persons and has a gross annual income of \$5,000,000. It seeks to employ the beneficiary as a marketing manager. The director denied the petition because it was determined that the beneficiary was not qualified to perform the duties of the proffered position.

On appeal, counsel submits a brief and additional evidence. Counsel states, in part, that the beneficiary is qualified to perform the duties of a specialty occupation, because the combination of her bachelor's degree and experience amounts to the equivalent of a U.S. bachelor's degree in marketing.

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 for the classification of qualified nonimmigrant aliens who are coming temporarily to the United States to perform services in a specialty occupation.

The first issue to be discussed in this proceeding is whether the beneficiary is qualified to perform the duties of a specialty occupation.

Section 214(i)(2) of the Act, 8 U.S.C. § 1184(i)(2), states that an alien applying for classification as an H-1B nonimmigrant worker must possess:

- (A) full state licensure to practice in the occupation, if such licensure is required to practice in the occupation,
- (B) completion of the degree described in paragraph (1)(B) for the occupation, or
- (C)
 - (i) experience in the specialty equivalent to the completion of such degree, and
 - (ii) recognition of expertise in the specialty through progressively responsible positions relating to the specialty.

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), for purposes of paragraph (h)(4)(iii)(C)(4) of this section, 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) 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.

In accordance with 8 C.F.R. § 214.2(h)(4)(iii)(D)(5):

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.

In the original petition, received at the service center on June 27, 2001, the petitioner stated that the proffered position requires an individual with a bachelor's degree and some work experience in travel marketing. The petitioner submitted copies of the beneficiary's academic qualifications, as well as an evaluation by the Washington Evaluation Service. The evaluation stated that the combination of the beneficiary's foreign bachelor's degree and her work experience amounts to the equivalent of a U.S. bachelor's degree in marketing.

The director requested further evidence regarding the proposed job duties and the beneficiary's qualifications. In response to the director's concerns about the beneficiary's qualifications, counsel submitted two letters from the beneficiary's former employers and copies of her university transcripts. The director found the record insufficient to conclude that the beneficiary was qualified to perform the duties of a specialty occupation, and he denied the petition on January 17, 2002.

On appeal, counsel submits a copy of *Tapis International v. INS*, 94 F. Supp. 2d 172 (D. Mass. 2000), a letter from a manager with the International Airlines Travel Agent Network (IATAN), and an evaluation from Morningside Evaluations and Consulting.

Counsel asserts that *Tapis International v. INS* supports her position that, since the beneficiary has already held H1B status in the same position with the same petitioner, the AAO should uphold the appeal and grant the petition. However, each nonimmigrant petition is a separate proceeding with a separate record. See 8 C.F.R. § 103.8(d). In making a determination of statutory eligibility, Citizenship and Immigration Services (CIS) is limited to the information contained in the record of proceeding. See 8 C.F.R. § 103.2(b)(16)(ii). Although the AAO may attempt to hypothesize as to whether the prior approval was granted in error, no such determination may be made without review of the original record in its entirety. If the prior petition was approved based on evidence that was substantially

similar to the evidence contained in this record of proceeding that is now before the AAO, however, the approval of the prior petition would have been erroneous.

CIS is not required to approve petitions where eligibility has not been demonstrated, merely because of prior approvals that may have been erroneous. See, e.g., *Matter of Church Scientology International*, 19 I&N Dec. 593, 597 (Comm. 1988). Neither CIS nor any other agency must treat acknowledged errors as binding precedent. *Sussex Engg. Ltd. v. Montgomery* 825 F.2d 1084, 1090 (6th Cir. 1987), cert denied, 485 U.S. 1008 (1988).

Furthermore, the Administrative Appeals Office is never bound by a decision of a service center or district director. *Louisiana Philharmonic Orchestra v. INS*, 44 F.Supp. 2d 800, 803 (E.D. La. 2000), aff'd, 248 F. 3d 1139 (5th Cir. 2001), cert. denied, 122 S.Ct. 51 (2001).

The record shows that the beneficiary's university degree is in French and Industrial Psychology. The beneficiary has some work experience in the field of travel marketing. Pursuant to 8 C.F.R. § 214.2(h)(4)(iii)(C)(4), in order for the beneficiary to qualify, the record must demonstrate that she has education, specialized training, and/or progressively responsible experience equivalent to a U.S. baccalaureate or higher degree in marketing, as well as recognition of her expertise in marketing management through progressively responsible positions directly related to this specialty.

In order to demonstrate the equivalence noted in the preceding paragraph, 8 C.F.R. § 214.2(h)(4)(iii)(D)(1) states that the petitioner may provide 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. None of the evaluation letters on record conforms to this standard.

