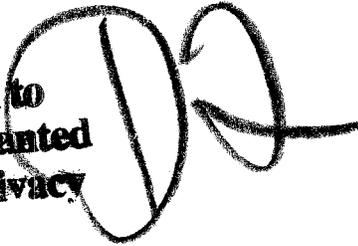


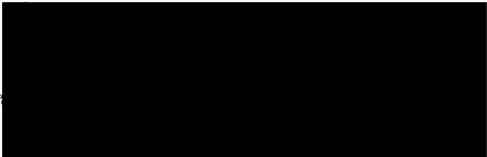
PUBLIC COPY

**identifying data deleted to
prevent clearly unwarranted
invasion of personal privacy**



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

U.S. Citizenship
and Immigration
Services

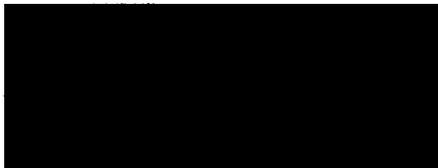


FILE: WAC 02 127 54474 Office: CALIFORNIA SERVICE CENTER Date: **MAR 08 2004**

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.


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 furniture retailer that seeks to employ the beneficiary as a financial 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 and a copy of the beneficiary's transcripts, the English translation of the transcripts, and an employment verification letter.

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 AAO reviewed the record in its entirety before issuing its decision.

The petitioner is seeking the beneficiary's services as a financial analyst. In the February 5, 2002 letter accompanying the petition, the petitioning entity stated that a candidate for the proffered position must possess a bachelor's degree in finance, business administration, or a related discipline and experience preparing financial documents and audits.

Finding that the beneficiary's degree in business administration is unrelated to the duties of the proffered position, the director found the beneficiary unqualified for the proffered position. Moreover, the director noted that the record did not contain the beneficiary's transcript or other documentation describing the beneficiary's coursework or letters verifying the beneficiary's prior employment.

On appeal, counsel states that the beneficiary's baccalaureate in business administration is directly related to, and is an acceptable requisite for, the financial analyst position. Thus, counsel maintains that the beneficiary is qualified for the proffered position by virtue of this bachelor's degree in business administration and his practical work experience. Counsel states that the following documents are submitted on appeal: (1) a copy of the beneficiary's transcript along with its translation in the English language; and (2) a copy of an employment verification letter.

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 a business-related field with an emphasis in finance.

The evidence of record in this proceeding contains a copy of the beneficiary's degree. However, the record does not contain the certified English translation of the degree. In the petitioner's evaluation from the Foundation for International Services, Inc., a company that specializes in evaluating academic credentials, the evaluator concluded that the beneficiary possesses the equivalent of a bachelor's degree in business administration from an accredited college or university in the United States. However, the reliability of the evaluation is highly questionable in light of paragraph 3 of the evaluation that stated:

The qualifications of the translator were not listed (certified translator, professor in the foreign language department at a university, etc.), so this evaluator cannot attest to the accuracy of the translations.

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 four criteria. Although counsel alleges that the beneficiary possesses a bachelor's degree in business administration, thus satisfying the second criterion at 8 C.F.R. § 214.2(h)(4)(iii)(C), the record does not contain a certified English translation of the degree or the transcripts. 8 C.F.R. § 103.2(b)(3). Furthermore, the evaluator never received these documents; accordingly, the reliability of the evaluation is highly questionable. *Matter of Sea, Inc.*, 19 I&N Dec. 817 (Comm. 1988). The petitioner, therefore, fails to establish the criterion found at 8 C.F.R. § 214.2(h)(4)(iii)(C)(2).

Because evidence of the beneficiary's degree is not reliable, 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.

As previously mentioned, the reliability of the evaluation from the Foundation for International Services, Inc. is highly questionable because the petitioner failed to submit certified English translations of the beneficiary's degree and transcripts. Moreover, with respect to the submitted employment verification letter, 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).

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;

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).

- (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 submits one employment verification letter. As previously discussed, the reliability of the educational evaluation is highly questionable. The beneficiary's employment verification letter, therefore, must cover three years of specialized training and/or work experience for each year of college-level training. Given that the employment letter spans only a six-year period, it fails to demonstrate the requisite period of employment.

Finally, there is no evidence that the beneficiary has recognition of expertise.

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 because the petitioner has not clearly defined the beneficiary's proposed duties. 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.