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U.S. Citizenship  
and Immigration  
Services

DZ

DEC 01 2004

FILE: WAC 03 021 52308 Office: CALIFORNIA SERVICE CENTER Date:

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 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

**DISCUSSION:** The service center 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 is a real estate sales company seeking to hire the beneficiary as a real estate loan 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. 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 her 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 petitioner is seeking the beneficiary's services as a real estate loan analyst. The petitioner indicated in an October 23, 2002 letter that it wished to hire the beneficiary because she possessed the requisite bachelor's degree from a foreign college and eight-years experience as a financial analyst for banking institutions and in

related fields. The petitioner also stated its intention to shift its commercial direction from one strictly devoted to real estate sales to one that also included mortgage banking. The professional with whom the petitioner filled the proffered position, according to the letter, would help transform the company.

The beneficiary does not hold a U.S. degree, a foreign degree determined to be equivalent to a U.S. baccalaureate in the specialty, or an unrestricted state license under 8 C.F.R. § 214.2(h)(4)(iii)(C). A beneficiary may qualify to perform a specialty occupation if he or she has 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 has recognition of expertise in the specialty through progressively responsible positions directly related to the specialty. 8 C.F.R. § 214.2(H)(4)(iii)(C)(4).

There are five ways to demonstrate that the beneficiary is qualified for the job despite the lack of the required degree. 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 Non-collegiate 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.

Under the third provision, counsel submitted an evaluation from Josef Silny & Associates, Inc., a company that specializes in evaluating academic credentials, which evaluated the beneficiary's foreign college credentials. The evaluator concluded that the beneficiary possesses the equivalent of a Bachelor of Science degree in computer sciences from an accredited U.S. college or university. Because this degree is not in the

specialty required for performing the specialty occupation, however, the director found the beneficiary was not qualified to perform the specialty occupation.

The petitioner did not provide evidence of the beneficiary's work experience as equivalent to higher education under the regulations first subpart. 8 C.F.R. § 214.2(h)(4)(iii)(D)(1). Nor did the petitioner or counsel provide evidence that the beneficiary had passed the tests referred to under 8 C.F.R. § 214.2(h)(4)(iii)(D)(2) and (4) -- the CLEP or PONSİ exams -- nor that she has certification or registration from a nationally-recognized professional association or society.

The director stated that it evaluated the beneficiary's work and educational background on its own, and found that the beneficiary was not qualified for the proffered position because the beneficiary's education, with a bachelor of science in computer science and her work experience were not equivalent to a baccalaureate degree in a finance and economics, a specialty required by the occupation. Instead the director analyzed the beneficiary's background, under 8 CFR § 214.2(h)(4)(iii)(D)(5), and found the beneficiary's educational credentials in computer science lacked the necessary concentration in finance and economics to perform the duties of the job.

The AAO concurs with the director that the position requires a bachelor's degree in finance, economics or a related field. This position is supported by the Department of Labor's *Occupational Outlook Handbook (Handbook)*. As the beneficiary does not have such a degree or its equivalent under 8 C.F.R. § 214.2(h)(4)(iii)(D)(1)-(4), CIS will review the beneficiary's qualifications under 8 C.F.R. § 214.2(h)(4)(iii)(D)(5).

When 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;

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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).

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

On appeal, counsel supplied letters from former colleagues of the beneficiary with earlier employers that describe each writer's expertise and the beneficiary's work experience while with each respective company. The letters discuss the beneficiary's qualifications for the position and her years of experience working as a financial analyst for banking and other institutions.

The AAO notes that the director's request for evidence, sent to counsel, specifically requested evidence that the beneficiary's training and/or work experience was equivalent to a baccalaureate degree in the specialty, framed around the requirements of 8 C.F.R. § 214.2(h)(4)(iii)(D)(5). Despite this, as noted in the director's decision, counsel did not send the documentary evidence requested.

CIS regulations affirmatively require a petitioner to establish eligibility for the benefit it is seeking at the time the petition is filed. See 8 C.F.R. § 103.2(b)(12). The purpose of a Request for Evidence (RFE) is to elicit further information that clarifies whether eligibility for the benefit sought has been established. 8 C.F.R. § 103.2(b)(8). The petitioner was put on notice of required evidence and given a reasonable opportunity to provide it for the record before the visa petition was adjudicated. The petitioner failed to submit the requested evidence and now submits it on appeal. However, the AAO will not consider this evidence for any purpose. *Matter of Soriano*, 19 I&N Dec. 764 (BIA 1988). The appeal will be adjudicated based on the record of proceeding before the director.

Counsel argues that the beneficiary's equivalent degree in computer science included coursework in mathematics, and that she is thus qualified for the position. As the record contains no documentation submitted on a timely basis that responds to the evidentiary requirements of 8 C.F.R. § 214.2(h)(4)(iii)(D)(5), the petitioner has failed to establish that the beneficiary is qualified to perform the specialty.

When evaluating a beneficiary's qualifications under the fifth criterion, CIS considers three years of specialized training and/or work experience to be the equivalent of one year of college-level training. In addition to documenting that the length of the beneficiary's training and/or work experience is the equivalent of four years of college-level training, the petitioner must also establish that the beneficiary's training and/or work experience has included the theoretical and practical application of specialized knowledge required by the specialty occupation, and that the experience was gained while working with peers, supervisors, or subordinates who have degrees or the equivalent in the specialty occupation. The petitioner must also document recognition of the beneficiary's expertise in the specialty, as evidenced by one of the following: recognition of expertise in the specialty occupation by at least two recognized authorities in the same specialty occupation; membership in a recognized foreign or U.S. association or society in the specialty occupation; published material by or about the alien in professional publications, trade journals, books or

major newspapers; licensure or registration to practice the specialty in a foreign country; or achievements which a recognized authority has determined to be significant contributions to the field of the specialty occupation.

However, as already stated in the director's denial, the beneficiary's training and employment history does not qualify her to work in a specialty occupation per the requirements at 8 C.F.R. § 214.2(h)(4)(iii)(D)(5). The record before the AAO does not establish that the beneficiary's work experience included the theoretical and practical application of specialized knowledge required for the petitioner's self-described specialty occupation of real estate loan analyst. Further, there is no information in the record to indicate that the beneficiary's work experience was gained while working with peers, supervisors or subordinates who have degrees or the equivalent in the specialty; or resulted in any recognition of his expertise in the specialty.

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.

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.