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Washington, DC 20536



U.S. Citizenship  
and Immigration  
Services



FILE: WAC 02 279 50635 Office: CALIFORNIA SERVICE CENTER Date: APR 20 2004

IN RE: Petitioner: [Redacted]  
Beneficiary: [Redacted]

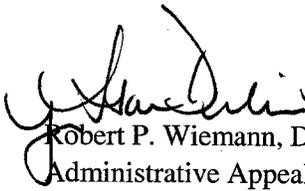
PETITION: Petition for a Nonimmigrant Worker Pursuant to Section 101(a)(15)(H) of the Immigration and Nationality Act, 8 U.S.C. § 1101(a)(15)(H)

ON BEHALF OF PETITIONER:



INSTRUCTIONS:

This is the decision of the Administrative Appeals Office 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.

  
Robert P. Wiemann, Director  
Administrative Appeals Office

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identifying data deleted to  
prevent clearly unwarranted  
invasion of personal privacy

**DISCUSSION:** The service center director denied the nonimmigrant visa petition and the matter is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed. The petition will be denied.

The petitioner sells multimedia products. It seeks to employ the beneficiary as a market research analyst. The petitioner endeavors to classify the beneficiary as a nonimmigrant worker in a specialty occupation pursuant to 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).

The director denied the petition because the beneficiary is not qualified to perform the duties of a specialty occupation. On appeal, counsel submits a brief.

Section 214(i)(2) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1184(i)(2), states that an alien applying for classification as an H-1B nonimmigrant worker must possess full state licensure to practice in the occupation, if such licensure is required to practice in the occupation, and completion of the degree in the specialty that the occupation requires. If the alien does not possess the required degree, the petitioner must demonstrate that the alien has 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, an 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 of proceeding before the AAO contains, in part: (1) Form I-129 and supporting documentation; (2) the director's request for additional evidence; (3) the petitioner's response to the director's request; (4) the director's denial letter; and (5) Form I-290B and supporting documentation. The AAO reviewed the record in its entirety before issuing its decision.

The record contains the following documentation relating to the beneficiary's qualifications:

- Beneficiary's college transcripts from a Filipino university reflecting five semesters and one summer of studies that included the following accounting course: "Fundamentals of Management Accounting";
- Credentials evaluation, dated September 4, 2002, indicating that the beneficiary completed the equivalent of 51 U.S. semester hours at an accredited U.S. university;
- Letter, dated September 3, 2002, from [REDACTED] Associate Academic Dean, Saint Vincent College, who concludes that, based on his educational and employment history, the beneficiary has attained the equivalent of a Bachelor of Science degree with a major in marketing from a regionally accredited U.S. college or university;
- Evaluation, dated October 4, 2002, from [REDACTED] Ph.D., Associate Professor of Marketing, Western New England College, who concludes that, based on his education and professional experience, the beneficiary has attained the equivalent of a U.S. bachelor's degree in business administration with a major in marketing;
- Certificate of Experience, dated July 9, 2002, from the CEO of the Taiwanese business, Longturn Aquarium Co., Ltd., who states that the beneficiary was employed from May 1, 1990 to August 31, 2001, as a marketing and sales consultant; and
- Certificate of Experience, dated August 8, 2002, from the president of the Filipino business, Asia United Bank, who states, that the beneficiary was employed from May 1, 1999 to December 30, 2000, as a senior manager/marketing representative.

The petitioner is seeking the beneficiary's services as a market research analyst. The petitioner indicated in its September 11, 2002 letter that the beneficiary was qualified because he possessed the equivalent of a bachelor's degree in marketing. Although not explicitly stated, it appears that the petitioner requires a baccalaureate degree or its equivalent in marketing for the proffered position.

The director found that the beneficiary was not qualified for the proffered position because the beneficiary's education, experience, and training were not equivalent to a baccalaureate degree in a specialty required by the occupation. On appeal, counsel states that the beneficiary is qualified for the position because he meets at least two criteria of 8 C.F.R. § 214.2(h)(4)(iii)(D). Counsel states that the record contains a letter from Ms. [REDACTED] Associate Academic Dean at Saint Vincent College, who concludes that the beneficiary holds the equivalent of a Bachelor of Science degree with a major in marketing from a regionally accredited U.S. college or university. Counsel also states that the record contains letters from the following two recognized authorities in the specialty occupation: Ms. [REDACTED] and from Mr. [REDACTED] Ph.D., Associate Professor of Marketing at Western New England College, who concludes that the beneficiary holds the equivalent of a U.S. bachelor's degree in business administration with a major in marketing. Accordingly, the AAO will address these two criteria only.

