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FEB 02 2004



FILE: WAC 02 274 54356 Office: CALIFORNIA SERVICE CENTER Date:

IN RE: Petitioner:  
Beneficiary:



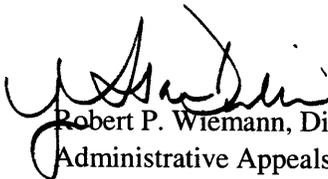
PETITION: Petition for a Nonimmigrant Worker Pursuant to Section 101(a)(15)(H) (i) (b) of the  
Immigration and Nationality Act, 8 U.S.C. § 1101(a)(15)(H)(i) (b)

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 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 is a yarn, fabric and textile company engaged in international trade that seeks to employ the beneficiary as a market research analyst. The petitioner, therefore, 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. Among the materials submitted to the record is an academics and work experience evaluation written by Dr. Jonathon Jelen, for Morningside Evaluations and Consulting, New York, New York. Another evaluation document in the record is a report from Global Education Group, Inc., Miami Beach, Florida, that contains both a work experience evaluation report written by Dr. Christos Koulamas, and an educational evaluation report written by Michelle A. Birch, consultant. The record also contains the beneficiary's resume, and a certification from the Hyosung Corporation in Seoul, Korea, of the beneficiary's employment with this company since January 1996. The AAO reviewed the record in its entirety before issuing its decision.

The petitioner is seeking the beneficiary's services as a market research analyst. 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 petitioner has submitted two educational equivalency documents along with the additional documentation requested by the director in his request for further evidence. Counsel asserts that the director only commented on one evaluation and accompanying documentation. Counsel finally states that the two separate and independent evaluations should carry more weight and credibility than one evaluation.

Upon review of the record, the petitioner has failed to establish that the beneficiary is qualified to perform an occupation that requires a baccalaureate degree in the marketing research field. The beneficiary does not hold a foreign degree determined to be equivalent to a baccalaureate degree from a U.S. college or university in the field of marketing research or a closely related field. Therefore, the petitioner must demonstrate that the beneficiary meets the criterion at 8 C.F.R. § 214.2(h)(4)(iii)(C)(4).

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; or
- (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.

Upon review of the record, although the petitioner has submitted a letter from Mercy College that establishes that Dr. Jelen does have the authority to grant the college-level credit for various graduate and undergraduate degree programs in the Division of Business and Accounting, Dr. Jelen's evaluation was not done on behalf of Mercy College; it was done for a private educational credentials consulting firm. A credentials evaluation service may not evaluate an alien's work experience or training; it can only evaluate educational credentials.

See 8 C.F.R. § 214.2(h)(4)(iii)(D)(3). Thus, the Morningside evaluation carries no weight in these proceedings. *Matter of Sea, Inc.*, 19 I&N Dec. 817 (Comm. 1988).

With regard to the Global Education Group's evaluation documentation, Dr. Koulamas is identified as a professor at Florida International University and this university has provided correspondence to verify Dr. Koulamas' ability to grant college-level credit for work experience. Again, because Dr. Koulamas' evaluation was done for a private educational credentials consulting firm and not on behalf of Florida International University, his evaluation carries no weight. Even if CIS had accepted the evaluation, it would be viewed as problematic. First, the correspondence from Florida International University is very specific as to the three areas in which Dr. Koulamas can grant college-level credit for training/and/or experience in the field of business administration. These areas are credit for co-op and internship programs; the waiver of courses offered by the college of business administration and the substitution of it by an independent study project; and the waiver of a computer skill course for students if a student's training/work experience is adequate. These specific areas do not appear to cover the granting of extensive college-level credits based on work experience. Second, in his evaluation of the beneficiary's work experience, Dr. Koulamas brings in elements of the beneficiary's work experience that were initially noted by the petitioner in its cover letter, such as "responsible for company's product promotions in Middle East, Africa and Europe." However, Dr. Koulamas then adds job duties such as "developed channel management strategies: aimed at optimization of route to market based on profitability, delivered market strategies with the corporate account management to support growth by managing and implementing corporate account strategies." These duties are found nowhere else in materials in the record, which includes the beneficiary's resume, and the employer's certification of the beneficiary's employment. It is not clear as to how Dr. Koulamas arrived at such a description of the beneficiary's previous job duties.

It should also be noted that the petitioner did not submit the transcript of courses undertaken by the beneficiary in his university studies. As a result, Michelle Burch, the evaluator of the beneficiary's education, was unable to determine whether any courses undertaken by the beneficiary in his undergraduate studies would be viewed as applicable to an undergraduate degree in market research.

The one remaining avenue to determine whether the beneficiary is qualified to perform the duties of the proffered position based on his education, work experience and training is outlined in 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>;

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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)

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

Although the record reflects that the beneficiary has worked for six years with the Hyosung Corporation in Korea, the documentation does not establish equivalence of this work experience to a baccalaureate degree in market research or any other business administration-related field. The certification by the beneficiary's employer contains no details as to the specific duties undertaken or positions occupied by the beneficiary during this time. The beneficiary's resume notes a succession of extensive marketing trips and emphasizes the operational aspect of the beneficiary's work experience as opposed to any market research and analysis job duties. Only the beneficiary's last position with Hyosung Corporation, which is described as a manager with the supervision of nine staff members, indicates a progressively more responsible aspect of the beneficiary's employment. However, even this job duty is somewhat unclear, as the job is noted as "part manager," the meaning of which is unknown.

Thus, the AAO cannot conclude that the beneficiary's past work experience included the theoretical and practical application of a body of highly specialized knowledge, which in this case is market research analysis. Furthermore, neither the beneficiary's resume nor the letter from his employer indicates that the beneficiary's work experience was gained while working with peers, supervisors, or subordinates who have a degree or its equivalent in the specialty occupation. Finally, there is insufficient evidence that the beneficiary has recognition of expertise. While both Dr. Jelen and Dr. Koulamas appear to be recognized authorities in their own academic fields and capable of rendering a decision as to whether any of the beneficiary's achievements are significant contributions to the field of market research, neither academic made any such determination in the instant petition.

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.