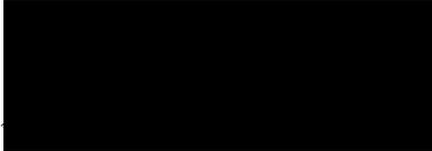


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U.S. Department of Homeland Security  
Bureau of Citizenship and Immigration Services

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



File: WAC-02-123-50706 Office: CALIFORNIA SERVICE CENTER

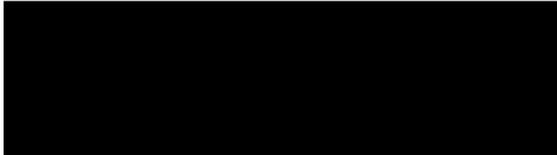
Date: **MAY 19 2003**

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 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 and is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed.

The petitioner is a hotel with 11 employees and a gross annual income of \$1.4 million. It seeks to employ the beneficiary as a management analyst/hospitality 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 thereof. On appeal, counsel submits two opinions from personnel of Western New England College and Saint Vincent College in support of her assertion that the beneficiary is qualified to perform the duties of a specialty 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.

The issue in this proceeding is whether the beneficiary is qualified to perform the duties of a management analyst position. In its *Occupational Outlook Handbook (Handbook)*, 2002-2003 edition, the Department of Labor (DOL) finds that most employers in private industry generally seek individuals with a master's degree in business administration or a related discipline for a management analyst position.

The beneficiary holds a Bachelor of Science degree in tourism from a Filipino institution. The record also contains a "certification," indicating that, at the time of the filing of the instant petition, the beneficiary had 10 years of employment at the Manila Hyatt Regency. A credentials evaluator has determined that the beneficiary has the equivalent of 3½ years of university-level credit in tourism and hospitality management from an accredited university in the United States, and seven years of progressive employment experience in the field of hospitality management and marketing. The same evaluator has determined that the beneficiary could be considered to have the equivalent of both a bachelor's degree and a master's degree in hospitality management and marketing.

This 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. The evaluator's finding that the beneficiary holds the equivalent of both a bachelor's and a master's degree in hospitality management and marketing, conflicts with the finding of [REDACTED]

[REDACTED] Associate Academic Dean of Saint Vincent College, who has determined that based on his educational and employment history, the beneficiary holds the equivalent of a bachelor's degree in tourism and travel management with a minor in marketing from a regionally accredited college or university in the United States. It is also noted that, although not explicitly stated, [REDACTED] Ph.D., Associate Professor of Western New England College, suggests that the beneficiary holds the equivalent of a Bachelor of Science degree in hospitality and tourism. The record, however, contains no explanation for the discrepancy between the credential evaluator's finding and the findings of Ms. [REDACTED] and Dr. [REDACTED]

Doubt cast on any aspect of the petitioner's proof may lead to a reevaluation of the reliability and sufficiency of the remaining evidence offered in support of the visa petition. Further, 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. (Comm. 1988). Accordingly, the evaluations are accorded little weight.

Furthermore, even if the Bureau were to accept the findings of Ms. [REDACTED] and Dr. [REDACTED] that the beneficiary holds the equivalent of a baccalaureate degree in tourism or an equivalent thereof, the beneficiary would still not be eligible to perform the duties of a management analyst because he does not possess a master's degree in business administration or a related discipline, as described in the DOL's *Handbook*. Rather, the beneficiary's educational background is in the tourism industry, which does not qualify him for a management analyst position.

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 decision of the director, the petitioner has not demonstrated 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 appeal is dismissed.