

PUBLIC COPY



**U.S. Citizenship
and Immigration
Services**

Identifying data deleted to
prevent clearly unwarranted
invasion of personal privacy



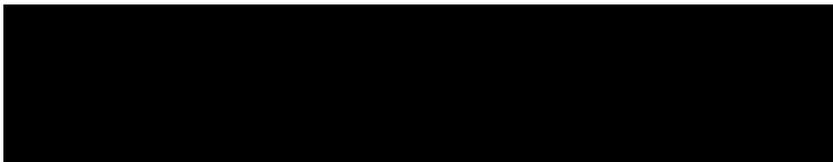
DA

FILE: LIN 03 038 53577 Office: NEBRASKA SERVICE CENTER Date: JUL 26 2004

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

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.

for 
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 travel agency that 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 § 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 statement and the beneficiary's first-year transcript from his baccalaureate studies in commerce.

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 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 petitioner is seeking the beneficiary's services as a market research analyst. The petitioner indicated that a qualified candidate for the job would possess a "U.S. baccalaureate or equivalent degree with knowledge of micro and macro economics, statistics, marketing, and finance."

The director found that the beneficiary was not qualified for the proffered position because the petitioner had not demonstrated that the beneficiary's foreign degrees in commerce and law qualify him for the proffered position. The director further found that the record contains incomplete evidence of the course work completed by the beneficiary in the pursuit of these degrees. On appeal, counsel states, in part, that the record contains an evaluation of the beneficiary's credentials establishing that the beneficiary holds the U.S. equivalent of a Bachelor of Arts degree in marketing. Counsel submits a copy of the beneficiary's first-year transcript that was initially reported missing, indicating that the beneficiary only recently located it. Counsel states finally that the director failed to consider the beneficiary's professional experience.

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

- An undated credentials evaluation from the International Credentials Evaluation and Translation Services (ICETS) concluding that the beneficiary's educational background is the equivalent of a Bachelor of Arts degree in marketing from an accredited institution of tertiary education in the United States;
- A credentials evaluation, dated October 27, 2001, from Alphakom Consultants concluding that the beneficiary's educational background and employment experience are equivalent to the completion of a Bachelor of Science degree in marketing from an accredited institution of tertiary education in the United States;
- A copy of the "Ordinances and Regulations for the First [REDACTED] Examination," dated 1980-81, from the Faculty of Commerce at [REDACTED];
- Bachelor of Commerce degree issued to [REDACTED] on November 19, 1983, by an Indian institution, and a "Statement of Marks" for the first and third years;
- Bachelor of Laws issued to [REDACTED] March 21, 1986, by an Indian institution, and a "Statement of Marks" for the second semester examination;
- Letter, dated November 10, 2000, from the senior manager of the Liberty Life [REDACTED] Branch," confirming that the beneficiary has 11 years of experience "in providing professional services on Liberty Life Insurance, Investments and Link products and excellent marketing and interpersonal communication skills";
- Letter, dated March 15, 2000, from the senior manager, investment portfolio division, African Life, stating that [REDACTED] as placed business to the value of R2 316 000.00 with African Life as at the [sic] 30th September 1999";
- Letter dated March 20, 2000, from the regional manager of [REDACTED] who states, in part, that the beneficiary is a broker with said business;
- Letter, dated October 21, 2000, from the senior manager [REDACTED] Fedsure Life, who states, in part, that the beneficiary is a broker with said business and "[h]e markets all our products like life, annuity, investment and link product [sic]"; and

- Document, dated December 14, 1998 stating: "[REDACTED] is accredited to market products administered by Millennium Financial Consultants and Investment Services (Pty) Ltd."

A review of the Department of Labor's (DOL) *Occupational Outlook Handbook (Handbook)*, 2004-2005 edition, finds that a master's degree in business administration, marketing, statistics, communications, or some closely related field, is the minimum requirement for many private sector market and survey research jobs. The beneficiary does not hold a master's degree from an accredited U.S. college or university in any field of study, or a foreign degree determined to be equivalent to a master's degree from a U.S. college or university in any field of study. Furthermore, even if CIS were to conclude that a bachelor's degree is sufficient for a market research analyst position within the petitioner's industry, the beneficiary would still not be eligible to perform the duties of the offered position because he does not possess a bachelor's degree in business administration, marketing, statistics, communications, or some closely related field. Although one evaluator concludes that the beneficiary's educational background is equivalent to a Bachelor of Arts degree in marketing from an accredited institution of tertiary education in the United States, the other evaluator concludes that the beneficiary educational background and employment experience are equivalent to the completion of a Bachelor of Science degree in marketing from an accredited institution of tertiary education in the United States. It is additionally noted that the record contains incomplete transcripts for the beneficiary, and the record contains no evidence to demonstrate the [REDACTED] the beneficiary, and Manoj Jayantilal Soni, the name that appears on the educational documents, are one and the same person. The record contains no explanation for these discrepancies. 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 upon 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). Therefore, the petitioner must demonstrate that the beneficiary meets the criterion at 8 C.F.R. § 214.2(h)(4)(iii)(C)(4).

Accordingly, it is concluded that the petitioner has not shown that the beneficiary qualifies to perform the duties of a specialty occupation based upon education alone.

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.

The record contains an evaluation from [REDACTED] a company that specializes in evaluating academic credentials. The evaluator concluded that the beneficiary possesses the equivalent of a Bachelor of Science degree in marketing from an accredited institution of tertiary education in the United States. However, the evaluation 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 evaluation carries no weight in these proceedings. *Matter of Sea, Inc.*, 19 I&N Dec. 817 (Comm. 1988).

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 occupation¹;
- (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 now turns to the beneficiary's prior work experience, and whether it included the theoretical and practical application of specialized knowledge required by the specialty. As described by each employer, the beneficiary's duties did not appear to involve the theoretical and practical application of market research

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).

analysis. None of the employers provide a comprehensive description of the beneficiary's duties. Furthermore, it appears that the beneficiary's duties are related to a life insurance broker position rather than a market research analyst. The beneficiary's duties are described generically; no specificity to the beneficiary's daily activities or his level of responsibility is provided. 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, no information 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. The AAO notes that neither evaluator can be considered a "recognized authority" because neither described his experience giving such opinions, citing specific instances where past opinions have been accepted as authoritative and by whom. Furthermore, as stated previously, the conclusions of the evaluators are inconsistent. *See Matter of Ho, supra.*

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 petitioner has not established that the proffered position is a specialty occupation because the petitioner has not demonstrated that the proffered position is that of a market research analyst. For this additional reason, the petition may not be approved.

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.