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U.S. Citizenship
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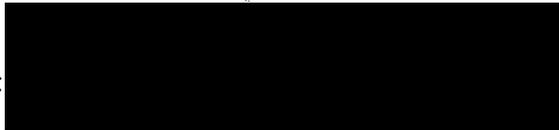


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MAR 22 2004

FILE: WAC 01 067 54408 Office: CALIFORNIA SERVICE CENTER Date:

IN RE: Petitioner:
Beneficiary:



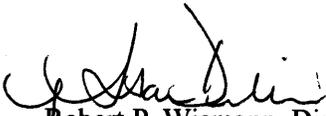
PETITION: Petition for a Nonimmigrant Worker Pursuant to Section 101(a)(15)(H)(i)(b) of the
Immigration and Nationality Act, 8 U.S.C. § 1101(a)(15)(H)(i)(b)

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 Director of the California Service Center approved the nonimmigrant visa petition and certified his decision to the Administrative Appeals Office (AAO) for review. The AAO reversed the director's decision and denied the petition. The matter is again before the AAO on motion to reopen or reconsider. The motion will be granted. The previous decision shall be affirmed. The petition will be denied.

The petitioner is a distributor of lighting products that seeks to employ the beneficiary as a marketing analyst. The AAO stated in its decision that the beneficiary is not qualified to perform the duties of the proffered position.

On motion, counsel states that the motion to reopen or reconsider is based on new or additional information, (an evaluation and resume from Professor [REDACTED] PhD, Professor of Marketing, Department of Marketing, California State University, Northridge) that establishes the beneficiary is qualified to perform the duties of a specialty occupation based on his prior professional experience. According to counsel, the evaluation states that the beneficiary's professional experience and proven performance are equivalent to a bachelor's degree in marketing from an accredited university.

Counsel's submission of additional evidence satisfies the requirements of a motion to reopen. A motion to reopen must state the new facts to be proved in the reopened proceeding and be supported by affidavits or other documentary evidence. 8 C.F.R. § 103.5(a)(2). On motion, counsel submits an evaluation from Professor [REDACTED] dated October 4, 2002, and contends that it constitutes new or additional information because neither the director nor the AAO considered this information. As previously stated, a motion to reopen must state the new facts that will be proven if the matter is reopened, and must be supported by affidavits or other documentary evidence. Generally, the new facts must have been previously unavailable and could not have been discovered earlier in the proceedings. See 8 C.F.R. § 3.2(c)(1). Here, the evidence in the motion contains new facts that were previously unavailable. Accordingly, the AAO grants counsel's motion to reopen.

The petitioner 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). Finding that the beneficiary is not qualified to perform the duties of the proffered position, the AAO withdrew the director's decision to approve the petition. On motion, counsel submits a brief and a credentials evaluation for the beneficiary.

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 AAO withdrew the director's decision because the petitioner had not demonstrated that the beneficiary is qualified to perform the duties of the proffered position. Essentially, the AAO found that the beneficiary does not possess a baccalaureate degree in any field of study. Accordingly, the beneficiary is not qualified to perform the duties of a specialty occupation based upon education alone. With respect to the beneficiary's employment experience, the AAO gave little weight to the credentials evaluation from International Evaluation Services, L.L.C. that equated the beneficiary's employment experience to a baccalaureate degree in marketing from an accredited U.S. institution. Moreover, the AAO also found that the beneficiary is not a member of an organization whose prerequisite for entry is a baccalaureate degree in a specialized area. Nor did the AAO find that the beneficiary holds a state license, registration, or certification that authorizes him to practice a specialty occupation.

On motion, counsel states that the beneficiary is qualified for the position because, according to Professor [REDACTED] evaluation, the beneficiary's professional experience is equivalent to a bachelor's degree in marketing from an accredited university. Counsel also submits a copy of the evaluation from Professor [REDACTED] of California State University, Northridge.

The record reveals that 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. Thus, 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.

On motion, counsel submits an evaluation from Professor [REDACTED] of California State University, Northridge. The evaluator concluded that the beneficiary possesses the equivalent of a bachelor's degree in marketing from an accredited university. However, the evaluation is based solely upon the beneficiary's work experience. According to 8 C.F.R. § 214.2(h)(4)(iii)(D)(1), the evaluation must, therefore, be made by 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. Here, the record contains no independent evidence of the evaluator's authority to grant college-level credit. The evaluation, consequently, carries no weight in these proceedings. *Matter of Sea, Inc.*, 19 I&N Dec. 817 (Comm. 1988). The evaluation is also deficient in that it appears to be based solely on the beneficiary's resume, not on independent evidence. Moreover, the evaluator did not indicate the basis for his opinion. The petitioner, therefore, fails to establish that the beneficiary is qualified to perform the duties of the proffered position.

The AAO does not have sufficient evidence to evaluate whether the beneficiary is qualified pursuant to 8 C.F.R. § 214.2(h)(4)(iii)(D)(5) because the beneficiary's letters of prior employment do not meet the requirements as outlined in the regulations.

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 decision of the AAO is affirmed. The petition is denied.