



U.S. Citizenship
and Immigration
Services

02

[Redacted]

FILE: WAC 03 182 52674 Office: CALIFORNIA SERVICE CENTER Date: OCT 28 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:

[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

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prevent clearly unwarranted
invasion of personal privacy

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 television/music editing and production company that seeks to employ the beneficiary as a research analyst. 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).

The director denied the petition because the beneficiary is not qualified to perform the duties of a specialty occupation. On appeal, counsel files a brief.

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 research analyst. The petitioner indicated in a May 30, 2003 letter that it wished to hire the beneficiary because she possessed the equivalent of a bachelor's degree in motion picture production.

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, and that the position requires a master's degree rather than just a bachelor's degree. On appeal, counsel states that the director misinterpreted the position within industry standards. Counsel asserts that the petitioner submitted two expert educational evaluations that determined that the position requires a degree in film/television production or a related field. Counsel also states that previous AAO decisions support the argument that individuals with degrees in unrelated fields could still be classified as professionals. Finally, counsel presents a number of arguments to support his contention that the proffered position is a specialty occupation, although the director did not address that issue in his decision nor was it a basis for the decision.

Upon review of the record, the petitioner has failed to establish that the beneficiary is qualified to perform a specialty occupation that requires a master's degree. The AAO routinely consults the Department of Labor's *Occupational Outlook Handbook (Handbook)* for its information about the duties and educational requirements of particular occupations. While the proffered position is called a research analyst, the duties are those of a market research analyst. The *Handbook* indicates that the qualifications for a market research analyst generally include a master's degree in economics, business administration, marketing statistics, or a closely related discipline. The beneficiary does not hold a baccalaureate degree from an accredited U.S. college or university in any field of study. The petitioner submitted a credentials evaluation to establish that the beneficiary's foreign degree is equivalent to a degree from a U.S. college in motion picture production. The evidence shows that the beneficiary possesses a bachelor's degree, and not a master's degree as required for the position, and 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;

- (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.

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. For a master's degree, the alien must have a bachelor's degree followed by at least five years of experience in the specialty. 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 record contains none of the above-referenced evidence to establish that the beneficiary's education, training and experience are equivalent to a master's degree in a specific specialty required by the specialty occupation.

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 referenced above, the *Handbook* states, “Graduate education is required for many private sector economist and market and survey research jobs,” and indicates that the area of specialty includes economics, business administration, marketing statistics, or a closely related discipline. The AAO considers this to be an industry standard. The documentation on record does not establish that the beneficiary possesses the equivalent of a master’s degree in any of the specific areas required for the specialty occupation. In addition, her education is in the field of motion picture production, which, as discussed, is not the degree required for entry into the field. While counsel quotes a source as stating, “It is illogical to completely disregard a professional’s education, which may include a graduate degree, simply because it is not directly in the field of employment,” the regulations require that result:

Specialty occupation means an occupation which requires theoretical and practical application of a body of highly specialized knowledge . . . and which requires the attainment of a bachelor’s degree or higher **in a specific specialty**, or its equivalent, as a minimum for entry into the occupation in the United States. [Emphasis added]. 8 C.F.R. § 214.2(h)(4)(ii).

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. The beneficiary’s resume includes a brief overview of her duties in previous positions. All of the duties relate to film editing, and none to market research analysis. In addition, there is no specificity regarding the beneficiary’s daily activities or her level of responsibility. 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, there is no evidence 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.

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.

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.