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U.S. Department of Homeland Security  
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-02-190-50399

Office: CALIFORNIA SERVICE CENTER

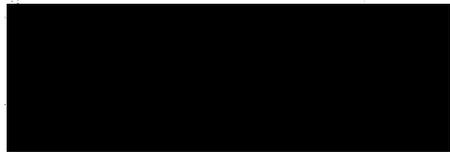
Date: DEC 30 2003

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:



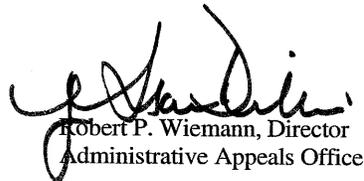
INSTRUCTIONS:

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 sells vision insurance. It has 12 employees and a gross annual income of \$1,900,000. 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 and another credentials evaluation.

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's work experience combined with her bachelor's degree in elementary and secondary education qualify her as a market research analyst. On appeal, counsel states, in part, that the record contains an evaluation from a reliable credentials evaluation service provider to demonstrate that the beneficiary holds the equivalent of a Bachelor of Education degree and a Master of Business Administration degree from an accredited institution of higher education in the United States.

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:

- (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 beneficiary holds a Bachelor of Science degree in elementary and secondary education and a Master of Arts degree in education conferred by Filipino institutions. A review of the Department of Labor's *Occupational Outlook Handbook*, 2002-2003 edition, at page 240, finds that graduate education in economics, business administration, marketing, statistics, or some closely related discipline, is required for many private sector market research jobs. Accordingly, it is concluded that the petitioner has not shown that the beneficiary qualifies to perform the duties of a specialty occupation based upon education alone.

The record contains the following four credentials evaluations:

- Evaluation, dated April, 11, 2002, from Mr. Bradley L. Spencer, who concludes that, as a result of the beneficiary's educational background and almost six and a half years of progressive employment experience in sales and marketing, the beneficiary holds the equivalent of a bachelor's degree in business administration with a major in marketing management from an accredited university in the United States;
- Evaluation, dated June 19, 2002, from Dr. Harold W. Berkman, who concludes that, as a result of the

beneficiary's education and approximately six years of documented professional work experience, the beneficiary holds the equivalent of a baccalaureate degree in business administration with a specialization in marketing;

- Evaluation, dated June 13, 2002, from Dr. David M. Hardesty, who concludes that, as a result of the beneficiary's education and six years of professional experience in marketing, the beneficiary holds the equivalent of a U.S. Bachelor's of Business Administration degree in marketing; and
- Evaluation, dated September 11, 2002, from Dr. Jonatan Jelen, who concludes that, on the basis of the beneficiary's education and fourteen years of employment experience and training in positions of progressively increasing responsibility and sophistication, the beneficiary holds the equivalent of a Bachelor of Education degree, with a concentration in elementary and secondary education, and a Master of Business Administration degree, from an accredited institution of higher education in the United States.

Citizenship and Immigration Services (CIS) 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. *Matter of Sea, Inc.*, 19 I&N Dec. 817 (Comm. 1988).

Here, the evaluations of the beneficiary's foreign credentials are based on employment experience and educational background. Although the evaluators base their conclusions, in part, on the beneficiary's employment background, the record contains no independent evidence to corroborate such employment experience, such as letters from the beneficiary's previous employers that include a comprehensive list of the beneficiary's duties. Furthermore, the evaluations contain conflicting information, as well as conflicting conclusions. Mr. Spencer, Dr. Berkman, and Dr. Hardesty find that the beneficiary has approximately six years of relevant employment experience, while Dr. Jelen finds that the beneficiary has approximately fourteen years of relevant employment experience. Furthermore, Mr. Spencer, Dr. Berkman and Dr. Hardesty conclude that the beneficiary holds the equivalent of a baccalaureate degree in business administration, while Dr. Jelen concludes that the beneficiary holds the equivalent of a master's

degree in business administration. The record, however, does not contain any information that addresses these inconsistencies.

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 on 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).

It is further noted that the record does not contain independent evidence showing that the evaluators are officials who have 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 8 C.F.R. § 214.2(h)(4)(iii)(D)(1). For the foregoing reasons, the credential evaluations are accorded little weight.

The beneficiary is not a member of any organizations whose usual prerequisite for entry is 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. It is also noted that the record does not contain any documentation to establish that the beneficiary has achieved recognition of expertise in the specialty occupation, in accordance with 8 C.F.R. § 214.2(h)(4)(iii)(D)(5). 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.