Pursuant to 8 C.F.R. § 214.2(h)(4)(iii)(D), equating the beneficiary's credentials to a United States baccalaureate or higher degree 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 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.

When Citizenship and Immigration Services (CIS) determines an alien's qualifications pursuant to 8 C.F.R. § 214.2(h)(4)(iii)(D)(5), 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<sup>1</sup>;
- (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

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<sup>1</sup> *Recognized authority* means a person or organization with expertise in a particular field, special skills or knowledge in that field, and the expertise to render the type of opinion requested. A recognized authority's opinion must state: (1) the writer's qualifications as an expert; (2) the writer's experience giving such opinions, citing specific instances where past opinions have been accepted as authoritative and by whom; (3) how the conclusions were reached; and (4) the basis for the conclusions supported by copies or citations of any research material used. 8 C.F.R. § 214.2(h)(4)(ii).

- (v) Achievements which a recognized authority has determined to be significant contributions to the field of the specialty occupation.

The AAO turns first to the criterion at 8 C.F.R. § 214.2(h)(4)(iii)(D)(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. The record contains a letter from [REDACTED] Associate Dean of Saint Vincent College, who concludes, in part, as follows:

“Based upon my review of his educational and employment history, it is my [judgment] that [the beneficiary] has attained the equivalent of a Bachelor of Science with a major in Marketing from a regionally accredited college or university in the United States. My assessment has been made through an application of the three-for-one work experience for college formula where his employment yields more than three years of equivalent education  
....”

Ms. [REDACTED] does not provide specifics in her evaluation regarding how much credit she granted for the beneficiary's college studies. Nor does Ms. [REDACTED] discuss the employment letters in any detail. Upon review of the employment letters, it appears that the beneficiary was concurrently employed by the Filipino business, Asia United Bank, and the Taiwanese business, Longturn Aquarium Co., Ltd. At the Filipino business, his position was described as that of a senior manager/marketing representative, while at the Taiwanese business, his position was described as that of a marketing and sales consultant. The petitioner has provided no details regarding how this concurrent employment was accomplished, such as an hourly breakdown of the duties performed at the Filipino and Taiwanese businesses.

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). Furthermore, it is noted that much of the text in both employment letters is identical. Thus, the AAO must question whether the opinions expressed in each letter are the views of each author. In view of the foregoing, Ms. [REDACTED] opinion is accorded little weight. CIS may, in its discretion, use as advisory opinions statements submitted as expert testimony. However, where an opinion is not in accord with other information or is in any way questionable, CIS is not required to accept or may give less weight to that evidence. *Matter of Caron International*, 19 I&N Dec. 791 (Comm. 1988).

The AAO now turns to the criterion at 8 C.F.R. § 214.2(h)(4)(iii)(D)(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.

In addition to the letter from Ms. [REDACTED] the record includes an evaluation from [REDACTED] Ph.D., Associate Professor of Marketing, Western New England College, who finds that the beneficiary's 51 credits of college coursework counts toward almost two years of a four-year college degree in liberal arts. Dr. [REDACTED] concludes that the beneficiary's educational background and eleven years of work experience as a marketing

and sales consultant are equivalent to a U.S. bachelor's degree in business administration with a major in marketing. Dr. [REDACTED] bases his conclusion on the beneficiary's transcripts and the Certificate of Experience written by the CEO of Longturn Aquarium Co., Ltd. As previously discussed, however, there are unresolved issues regarding the letter from the CEO of Longturn Aquarium Co., Ltd., such as the lack of details of the beneficiary's concurrent employment at Asia United Bank, and the identical text of both employment letters. In view of the foregoing, the evaluations/expert opinions are accorded little weight. As such, the record contains insufficient evidence that the beneficiary has recognition of expertise.

As related in the discussion above, the petitioner has failed to establish that the beneficiary is qualified to perform the duties of the proffered position. Accordingly, the AAO shall not disturb the director's denial of the petition.

Beyond the decision of the director, the AAO does not find that the proffered position is a specialty occupation because the proffered position appears to be primarily that of a marketing manager. However, as the AAO is dismissing the appeal on another ground, it will not examine this issue 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. The petition is denied.