U.S. Department of Homeland Security
20 Mass, Rm. A3042, 425 I Street, N.W.
Washington, DC 20529

U.S. Citizenship and Immigration Services

FILE: WAC 02 162 50080 Office: CALIFORNIA SERVICE CENTER Date:

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

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 staffing agency. In order to employ the beneficiary as an marketing analyst, the petitioner endeavors to classify him 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 not established that the beneficiary is qualified in accordance with 8 C.F.R. § 214.2(h)(4)(iii)(C) to perform services as a marketing analyst, the type of specialty-occupation position that the petitioner asserts it is proffering. On appeal, counsel contends that the evidence of record establishes that the combination of the beneficiary's education and work experience qualifies him to serve as a marketing analyst.

As discussed below, the AAO has found that the director's decision to deny the petition was correct, and, therefore, the appeal will be dismissed and the petition will be denied. In reaching its decision, the AAO reviewed the entire record of this proceeding, including: (1) the petitioner's Form I-129 and supporting documentation; (2) the director's request for additional evidence (RFE); (3) the matters submitted in response to the RFE; (4) the director's denial letter; and (5) the Form I-290B as annotated by counsel, and counsel's brief on appeal.

The record's documentary evidence about the beneficiary's qualifications consists of: a copy of the beneficiary's college diploma that evidences that the beneficiary received a bachelor of commercial science degree from [redacted] in the Philippines; an official copy of the [redacted] transcript; an "Academic Evaluation Report" by Educational Assessment, Inc. that opined that the beneficiary's degree is the equivalent of a U.S. bachelor of science degree in business administration, and that the degree's "focus appears to be in Accounting"; a "Certification" from Republic Chemical Industries, Inc. (RCI, Inc.) which attests that this firm employed the beneficiary from 1971 to 1997, and that he served as accounting and marketing manager (from 1980-1987), and as senior market analyst (from 1987 to 1997); an educational evaluation from a firm named e-ValReports, which opined that the combination of the beneficiary's foreign college degree and "17 years of employment experience in the Marketing Field" is "the equivalent of a bachelor's degree in marketing using the INS standard of 3 years of progressive, full-time employment experiences as equivalent to 1 year of university credit"; and a notarized "Certification" that "[the beneficiary], Marketing Manager of [RCI, Inc.], is a member of the Management Association of the Philippines (MAP)." This document also stated that "MAP is a 50-year old professional organization that represents a cross-section of managers, executives, and other business professionals holding management positions from different companies in the Philippines" with the "overall objective" of "fostering management excellence and maintaining closer relations among various business executives and professionals."

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.

Only sections *2* and *4* are relevant to the evidence of record in this proceeding.

The two educational evaluations in the record opine that the beneficiary's foreign degree is the equivalent of a U.S. bachelor's degree. However, according to the Department of Labor's (DOL) *Occupational Outlook Handbook (Handbook)*, which the AAO recognizes as an authoritative source on the duties and educational requirements of a wide variety of occupations, a *master's* degree is "required for most market and survey research jobs in business and industry" (page 174, 2004-2005 edition.) Also, the two educational evaluations in the record opine that the beneficiary's degree is the equivalent of a U.S. baccalaureate degree not in marketing, but in business administration with a concentration in accounting. However, the *Handbook* indicates that even a bachelor's degree in *marketing* only equips a person for positions below that of an entry-level marketing analyst:

> Bachelor's degree holders who majored in marketing and related fields may qualify for many entry-level positions that might or might not be related to market and survey research. These positions include research assistant, administrative or management trainee, marketing interviewer, and salesperson, among others. Many businesses, research and consulting firms, and government agencies seek individuals who have strong computer and quantitative skills and can perform complex research. Many corporation and government executives have a strong background in marketing. [Id., at page 174.]

As the evidence of record is insufficient to refute the DOL's *Handbook* information, the petitioner has not satisfied section *2*.

