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

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



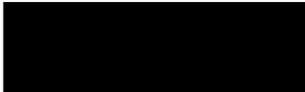
File: WAC-00-036-50080

Office: CALIFORNIA SERVICE CENTER

Date:

JUL 21 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:



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prevent clearly unwarranted
invasion of personal privacy**

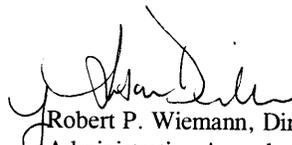
INSTRUCTIONS:

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 the Bureau of Citizenship and Immigration Services (Bureau) 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. A subsequent appeal was dismissed by the Administrative Appeals Office (AAO). The matter is now before the AAO on a motion to reopen and reconsider. The motion will be granted. The previous decision of the AAO will be affirmed.

The petitioner is a restaurant with 40 employees and an approximate gross annual income of \$2 million. 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 had submitted a statement in support of the appeal.

The AAO dismissed the appeal reasoning that the petitioner had not demonstrated that the beneficiary's bachelor's degree in communications qualifies him for a market research analyst position. The AAO further found that the record contained insufficient evidence in support of the evaluator's claim that the beneficiary's education and experience are equivalent to a master's degree in marketing.

On motion, counsel submits a second credentials evaluation in support of his claim that the beneficiary is qualified to perform the duties of a specialty occupation.

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.

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 record indicates that the beneficiary holds a bachelor's degree in communications conferred by a Peruvian institution. A credentials evaluation service determined that his degree is equivalent to a baccalaureate degree conferred by a U.S. institution. The same credentials evaluation service found that the beneficiary's education and experience are equivalent to a master's degree in marketing.

In the second credentials evaluation that has been submitted on appeal, the evaluator states, in part, as follows:

In conducting my evaluation, I have reviewed a photocopy of [the beneficiary's] diploma and transcript from [the] University of Lima showing a Bachelor of Arts degree in Communication including coursework in advertising and marketing; photocopies of his resume with an employment letter from [REDACTED] of Pantodos showing a professional record of about 2 years of

experience in communications and teaching and about 12.5 years of professional experience in marketing and advertising; and a record of professional training

[The beneficiary] has relevant work experience in sales, advertising, marketing and management. During his years of experience, he had progressively increasing responsibility including positions as Sales Representative, Chief of the Advertising Department, Marketing Executive, and Accounts Supervisor/Executive.

[I]t is my opinion that [the beneficiary's] academic and professional work experience is functionally equivalent to a bachelor's degree in business administration specializing in marketing from a university in the U.S. and a master's degree in business administration specializing in marketing from a U.S. university.

The Bureau 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 evaluation of the beneficiary's foreign credentials is based on employment experience and educational background. 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. The evaluator concluded that the beneficiary has equivalent graduate education in the listed disciplines. The record, however, does not contain independent evidence, such as a statement from an admissions official of Seattle Pacific University, that the evaluator is 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 required by 8 C.F.R. § 214.2(h)(4)(iii)(D)(1). Accordingly, the evaluation is 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 him 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 decisions of the director and the AAO, the petitioner has not persuasively established 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.

ORDER: The finding of the AAO in its decision dated April 11, 2002, that the beneficiary is not qualified to perform the duties of a specialty occupation, is affirmed.