PUBLIC COPY

U.S. Department of Homeland Security
20 Mass, Rm. A3042, 425 I Street, N.W.
Washington, DC 20536

identifying data deleted to prevent clearly unwarranted invasion of personal privacy

U.S. Citizenship and Immigration Services

D2

[redacted]

FEB 12 2004

FILE: WAC 01 288 53482 Office: CALIFORNIA SERVICE CENTER Date:

IN RE: Petitioner: [redacted]
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:

[redacted]

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 an airline company that seeks to employ the beneficiary as vice president of sales and marketing. 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 resubmits materials to the record with regard to the beneficiary's work experience.

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 documentation includes an educational equivalency evaluation report written by Michelle Burch of Global Educational Group, Inc, Miami Beach, Florida, and a work experience evaluation report written by Dr. Christos Koulamas, a consultant with Global Educational Group, and a faculty member, Florida International University. Correspondence from the beneficiary's former and present employers is also in the record. The AAO reviewed the record in its entirety before issuing its decision.

The petitioner is seeking the beneficiary's services as a vice president, sales and marketing. The petitioner indicated in a letter dated August 20, 2001, that over the next three years, it would be focusing on generating sales from United Kingdom and European tour operators. It sought to hire the beneficiary because it needed a person with experience in international tour operations and an extensive knowledge of their sales, marketing and customer service processes.

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 record contains documents from the beneficiary's previous employers that the director did not review. Counsel further states that this documentation established that the beneficiary's work experiences provided the equivalent of a baccalaureate degree in business administration.

Upon review of the record, the petitioner has failed to establish that the beneficiary is qualified to perform the duties of a specialty occupation that requires a baccalaureate degree in a specific specialty. The beneficiary does not hold a baccalaureate degree from an accredited U.S. college or university in any field of study, or a foreign degree determined to be equivalent to a baccalaureate degree from a U.S. college or university in any field of study. 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.

With regard to using the evaluation submitted by Global Education Group to establish that the beneficiary's

education is the equivalent of a baccalaureate degree, pursuant to 8 C.F.R.§ 214.2 (h)(4)(iii)(D)(1), the record contains no evidence that the beneficiary has any academic coursework in business administration. The only certificate submitted for the record documents that the beneficiary attended a BTEC certificate program in engineering at Tameside College of Technology on a part-time basis for two years. The transcript for this certificate course indicates a sole emphasis on engineering and engineering technology. The evaluation done by Michelle Burch is not specific as to how the beneficiary's coursework in engineering equated to one year of undergraduate study at an accredited U.S. educational institution. Nevertheless Ms. Burch states that the beneficiary's studies are the equivalent of one year of undergraduate studies at a U.S. university. CIS uses evaluations by a credentials evaluation organization of a person's foreign education as an advisory opinion only. Where an evaluation is not in accord with previous equivalencies or is in any way questionable, it may be discounted or given less weight. *See Matter of SEA, Inc.*, 19 I&N Dec. 820 (Comm. 1988). In the instant petition, the education equivalency report by Michelle Burch is found insufficient to establish that the beneficiary has the equivalent of one year of undergraduate studies in a subject area relevant to the petitioner, namely, business administration. Thus the education evaluation document is given no weight in this proceeding.

With regard to the work evaluation document also submitted by Global Education Group, Dr. Koulamas identified himself as chair of the Department of Decision Sciences and Information Systems, College of Business Administration, Florida International University. He states in his cover letter that he has the authority to grant college-level credit for training and/or experience in the field of business administration. Dr. Koulamas then determined that the beneficiary's ten years of experience in tour operations was the equivalent of a baccalaureate degree in business administration. In making this evaluation, the evaluator cited to the contents of letters submitted by the beneficiary's employers in the United States from 1988 to 2001. It is not clear from the record that either the evaluator has the authority or that Florida International University has a program to grant college level credits sufficient for a 4-year baccalaureate degree without some prior college coursework by the beneficiary in the area of business administration. In addition, Dr. Koulamas' statement with regard to his ability to grant college credits for equivalent work experience is not persuasive because it was not written on Florida International University letterhead, and the record does not contain any independent evidence from Florida International University of Dr. Koulamas' authority to grant college-level credit on the university's behalf.

In addition, Dr. Koulamas' evaluation as presently written is based upon the beneficiary's education, training and work experience. 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 Koulamas evaluation carries no weight in these proceedings. *Matter of Sea, Inc.*, 19 I&N Dec. 817 (Comm. 1988).

Another avenue of evaluating a beneficiary's education, work or experience and its equivalency to a baccalaureate degree in a specific specialty 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[1];

(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.

The AAO turns to the beneficiary's prior work experience, and whether it included the theoretical and practical application of specialized knowledge. The petitioner submitted three letters from the beneficiary's employers who provided substantive details on the beneficiary's work experience in the tour operations industry from 1988 to 2001. Sue Chatfield, human resources manager, for First Choice Holidays & Flights, described the beneficiary's work as a ski representative/guide and resort representative from 1988 to January 1992. Jean Taylor, overseas personnel manager, AirTours, provided job descriptions for two other jobs that the beneficiary held from 1992 to 2001 in the tour operations industry. These two positions were titled operations manager and commercial manager. As described by Ms. Taylor, the operations manager position reported to a regional manager, and the duties of the position were to manage a resort operation, optimize service delivery and maximize profit. The second position held by the beneficiary from January 7, 1999 to May 4, 2001 with AirTours entailed the following duties: negotiate and manage attraction and sundry contracts within the United States; assist in the property contracting process where necessary, and to initially set up an independent agency in the United States to serve AirTours Holiday.

As described by each employer, the beneficiary's duties appear to have evolved from subordinate positions with First Choice Holidays to two more progressively responsible positions with AirTours management infrastructure. Nevertheless, the record is not clear that such positions require the practical and theoretical application of highly specialized knowledge, such as that envisioned in the definition of specialty occupation. Furthermore, the record does not establish 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 in the record that the beneficiary has recognition of expertise. While the AAO notes that Dr. Christos Koulamas does appear qualified to be a recognized authority in the area of business administration, he provides no statement as to any recognition of expertise that the beneficiary may have in the field of tour operations.

---

[1] *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).

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. The proffered position appears to be that of a sales and marketing manager. The Department of Labor's (DOL) *Occupational Outlook Handbook* (*Handbook*) on page 28 states that a wide range of educational backgrounds are suitable for entry into such a position. It further indicates that employers prefer those with experience in related occupations plus a broad liberal arts background. The *Handbook* does not indicate that a baccalaureate degree is required for entry into such a position. In addition, the petitioner provided no information that would have established any other criterion outlined in 8 C.F.R. § 214.2(h)(4)(iii)(A). 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.