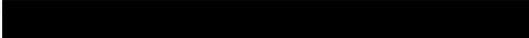
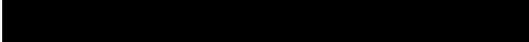




U.S. Citizenship
and Immigration
Services



FILE: WAC 03 130 53015 Office: CALIFORNIA SERVICE CENTER Date: **OCT 27 2004**

IN RE: Petitioner: 
Beneficiary: 

PETITION: Petition for a Nonimmigrant Worker Pursuant to Section 101(a)(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

**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 appeal will be dismissed. The petition will be denied.

The petitioner is a corporation operating as a travel agency that specializes in group tours, pilgrimages, cruise vacations, rail travel, and other specialty/interest tours. In order to employ the beneficiary as a management analyst, the petitioner endeavors to classify her 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 on the basis that the petitioner had failed to establish that the beneficiary is qualified to serve in the management analyst specialty occupation that the petitioner presented as the proffered position. The director specifically found that the beneficiary did not possess a master's degree.

On appeal, the petitioner contends that the director failed to recognize that the educational evaluation in the record and the beneficiary's experience are sufficient to establish that the beneficiary holds the equivalent of the type of master's degree required to serve as the petitioner's management analyst.

Upon review of the letter submitted by the petitioner on appeal, the letter's two exhibits, and the totality of the evidence included in the record of proceeding, the AAO has determined that the director was correct in denying the petition for failure to establish that the beneficiary is qualified to perform specialty occupation services.

Section 214(i)(2) of the Act, 8 U.S.C. § 1184(i)(2), states, in pertinent part, that an alien applying for classification as an H-1B nonimmigrant worker must have completed a degree in the specialty that the occupation requires, and that, if he or she 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.

To qualify the beneficiary in this proceeding, the evidence must demonstrate that he meets the criterion at either section 2 or 4, because in this particular proceeding there is no evidence relevant to sections 1 or 3.

Section 2 has two evidentiary elements. First, the evidence of record must include a determination by a reputable foreign-degree evaluating service that the beneficiary's foreign degree is equivalent to at least a U.S. baccalaureate degree. Second, the U.S.-equivalent degree must be in a course of studies that conveys highly specialized knowledge, both theoretical and applied, upon which the beneficiary would have to draw in order to perform the proffered position.

The Morningside Evaluations and Consulting (MEC) Evaluation of Academics and Experience and the supporting educational records are sufficient to establish that the beneficiary has achieved the equivalent of a U.S. baccalaureate degree in tourism. This is because the MEC evaluation of the beneficiary's formal evaluation is based upon a foreign degree and associated coursework that is documented in the record. However, as reflected in the coursework recorded in the beneficiary's college transcript, a baccalaureate in tourism is not, in the language of 8 C.F.R. § 214.2(h)(4)(iii)(C)(2), a "degree required by the specialty occupation" if one assumes that the proffered position is a managerial analyst position. To qualify the beneficiary, his foreign U.S.-equivalent degree would have to be in a precise and specific course of study that relates directly and closely to the position in question. There must be a close corollary between a beneficiary's specialized studies and the position. See *Matter of Michael Hertz Associates*, 19 I&N Dec. 558 (Comm. 1988).

This leaves the petitioner with only section 4 to establish that, as counsel maintains, the beneficiary possesses a master's degree that is required to perform the proffered position. Pursuant to 8 C.F.R. § 214.2(h)(4)(iii)(D), to succeed in equating the beneficiary's credentials to a United States baccalaureate or higher degree under 8 C.F.R. § 214.2(h)(4)(iii)(C)(4), the beneficiary would have to present 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 MEC evaluation is not authored by one “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.” The author asserts not that he has the authority to *grant* college-level credit in management analysis, but only that he has “the authority to evaluate whether the school is to grant college level credit” for experience or training. Furthermore, MEC does not present letters or like documentation the AAO would accept from a dean, provost, or other appropriate authority at a college-level educational institution to attest that the institution empowered the evaluator to grant college-level credit in the relevant specialty. The petitioner has not submitted such proof.

That part of the MEC evaluation that declares the beneficiary’s experience to be the equivalent of a certain amount of business administration coursework must be discounted, as section 3 of 8 C.F.R. § 214.2(h)(4)(iii)(D) recognizes a foreign credentials evaluation service’s opinion only to the extent that is an “evaluation of education,” not work experience. Accordingly, because it is based partly on an evaluation of experience, the AAO does not accept the MEC conclusion that the beneficiary possesses the equivalent of a U.S. master’s degree in business administration.

Only section 5 of 8 C.F.R. § 214.2(h)(4)(iii)(D) remains to be addressed.

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 (1) that the alien’s training and/or work experience included the theoretical and practical application of specialized knowledge required by the specialty occupation; (2) 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 (3) 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;

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).

- (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.

For the following reasons, the petitioner has failed to meet the beneficiary qualification requirements of 8 C.F.R. § 214.2(h)(4)(iii)(D)(5). The former employer's letter (at Appellate Exhibit B) describes the beneficiary's experience in terms (such as "recommending valuable changes," "coach[ing] Project Leaders through their projects," and "develop[ing] strategic plans guiding the quantitative and qualitative evaluation of travel programs and implementation") that are too general to clearly demonstrate that the beneficiary's training and/or work experience included the theoretical and practical application of specialized knowledge required by a specialty occupation. Furthermore, neither the information in the former employers' letters nor any other evidence of record clearly demonstrates that the beneficiary's experience was gained "while working with peers, supervisors, or subordinates who have a degree or its equivalent in the specialty occupation," as the regulation requires. Finally, the record of proceeding lacks documentation of the type specified at subsections (i) through (v) to establish that the alien has achieved the appropriate level of recognition in a pertinent specialty occupation.

In sum, the evidence of record is insufficient to establish that the beneficiary possesses the credentials necessary for performing services in a specialty occupation under 8 C.F.R. § 214.2(h)(4)(iii)(C) and related regulations. Accordingly, the director's decision to deny the petition will not be disturbed.

Beyond the decision of the director, the AAO notes that the proffered position and its duties are described in terms that are too general and generic to establish that their performance actually requires a bachelor's degree or the equivalent in a specific specialty. Accordingly, the petitioner has also failed to establish that the proffered position is a specialty occupation as defined at Section 214(i)(1) of the Act, 8 U.S.C. § 1184(i)(1), and in the related CIS regulations at 8 C.F.R. § 214.2(h)(4)(iii)(A). For this reason also, 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 and the appeal shall accordingly be dismissed.

ORDER: The appeal is dismissed. The petition is denied.