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U.S. Citizenship
and Immigration
Services

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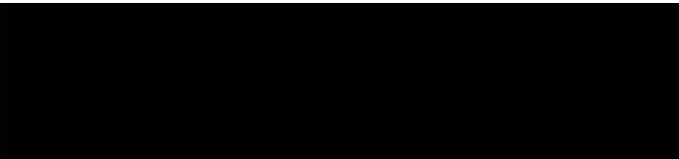
FILE: WAC 02 279 54780 Office: CALIFORNIA SERVICE CENTER Date: **SEP 02 2004**

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.

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Robert P. Wiemann, Director
Administrative Appeals Office

DISCUSSION: The service center director denied the nonimmigrant visa petition and the matter is before the Administrative Appeals Office (AAO) on appeal. The appeal shall be dismissed.

The petitioner is a company that provides sales, service, and installation of wireless products, pagers, car alarms, and car stereos. It seeks to employ the beneficiary as a market research 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 determined that the beneficiary was not qualified to perform the duties of the position, as she did not possess the equivalent of a master's degree from an accredited U.S. educational institution. In addition, the director did not give weight to the educational equivalency document submitted by the petitioner, as it examined both the beneficiary's academic and work experiences.

On appeal, counsel states that the beneficiary has education equivalent to a bachelor's degree in a related field and eleven years of related and progressive employment in marketing. Counsel refers to several Department of Labor reports to establish that a bachelor's degree is sufficient preparation for the proffered position.

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, dated March 25, 2003; (3) the petitioner's response to the

director's request; (4) the director's denial letter; and (6) 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 market research analyst. In its response to the director's request for further evidence, counsel indicated that the petitioner wanted to hire a market research analyst to implement a higher level of service and customer satisfaction based on customer feedback as well as customer surveys. This was especially important to reach the market that contracts for monthly services. Counsel also stated that the second reason for the position was to establish better relationships with companies that refer large amounts of business. The petitioner also indicated that its most recent marketing initiative involved e-commerce involving three company websites. Based on the petitioner's job advertisement, it requires a bachelor's degree in business, economics, marketing, statistics, social sciences, or a related field plus four years of relevant work experience.

The director found that the beneficiary was not qualified for the proffered position because, although she earned a total of 133 units leading to a baccalaureate degree in commerce, the beneficiary did not have a master's degree in the specialty occupation. In addition, the director commented on the educational equivalency document from [REDACTED]. The director stated that the petitioner was attempting to show that the beneficiary's education, training and experience was equivalent to completion of a U.S. baccalaureate degree in business administration. Finally, the director stated that even if the evaluator's conclusions with regard to the equivalence of the beneficiary's university studies to a U.S. baccalaureate from an accredited U.S. institution were correct, the beneficiary would not qualify to perform the duties of the proffered position, because she did not have a master's degree in a specific specialty.

On appeal, counsel states that the proffered position is professional and that the director's decision did not dispute this fact. Counsel also stated that the Department of Labor's (DOL) *Occupational Outlook Handbook (Handbook)*, *Dictionary of Occupational Titles (DOT)*, and the DOT's present electronic version, the *O*Net*, all indicate that a bachelor's degree is sufficient to perform the duties of a market research analyst. Counsel states that the beneficiary is qualified to perform the duties of the proffered position based on her education that is equivalent to a bachelor's degree in a related field and eleven years of related and progressively responsible employment in marketing.

It should be noted that the director's determination that the beneficiary lacked a master's degree in marketing confuses the final decision, rather than clarifies it. The lack of a master's degree is not the principal reason for why the beneficiary is not qualified to perform the proffered position. Pursuant to 8 C.F.R. § 214.2(h)(4)(iii)(C)(2), the beneficiary is statutorily required to possess a bachelor's degree in a specific specialty in order to be qualified to perform the specialty occupation. Depending on whether the position is of market research analyst calibre, a position in market research may or may not require a master's degree in marketing.

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 marketing, or a related field. 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.

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; 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.

Pursuant to 8 C.F.R. § 214.2(h)(4)(iii)(D)(1), the petitioner can submit 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. The present educational and work experience equivalency evaluation written by Bradley L. Spencer is not sufficient to establish this criterion. The record is devoid of any information that Mr. Spencer is affiliated with a university that has a program to grant college credit for work experience, and that this same university presently gives him the authority to grant such credit. The petitioner also has not provided sufficient documentation to satisfy the criteria outlined in 8 C.F.R. § 214.2(h)(4)(iii)(D)(2) or (4).

