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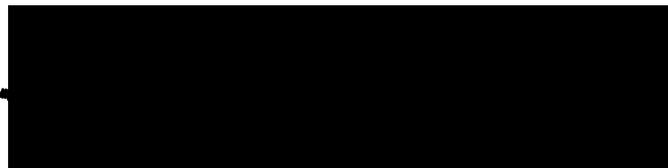
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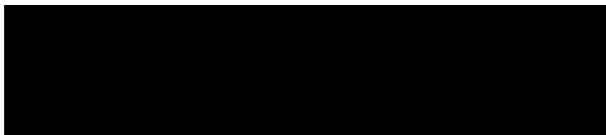


FILE: WAC 03 086 53133 Office: CALIFORNIA SERVICE CENTER Date: 7/7/03

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:



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 provider of insurance products and services that seeks to employ the beneficiary as a marketing/management 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 the proffered position. On appeal, counsel submits a brief and other documentation.

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; (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 management/marketing analyst. The petitioner requires a baccalaureate degree or its equivalent in marketing, business administration, or a similar field for the proffered position. The petitioner indicated that it wished to hire the beneficiary because she possessed a Filipino degree determined to be equivalent to a U.S. bachelor's degree in business administration and work experience in the field of marketing.

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 instant position. The director compared the duties of the proffered position to those of a market research analyst, as that job is described in the Department of Labor's *Occupational Outlook Handbook (Handbook)*, 2002-2003 edition, and noted that the *Handbook* indicates that the usual minimum requirement for employment in the instant field is a master's degree in economics or marketing. On appeal, counsel states that the proffered position also includes some duties of a management analyst, for which the beneficiary is qualified, because she has the equivalent of a bachelor's degree in business administration. Furthermore, counsel claims that the beneficiary has over fifteen years of work experience in the field of marketing, which qualifies her to perform the duties of a market research analyst.

The AAO notes that the proffered position, as described in the petitioner's January 13, 2003 letter in support of the petition, appears to include elements of several different jobs, such as management analyst, market research analyst, marketing manager, and sales representative. The record fails to indicate what percentage of time the beneficiary would spend on any given task, or what her primary function would be. Nevertheless, the fact that the offered job includes multiple functions or has a compound title does not relieve the petitioner of the burden of showing that the beneficiary is qualified, pursuant to the above regulations, to perform any and all facets of the job. Thus, while the beneficiary may be qualified to perform management analysis by virtue of her degree in business administration, for example, it must still be demonstrated that she is qualified to perform the market research analysis required in the proffered position.

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 economics or marketing. The beneficiary does not hold a baccalaureate degree from an accredited U.S. college or university in any field of study. Her foreign degree has been determined to be equivalent to a baccalaureate degree from a U.S. college or university in business administration, which is not a specific specialty. 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. 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

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).

- (v) Achievements which a recognized authority has determined to be significant contributions to the field of the specialty occupation.

The record contains an evaluation of the beneficiary's education from Morningside Evaluations and Consulting that states that she holds the equivalent of a bachelor's degree in business administration. There is no independent evidence to illustrate how this degree relates to the completion of a baccalaureate degree in economics or marketing. The record contains a letter from the beneficiary's former employer, Solidbank, which indicates that the beneficiary worked for that employer from 1977 to 1995 as an assistant branch manager/branch cashier. The letter states that the beneficiary performed marketing analysis and forecasting and was in charge of the bank branch's mortgage and financial services section, as well as the marketing department.

The letter from Solidbank does not describe the progression of the beneficiary's career there, nor does it provide any specificity regarding the beneficiary's daily activities or her level of responsibility. The beneficiary's duties are listed very briefly and generically. 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 economics or market research analysis. In addition, there is insufficient evidence that the beneficiary has recognition of expertise. The AAO notes that there is no documentation to show that membership in the Marketing Associations of the Philippines constitutes recognition of expertise, as the latter is contemplated by the above regulations.

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.