

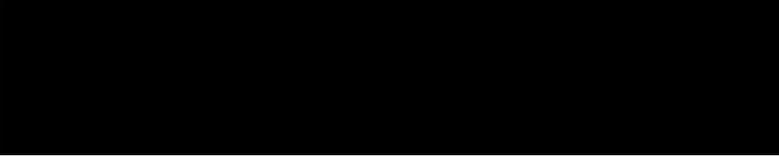
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U.S. Department of Homeland Security
Citizenship and Immigration Services

DZ

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



File: LIN 03 072 52979 Office: NEBRASKA SERVICE CENTER Date:

IN RE: Petitioner:
Beneficiary:



NOV 22 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)

ON BEHALF OF PETITIONER:



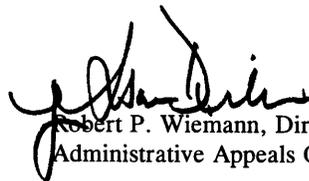
INSTRUCTIONS:

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 which 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, Nebraska Service Center. The matter is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed.

The petitioner is a regional food retailer with 1897 employees, and an undisclosed gross annual income. It seeks to employ the beneficiary as a District Manager. The director denied the petition because the beneficiary did not qualify to perform the duties of a specialty occupation.

On appeal, counsel submits a brief and additional evidence. Counsel states that the beneficiary is qualified to perform the duties of a specialty occupation and offers two evaluations of the beneficiary's qualifications in support of that assertion: (1) an evaluation from Dr. [REDACTED] of the Global Education Group, Inc.; Dr. [REDACTED] states that the beneficiary has the equivalent of a Bachelor's Degree in Business Administration from a regionally accredited university in the United States, based upon the beneficiary's education and work experience; and (2) an evaluation from [REDACTED] the [REDACTED] Foundation for International Services, Inc.; Ms. [REDACTED] opines that the beneficiary possesses the equivalent of a Bachelor's Degree in Business Administration, with specialization in human resources management, from an accredited college or university in the United States, based upon the beneficiary's education and work experience.

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

Implicit in the director's denial letter is his conclusion that the proffered position is a specialty occupation. The director's determination denying the I-129 petition was based solely on the beneficiary's qualifications to perform the duties associated with that occupation. The only 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
 - (i) completion of such experience in the specialty equivalent to the 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 or 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.

The offered position is that of a district manager and requires a baccalaureate or higher degree, or its equivalent, in business administration or a related field as a minimum requirement for entry into the position. The petitioner seeks to qualify the beneficiary by establishing that the beneficiary meets the requirements of 8 C.F.R. § 214.2 (h)(4)(iii)(C)(4). In support of this assertion, the petitioner submitted three separate evaluations.

The first evaluation submitted is dated December 4, 2002, and was prepared by [REDACTED] Assistant Director of Evaluations with the Foundation for International Services, Inc. Ms. [REDACTED] states that the beneficiary possesses the equivalent of a Bachelor's Degree in Business Administration from an accredited college or university in the United States, based upon the beneficiary's education and work experience. The evaluator is not, however, 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, she does not have authority to evaluate the beneficiary's work experience for the purpose of determining degree equivalence and her evaluation is of little evidentiary value.

The second evaluation submitted is dated February 18, 2003, and was prepared by [REDACTED] with the Foundation for International Services, Inc. Ms. [REDACTED] states that the beneficiary possesses the equivalent of a Bachelor's Degree in Business Administration, with a specialization in human resources management, from an accredited college or university in the United States, based upon the beneficiary's education and work experience. Again, the evaluator is not 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). Ms. [REDACTED] does not, therefore, have authority to evaluate the beneficiary's work experience for the purpose of determining degree equivalence and her evaluation is of little evidentiary value.

The third evaluation submitted is from Dr. [REDACTED] of the Global Education Group, Inc. Dr. [REDACTED] states that the beneficiary holds the equivalent of a Bachelor's Degree in Business Administration from an accredited college or university in the United States, based upon the beneficiary's prior education and work experience. Dr. [REDACTED] is a professor, and Chairman of the Department of Decision Sciences and Information Systems at Florida International University. He states in his evaluation that he has advisory authority to grant college-level credit for training and/or experience in the field of business administration at Florida International University. There is, however, no documentation in the record from Florida International University confirming that Dr. [REDACTED] possesses that authority. His unsupported assertion is insufficient to satisfy the requirement of 8 C.F.R. § 214.2 (h)(4)(iii)(D)(1). Furthermore, it is unclear whether the evaluator actually has the requisite authority, or only the authority to recommend the approval of college-level credit for work experience since he indicates that his authority is "advisory" in nature. The evaluation is, therefore, of little evidentiary value.

Citizenship and Immigration Services (CIS), may itself determine whether the beneficiary is qualified to perform the duties of the specialty occupation. That determination may be made pursuant to 8 C.F.R. § 214.2 (h)(4)(iii)(D)(5), which provides:

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:

1. Recognition of expertise in the specialty occupation by at least two recognized authorities in the same specialty occupation;
2. Membership in a recognized foreign or United States association or society in the specialty occupation;
3. Published material by or about the alien in professional publications, trade journals, books or major newspapers;
4. Licensure or registration to practice the specialty occupation in a foreign country; or
5. Achievements which a recognized authority has determined to be significant contributions to the field of the specialty occupation.

The documentation recounting the beneficiary's work experience is insufficient in detail to determine that: the work experience included the theoretical and practical application of specialized knowledge required by the proffered position; the beneficiary'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 beneficiary has recognition of expertise in the specialty. CIS cannot, therefore, determine that the beneficiary is qualified to perform the duties of the specialty occupation.

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 failed to sustain that burden and the appeal shall accordingly be dismissed.

ORDER: The appeal is dismissed.