Pursuant to 8 C.F.R. § 214.2(h)(4)(iii)(D)(3), the petitioner submitted an evaluation from the e-ValReports, Mulkiteo, Washington, a company that specializes in evaluating academic credentials. The evaluator concluded that the beneficiary possessed the equivalent of a baccalaureate degree in business administration with a major in marketing. However, the evaluation is based upon the beneficiary's education, training and work experience. 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). Thus, the evaluation carries no weight in these proceedings. *Matter of Sea, Inc.*, 19 I&N Dec. 817 (Comm. 1988).

When Citizenship and Immigration Services (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;
- (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 the following documents with regard to the beneficiary's education and work experience:

A statement from ██████████ assistant registrar, ██████████ Philippines. This document states that the beneficiary has 133 units leading to the degree of a bachelor of science in commerce. A transcript apparently from the university is also submitted.

A transcript from Centro Escolar University that lists the coursework taken by the beneficiary in the college of medical technology apparently in 1983.

A real estate broker certificate, issued by the Philippine Department of Trade and Industry, Housing and Land Use Regulatory Board to the beneficiary on January 6, 1998.

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).

A letter and salary statement from Acem Enterprises, a company involved in the delivery, production and manufacture of different concrete products for the construction industry in the Philippines. This letter states that the beneficiary worked for this company from January 1991 to May 1995 as marketing and purchasing manager. The letter further states that the beneficiary was assigned in 1992 to do market research for the company.

An undated, unsigned letter from Extraordinary Development Corporation, a company involved in real estate development in the Philippines. The letter stated the beneficiary is an accredited marketing manager of the corporation, and that in 1995, the beneficiary performed exceptionally well as the company's marketing manager. Although the letter states that certificates of recognition awarded to the beneficiary are attached to the letter, no such documentation is found in the record.

Although the educational equivalency report submitted by the petitioner mentioned it had reviewed the beneficiary's resume that listed the beneficiary's work experience in the field of marketing from 1991 to 2002, no such document is found in the record.

As stated previously, the educational equivalency document submitted by the petitioner does not establish equivalence to a baccalaureate degree in business administration with a major in marketing. It is also noted that the educational equivalency evaluation report lacks any analysis of how the beneficiary's coursework in the field of medical technology is considered part of the overall number of credit hours that the beneficiary accrued in her university studies toward a degree in business administration.

The AAO now turns to the beneficiary's prior work experience. It should be noted that the record is incomplete with regard to the beneficiary's work experience. Only five years of work experience are specifically identified in the documentation submitted, the period from 1991 to 1995. Second, it is not clear that this work experience included the theoretical and practical application of specialized knowledge required by the specialty. As described by both employers, the beneficiary's duties did not appear to involve the theoretical and practical application of market research. One employer assigns duties to the beneficiary such as "keeping abreast of the requirements and responsibilities of the marketing division in coordination with the owner and co-employees" and "marketing the sales and services through advertising and sales promotion like advertisement in newspapers, press releases, banners, fliers and other devices." Both employers describe the beneficiary's duties generically; no specificity to the beneficiary's daily activities or her level of responsibility is provided. 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, neither employer indicates 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.

Finally, there is insufficient evidence that the beneficiary has recognition of expertise. The AAO notes that the evaluator from the e-ValReports cannot be considered a "recognized authority" because the evaluator did not provide his qualifications as an expert; no resume or other evidence was attached to the evaluation.

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, based on the lack of specificity with regard to the actual business of the petitioner, and the duties of the beneficiary's position. For example, in its initial petition, the petitioner described itself as established in 1986, with 70 employees and a gross annual income of \$30 million. In its response to the director's request for further evidence, the petitioner stated that it had three salespersons in its store, along with an undefined number of outside sales people who work on commission. It stated that its total gross revenues for the years 2002 and 2003 were approximately \$1.5 million, with a marketing budget of \$75,000. From these two descriptions, the record is not clear as to the petitioner's business volume, present infrastructure for marketing activities, and/or the need for its first or an additional market research analyst.

With regard to the beneficiary's duties, the petitioner stated that it had not been determined if the beneficiary would supervise anyone, but that she would be provided clerical support as required. The record is devoid of any information on other personnel presently working as market research analysts with the stated \$70,000 marketing budget. The petitioner further described its newest venture into e-commerce, although the duties listed for the beneficiary include no mention of development of e-commerce marketing initiatives. Without further clarification, the actual nature of the petitioner's business remains unclear, and the position as described is not necessarily viewed as a market research analyst as described in the *Handbook*. Furthermore, in its job advertisement, the petitioner identified a range of academic disciplines that would be suitable for entry into the proffered position. CIS interprets the term "degree" in the criteria at 8 C.F.R. § 214.2(h)(4)(iii)(A) to mean not just any baccalaureate or higher degree, but one in a specific specialty that is directly related to the proffered position. For these additional reasons, the petition may not be approved.

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