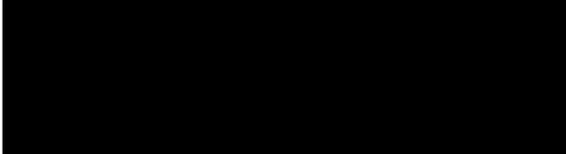


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U.S. Department of Homeland Security
Bureau of Citizenship and Immigration Services

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



File: EAC 01 056 54414

Office: VERMONT 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 petition was approved by the Director, Vermont Service Center. Based upon information obtained from the beneficiary during the visa issuance process at the American Consulate in Belfast, the director subsequently determined that the beneficiary was not clearly eligible for the benefit sought. Accordingly, the director properly served the petitioner with notice of his intent to revoke approval of the visa petition and his reasons therefore, and ultimately revoked the approval of the petition. The matter is now before the Administrative Appeals Office ("AAO") on appeal. The appeal will be dismissed.

The petitioner is a gambling casino with 110 employees and an approximate gross annual income of \$2.5 million. It seeks to employ the beneficiary as a business manager for a period of three years. The director revoked approval of the petition based on a determination that the petitioner had not shown that the beneficiary qualifies to perform services in a specialty occupation.

On appeal, counsel submits a brief and additional evidence.

The pertinent regulation at 8 C.F.R. § 214.2(h)(11)(B)(iii)(2) states, in part, that the director shall send to the petitioner a notice of intent to revoke the petition if the director finds that the statement of facts contained in the petition was not true and correct.

The record shows that the director initially approved the petition on February 20, 2001. On July 24, 2001, the director issued a notice informing the petitioner of his intent to revoke approval of the petition based on information received from the American Consulate in Belfast. Specifically, the consular officer who conducted the beneficiary's visa interview determined that the beneficiary's claimed qualifications and experience were not substantiated by his university transcript or resume, nor were they evidenced during his visa interview. The consular officer noted that, although the duties of the proffered position included implementing a system of general accounting, preparation of balance sheets, preparing profit and loss statements, auditing all company contracts, and reviewing and coordinating budget operations, the beneficiary had completed only one module consisting of fifteen credits in accounting during his university studies.

The consular officer further noted that the beneficiary's resume reflected only three months of management/supervisory experience, gained while working as a labor supervisor between June and October 1999. Finally, the consular officer noted that the beneficiary had misrepresented his employment status on the Nonimmigrant Visa Application Form OF-156 and during his visa interview. Specifically, the beneficiary indicated that he was currently self-employed in the construction industry when he had, in fact, been unemployed since July 2000. The consular official returned a copy of the original petition and supporting documents, the visa petition, the beneficiary's resume, and the Form I-797 H-1B approval notice, to the director for consideration of revoking approval of the petition.

The record shows that the petitioner failed to respond to the notice of intent to revoke. The director, therefore, revoked approval of the petition on November 27, 2001, because the petitioner had failed to submit a brief or any evidence to overcome the adverse information contained in the consular officer's memorandum.

On appeal, counsel asserts that position in question is not that of an accountant, but rather that of a business manager who would oversee the overall operations of the company including accounting and the hiring, training, supervision, and firing of employees. Counsel states that the petitioner currently employs 4 bookkeepers and retains the services of an independent accounting firm to handle the petitioner's bookkeeping and accounting work. Counsel asserts that the 15 credits in accounting completed by the beneficiary during his business administration studies are more than sufficient to enable him to oversee the financial operations of the company.

Counsel further asserts that the director did not take into consideration the beneficiary's management experience during his employment for Desertoak, PLC and Kay's PLC. Finally, counsel claims that the beneficiary worked at temporary jobs during the period from May 2000 to June 2001 because he planned to transfer to the United States to begin his first period of authorized H-1B employment as the petitioner's business manager.

Finally, counsel states that, as of the filing date of the appeal, the beneficiary was working as a business manager for a company in the United Kingdom, Resdev, Northern Ireland LTD.

Pursuant to section 214(i)(2) of the Immigration and Nationality Act (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 shows the beneficiary was awarded a bachelor's degree in business administration with additional credits in information technology by the University College Worcester after completion of a three-year course of studies. A credentials evaluator found the

beneficiary's education equivalent to a Bachelor's degree in Business Administration, including course-work in Information Technology, from an accredited institution in the United States.

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). In this case, the evaluator has not provided any explanation as to how he arrived at his conclusion, nor has he submitted copies of any relevant reference material he relied upon to reach his conclusion. Additionally, the evaluator has not provided any evidence such as a curriculum vitae setting forth his qualifications to make such a determination. Accordingly, the evaluation is accorded little weight.

Pursuant to 8 C.F.R. § 214.2(h)(4)(iii)(D)(1), 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 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.

The petitioner has not submitted an evaluation of the beneficiary's education and work experience 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.

