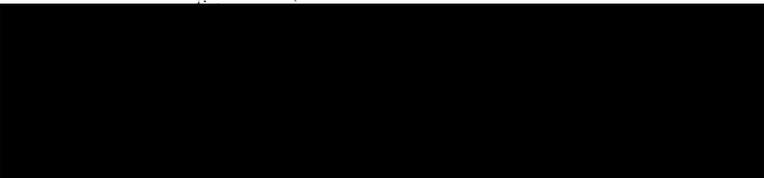




U.S. Citizenship
and Immigration
Services

D2



FILE: WAC 03 066 52772 Office: CALIFORNIA SERVICE CENTER Date: JUL 30 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.

Maui Johnson

Er Robert P. Wiemann, Director
Administrative Appeals Office

identifying data deleted to
prevent clearly unwarranted
invasion of personal privacy

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DISCUSSION: The service center director denied the nonimmigrant visa petition and the matter is now before the Administrative Appeals Office (AAO) on appeal. The director's decision will be withdrawn. The petition will be remanded to the director for entry of a new decision

The petitioner is involved in the telecommunications industry. It seeks to employ the beneficiary as an account executive, and endeavors to classify him 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 did not qualify to perform the duties of a specialty occupation. On appeal, counsel submits a brief and additional information.

The first issue to be considered is whether the beneficiary is qualified to perform the duties of a specialty occupation.

Section 101(a)(15)(H)(i)(b) of the Act, 8 U.S.C. § 1101(a)(15)(H)(i)(b), provides, in part, for the classification of qualified nonimmigrant aliens who are coming temporarily to the United States to perform services in a specialty occupation.

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:

- (A) full state licensure to practice in the occupation, if such licensure is required to practice in the occupation,
- (B) completion of the degree described in paragraph (1)(B) for the occupation, or
- (C) (i) experience in the specialty equivalent to the completion of such degree, and
(ii) 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, the 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.

Pursuant to 8 C.F.R. § 214.2(h)(4)(iii)(D), for purposes of paragraph (h)(4)(iii)(C)(4) of this section, equivalence to completion of a United States baccalaureate or higher degree shall mean achievement of a level of knowledge, competence, and practice in the specialty occupation that has been determined to be equal to that of an individual who has a baccalaureate or higher degree in the specialty and 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 duties of the offered position are those essentially performed by advertising, marketing, promotion, public relations and sales managers. The U.S. Department of Labor's *Occupational Outlook Handbook (Handbook)* notes that a wide range of educational backgrounds is suitable for entry into these professions, but that many employers prefer those with experience in related occupations plus a broad liberal arts background. A bachelor's degree in sociology, psychology, literature, journalism, or philosophy, among other subjects, is acceptable. Requirements vary, however, depending on the particular job. For example, for marketing, sales, and promotions management positions some employers prefer a bachelor's or master's degree in business administration with an emphasis on marketing. In highly technical industries such as computer and electronics manufacturing, a bachelor's degree in engineering or science, combined with a master's degree in business administration is preferred. For advertising management positions some employers prefer a bachelor's degree in advertising or journalism. Public relations management positions often require a bachelor's or master's degree in public relations or journalism. Most advertising, marketing, promotions, public relations, and sales management positions, however, are filled by promoting experienced staff or related professional personnel. Many managers are former sales representatives, purchasing agents,

buyers, or product, advertising, promotions, or public relations specialists. A degree in a wide range of educational disciplines will qualify individuals for entry into these positions, and in some cases past experience alone will suffice.

The petitioner seeks to qualify the beneficiary pursuant to 8 C.F.R. § 214.2(h)(4)(iii)(C)(4). In support of this assertion, the petitioner submitted experiential evaluations from [REDACTED] Associate Professor of Marketing at the [REDACTED] Assistant Professor of Finance at the [REDACTED]. The record establishes that both professors have 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. 8 C.F.R. § 214.2(h)(4)(iii)(D)(1). They are, therefore, qualified to render an opinion as to whether the beneficiary has education, specialized training, and/or progressively responsible experience 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.

[REDACTED] states on the first page of his evaluation that the beneficiary's qualifying work experience (approximately 15 years) is equivalent to a Bachelor of Business Administration degree with a concentration in Marketing in the United States. After recounting the beneficiary's qualifying work experience, however, [REDACTED] inexplicably states on page three of his opinion that "[b]ased on fifteen years of employment experience and professional training in business administration, marketing, and related areas, it is my judgment that [the beneficiary] has completed the equivalent of two years of academic study toward a Bachelor of Business Administration Degree, with a concentration in Marketing, from an accredited institution of higher education in the United States." (Emphasis added.) The two statements are inconsistent and the inconsistency cannot be remedied from a reading of the evaluation. It is, therefore, of little evidentiary value.

The second experiential evaluation, however, contains no such inconsistency. [REDACTED] opines that the beneficiary's past work experience is clearly equivalent to a Bachelor of Business Administration degree with a concentration in Marketing from an accredited institution of higher education in the United States. The beneficiary is, therefore, qualified to perform the duties of the proffered position. The director's decision in this regard, is withdrawn.

It must further be noted, however, that the proffered position does not appear to qualify as a specialty occupation. As previously noted, a degree in a wide range of educational disciplines will qualify the beneficiary to perform the duties of the offered position. The position does not require a baccalaureate degree in a specific specialty as a minimum requirement for entry. As such, this matter must be remanded to the director to determine, after considering all evidence submitted into the record, whether the proffered position qualifies as a specialty occupation. The director may request such additional evidence as he deems necessary in rendering his decision.

As always, the burden of proof in these proceedings rests solely with the petitioner. Section 291 of the Act, 8 U.S.C. § 1361.

ORDER: The director's decision is withdrawn. The petition is remanded to the director to enter a new decision commensurate with the directives of this opinion.