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U.S. Department of Homeland Security
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Washington, DC 20529



U.S. Citizenship
and Immigration
Services

[Redacted]

FILE: WAC 03 044 50373 Office: CALIFORNIA SERVICE CENTER Date: OCT 29 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

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 retailer of car stereo and audio systems. It seeks to employ the beneficiary as a market research analyst, and 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 because the beneficiary did not qualify to perform the duties of a specialty occupation. On appeal, the petitioner submits a brief stating that the beneficiary qualifies to perform the duties of a specialty occupation.

The director's determination denying the I-129 petition was based solely on the beneficiary's qualifications to perform the duties associated with that occupation. The only issue to be discussed in this proceeding 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 offered position is that of a market research analyst. The U.S. Department of Labor's *Occupational Outlook Handbook (Handbook)* notes that market research analysts generally possess graduate degrees in business administration, marketing, statistics, communications or a closely related discipline. Entry level positions such as research assistants, administrative or management trainees, marketing interviewers, or professional sales positions may be filled by individuals possessing only a bachelor's degree in marketing or a related field. The proffered position is for a market research analyst, however, not one of the entry-level positions noted.

The petitioner seeks to qualify the beneficiary by establishing that the beneficiary meets the requirements of 8 C.F.R. § 214.2(h)(4)(iii)(C)(4). In support of this assertion, the petitioner submitted the following evaluations:

- Evaluation dated August 22, 2002 from [REDACTED] Evaluations and Consulting

[REDACTED] opined that the beneficiary's foreign education and past work experience are equivalent to a bachelor's degree in business administration from an accredited institution of higher education in the United States.

- Evaluation dated March 24, 2003 from [REDACTED] an Associate Professor of Business Administration at St. Louis University.

[REDACTED] states that the beneficiary's foreign education and past work experience are equivalent to a bachelor's degree in business administration from an accredited institution of higher education in the United States.

- Evaluation dated February 23, 2004 from [REDACTED], an evaluator with Global Education [REDACTED]

[REDACTED] states that the beneficiary's foreign education and past work experience are equivalent to a bachelor's degree in business administration with a major in marketing from an accredited institution of higher education in the United States.

- Evaluation from [REDACTED] an evaluator with [REDACTED]

[REDACTED] states that the beneficiary's foreign education is equivalent to a bachelor's degree in political science awarded by a regionally accredited university in the United States.

- Evaluation dated February 23, 2004 from [REDACTED] an evaluator with Global Education [REDACTED]

[REDACTED] states that the beneficiary's foreign education and past work experience are equivalent to a bachelor's degree in business administration with a major in marketing from an accredited institution of higher education in the United States.

As noted above, the normal educational requirement for market research analysts is a graduate degree in business administration, marketing, statistics, communications or a closely related discipline. None of the evaluations submitted are sufficient to state an opinion on the beneficiary's educational equivalence based upon her past education and work experience. As stated in 8 C.F.R. § 214.2(h)(4)(iii)(D)(I), a beneficiary's prior education and work experience may only be evaluated, for the purpose of determining educational equivalence, 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. The evaluations prepared by [REDACTED] were prepared on behalf of credentials evaluation services. Those organizations may only evaluate foreign education credentials, not past work history. The opinion issued by Dr. Fisher on St. Louis University letterhead is also of little evidentiary value with regard to evaluating past work experience because the record does not contain a statement from St. Louis University administration officials indicating that St. Louis University has a

program for granting college level credit based on an individual's training and/or work experience, or that Dr. [REDACTED] has authority to grant that credit on behalf of the university. These evaluations are, therefore, of little evidentiary value.

The record does establish, based upon the educational evaluation of [REDACTED] with Global Education [REDACTED], that the beneficiary's foreign education alone is equivalent to a bachelor's degree in political science awarded by a regionally accredited university in the United States. That degree, however, does not qualify the beneficiary to perform the duties of a market research analyst. As previously stated, market research analysts generally possess graduate degrees in business administration, marketing, statistics, communications or a closely related discipline. The beneficiary's education is not at a graduate level in one of these disciplines. The petitioner has not established, therefore, that the petitioner is qualified to perform the duties of the proffered position under 8 C.F.R. § 214.2(h)(4)(iii)(C)(4).

Citizenship and Immigration Services (CIS), may itself determine whether the beneficiary is qualified to perform the duties of the specialty occupation. That determination may be made pursuant to 8 C.F.R. § 214.2 (h)(4)(iii)(D)(5), which provides:

For purposes of determining equivalency to a baccalaureate degree in the specialty, three years of specialized training and/or work experience must be demonstrated for each year of college-level training the alien lacks. For equivalence to an advanced (or Masters) degree, the alien must have a baccalaureate 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 occupation;
- (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 documentation recounting the beneficiary's work experience is insufficient in detail to determine that: the

work experience included the theoretical and practical application of specialized knowledge required by the proffered position; the beneficiary'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 beneficiary has recognition of expertise in the specialty. CIS cannot, therefore, determine that the beneficiary is qualified to perform the duties of the specialty occupation.

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 failed to sustain that burden and the appeal shall accordingly be dismissed.

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