Pursuant to 8 C.F.R. § 214.2(h)(4)(iii)(D)(5), the Bureau may determine that equivalence to completion of a baccalaureate degree in a 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 for expertise in the specialty occupation as a result of such training and experience. For purposes of determining equivalency to a baccalaureate degree,

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, 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's resume is the only evidence of the beneficiary's claimed employment history contained in the record of proceeding. This document was mailed to the Consulate by the beneficiary after his visa interview and was not incorporated into the record of proceeding until after the Form I-129 petition had been approved. The beneficiary listed the following work experience on his resume:

1. From May 1997 to June 1999, the beneficiary stated that he worked for Kay's PLC in Worcestershire, England as a warehouse operative overseeing inventory control and logistics planning;
2. From June 1999 to October 1999 the beneficiary stated that he worked as a labor supervisor for Desertoak PLC in Gloucester, England;

3. From October 1999 to March 2000, the beneficiary stated that he worked for Kays PLC as a warehouse operative overseeing inventory control and logistics planning;
4. From April 2000 to June 2000 the beneficiary stated that he worked as an assistant site agent for Harper PLC overseeing job planning, contract dealings, and salary control.
5. The beneficiary indicated that he has been unemployed since July 2000.

Neither counsel nor the beneficiary has submitted any independent evidence to corroborate the beneficiary's claimed employment experience. Simply going on record without supporting documentary evidence is not sufficient for meeting the burden of proof in these proceedings. *Matter of Treasure Craft of California*, 14 I&N Dec. 190 (Reg. Comm. 1972). Additionally, it was held in *Matter of Obaigbena*, 19 I&N Dec. 533, 534 (BIA 1988) and *Matter of Ramirez-Sanchez*, 17 I&N Dec. (BIA 1980) that the assertions of counsel do not constitute evidence.

On appeal, counsel incorrectly asserts that the consular officer failed to consider the beneficiary's supervisory experience during his employment with Desertoak PLC. The consular officer specifically noted in his memorandum that the beneficiary claimed to have three months of management/supervisory experience gained while working as a labor supervisor during his employment from June 1999 to October 1999. This is precisely the period during which the beneficiary indicated he worked for Desertoak PLC.

Although counsel asserts on appeal that the beneficiary had additional supervisory/managerial experience, counsel has not provided employment letters from any of the beneficiary's former employers setting forth his job title and duties during his claimed employment for those companies. Additionally, as noted by the consular officer, the Bureau does not consider the supervision of laborers to be qualifying employment for purposes of determining equivalency to a baccalaureate degree in a specific specialty.

Finally, there is the matter of the beneficiary's misrepresentation of his employment history on the Form OF-156

Nonimmigrant Visa Application and during his visa interview. The consular officer stated in his memorandum:

In addition, Mr. [REDACTED] mis-stated his current employment status on his visa application form and in person to the Consular Officer. In writing (OF-156) and during his interview with me, he stated that he was currently self-employed in the construction industry. Mr. [REDACTED] has in fact been unemployed since July 2000, as was subsequently confirmed when he mailed in his resume. I do not know if the fact and length of Mr. [REDACTED] unemployment were known to INS at the time INS approved the petition.

In his response to Item 19 of the visa application form, Present Occupation, the beneficiary wrote: "Self employed/construction." According to the consular officer, the beneficiary confirmed during his visa interview that he was currently self-employed and working in the construction industry. These statements are directly contradicted by the beneficiary's statement on his resume that he had actually been unemployed since July 2000.

On appeal, counsel submits an undated letter from the beneficiary in which he states:

You may note that my C[urriculum] V[itae] discloses that I have been unemployed for the previous ten months on the return from England due to Personnel [sic] and family issues. This is different to what I spoke of during the interview as I thought being unemployed for this period of time would abandon all chances of the Visa being granted.

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). In this case, the beneficiary states that he failed to disclose the truth about his period of unemployment on the visa application form and during his visa interview because he feared his visa application

would be denied. The petitioner has not, however, provided any independent objective evidence pointing to where the truth, in fact, lies in this matter. Therefore, the beneficiary's failure to resolve the inconsistencies in the record regarding his period of unemployment raises serious questions regarding the reliability and sufficiency of the remaining evidence offered in support of the visa petition.

The beneficiary is not a member of any organizations whose usual prerequisite for entry is a baccalaureate degree in a specialized area. The record contains no evidence that the beneficiary holds a state license, registration, or certification which authorizes him to practice a specialty occupation in a foreign country. The record does not contain any published material by or about the alien in professional publications, trade journals, or major newspapers. No evidence has been submitted to document any achievements which a recognized authority has determined to be significant contributions to the field of the specialty occupation. In view of the foregoing, it is concluded that the petitioner has not demonstrated that the beneficiary qualifies to perform the duties of a specialty occupation.

Beyond the director's decision, it is noted that the proffered position does not appear to be a specialty occupation. The position appears to be that of a general or operations manager. A review of the Department of Labor's *Occupational Outlook Handbook*, 2002-2003 edition, at page 86 finds no requirement of a baccalaureate degree in a specific specialty for employment as a general manager. The formal education and experience of top executives varies as widely as the nature of their responsibilities. Degrees in business and in liberal arts fields appear equally welcome. In addition, certain personal qualities and participation in-house training programs are often considered as important as a specific formal academic background. As the appeal will be dismissed on the grounds discussed, however, 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.