Pursuant to 8 C.F.R. § 214.2(h)(4)(iii)(D)(5), CIS may determine that the beneficiary has the equivalent of a degree in marketing if she has a combination of education, specialized training, and/or work experience in areas related to this specialty. The beneficiary's bachelor's degree is not related to the field of marketing. The university transcript is unclear as to whether the beneficiary completed a three or four-year course of study. The evaluation letters provided do not specify how the evaluators arrived at their differing conclusions. One letter

states that the beneficiary's university studies are equal to a U.S. bachelor's degree, and another letter evaluates her education as equal to three years of study towards a U.S. bachelor's degree. It cannot be determined how many years of studies she lacks in order to reach the equivalent of a U.S. bachelor's degree. CIS uses an evaluation by a credentials evaluation organization of a person's foreign education as an advisory opinion only. Where an evaluation is not in accord with previous equivalencies or is in any way questionable, it may be discounted or given less weight. See *Matter of SEA, Inc.*, 19 I&N Dec. 820 (Comm. 1988).

In addition, the two letters from the beneficiary's former employers do not contain enough detail to determine how many years of experience the beneficiary has in marketing management, and whether this experience was gained while working with peers, supervisors, and subordinates who have a degree or its equivalent in marketing. Finally, the record lacks the required showing of the beneficiary's expertise in travel marketing management. The record contains only one letter from a member of the travel industry written on the beneficiary's behalf, and the writer is not shown to be a recognized authority in the specialty of marketing management. The evidence does not establish that the beneficiary is qualified to perform a specialty occupation. For these reasons, the director's decision to deny the petition will not be disturbed.

Beyond the decision of the director, the evidence on record does not demonstrate that the position offered to the beneficiary qualifies as a specialty occupation. Section 214(i)(1) of the Act, 8 U.S.C. § 1184(i)(1), defines the term "specialty occupation" as an occupation that requires:

- (A) theoretical and practical application of a body of highly specialized knowledge, and
- (B) 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.

The term "specialty occupation" is further defined at 8 C.F.R. § 214.2(h)(4)(ii) as:

an occupation which requires theoretical and practical application of a body of highly specialized knowledge in fields of human endeavor including, but not limited to, architecture, engineering, mathematics, physical

sciences, social sciences, medicine and health, education, business specialties, accounting, law, theology, and the arts, and which requires the attainment of a bachelor's degree or higher in a specific specialty, or its equivalent, as a minimum for entry into the occupation in the United States.

Pursuant to 8 C.F.R. § 214.2(h)(4)(iii)(A), to qualify as a specialty occupation, the position must meet one of the following criteria:

(1) A baccalaureate or higher degree or its equivalent is normally the minimum requirement for entry into the particular position;

(2) The degree requirement is common to the industry in parallel positions among similar organizations or, in the alternative, an employer may show that its particular position is so complex or unique that it can be performed only by an individual with a degree;

(3) The employer normally requires a degree or its equivalent for the position; or

(4) The nature of the specific duties is so specialized and complex that knowledge required to perform the duties is usually associated with the attainment of a baccalaureate or higher degree.

CIS often looks to the Department of Labor's *Occupational Outlook Handbook (Handbook)* for information regarding the educational and other training requirements of occupations in question. The 2002-2003 edition of the *Handbook* on page 28 discusses the training and other qualifications requirements for marketing managers. The *Handbook* states the following:

A wide variety of educational backgrounds are suitable for entry into advertising, marketing, promotions, public relations, and sales managerial jobs, but many employers prefer those with experience in related occupations plus a broad liberal arts background. A bachelor's degree in sociology, psychology, literature, journalism, or philosophy, among other subjects, is acceptable. However, requirements vary, depending upon the particular job.

The *Handbook* mentions that some employers of marketing and sales

managers prefer individuals with a bachelor's or master's degree in business administration with an emphasis on marketing. A preference on the part of some employers, however, does not mean that a degree in business is a minimum entry requirement for the field of marketing.

Counsel points out that degrees in many different specific specialties are acceptable for entry into the position of marketing manager. Counsel observes that the Internet job postings included demonstrate this fact. In order to qualify as a specialty occupation, the position must require a bachelor's degree, or its equivalent, *in a specific specialty*.

The evidence on record and information in the *Handbook* do not indicate that a bachelor's degree in a specific specialty or its equivalent is normally the minimum requirement for entry into the particular position; thus, the offered position of marketing manager does not meet the definition set forth at 8 C.F.R. § 214.2(h)(4)(ii) and cannot be considered a specialty occupation. As the appeal is being dismissed on other grounds, however, this issue will 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. The petition is denied.