Because the beneficiary's foreign degree does not qualify him to serve as a marketing analyst under section *2* of 8 C.F.R. § 214.2(h)(4)(iii)(C), the AAO also reviewed the evidence in light of section *4*, to determine if the petitioner had established that the beneficiary qualified to perform services as a marketing analyst by a combination of both (1) "education, specialized training, and/or progressively responsible experience that is equivalent to completion of a United States baccalaureate or higher degree in the [marketing analyst] specialty occupation," and (2) recognition of expertise in the specialty through progressively responsible positions directly related to the [marketing analyst] specialty."

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 under 8 C.F.R. § 214.2(h)(4)(iii)(C)(*4*) 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 record contains no evidence regarding sections *1* and *2* of 8 C.F.R. § 214.2(h)(4)(iii)(D).

Counsel is incorrect in proposing that the beneficiary is qualified to serve as a marketing analyst under section *3* by virtue of the e-ValReports opinion that the combination of the beneficiary's U.S.-equivalent bachelor's degree and "17 years of employment experience in the Marketing Field" is "the equivalent of a bachelor's degree in marketing using the INS standard of 3 years of progressive, full-time employment experiences as equivalent to 1 year of university credit." By its explicit language, section *3* recognizes only the "evaluation of education" by credentials evaluation services. Therefore, the e-ValReports opinion about the educational equivalence of the beneficiary's work experience has no evidentiary weight under this section.

Next, the MAP certification has no evidentiary impact other than establishing that the beneficiary is a member of that organization. This evidence does not establish that the beneficiary qualifies to serve as a marketing analyst by application of section *4*. According to its certification, MAP is an organization for "managers, executives, and other business professionals holding management positions." This indicates that MAP is not an association or society "for the specialty," that is, the practice of marketing analysis. Also, there is no evidence in the record that MAP certification or registration is reserved for those "in the occupational specialty [i.e., marketing analysis] who have achieved a certain level of competence in the specialty."

This leads to section *5*, where the following rules apply to CIS determinations on an alien's qualifications under 8 C.F.R. § 214.2(h)(4)(iii)(D). For a U.S. bachelor's degree equivalency determination, three years of specialized training and/or work experience must be demonstrated for each year of college-level training the alien lacks; and, for U.S. master's degree equivalency determinations, the record must demonstrate at least a U.S.-equivalent bachelor's degree followed by at least five years of experience in the specialty. Also, according to section *5* it must be

> *[C]learly demonstrated* that [1] the alien's training and/or work experience included the theoretical and practical application of specialized knowledge required by the specialty occupation; that [2] 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 occupation[1];
>
> *(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.
>
> [Italics added.]

---

[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 indicated earlier in this decision, the AAO accepts the *Handbook's* observation that a marketing survey analyst position requires at least a master's degree in marketing or a related specialty. However, for the reasons explained below, the evidence about the beneficiary's work experience is insufficient to merit any educational equivalency credit. Accordingly, the petitioner has failed to establish that the beneficiary holds the equivalent of a U.S. baccalaureate degree in marketing – as e-ValReports opined and counsel asserts – or a master's degree – which the AAO recognizes as the requirement for a genuine marketing analyst position.

REI, Inc. presents generic, generalized information about the work in which the beneficiary engaged as accounting and marketing manager and, later, as senior market analyst. This evidence fails to clearly demonstrate that "the alien's training and/or work experience included the theoretical and practical application of specialized knowledge required by the specialty occupation." Furthermore, REI, Inc.'s generalized statement that, as senior market analyst, the beneficiary "supervised a staff of four (4) who were all marketing graduates (B.S. in Marketing)" is insufficient to establish 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:" there is no documentation to substantiate the validity of the degrees or their U.S.-equivalency value; and, again, there is no concrete information about the work experience in which the beneficiary engaged with his degreed subordinates.

Finally, there is no evidence relating to the type of professional recognition required by 8 C.F.R. § 214.2(h)(4)(iii)(D)(*5*) (*i*) to (*v*). In this regard, for the reasons indicated in the earlier discussion of the value of the MAP certification, the beneficiary's MAP membership does not qualify as a subparagraph (*v*) membership in a recognized association or society in the specialty occupation of marketing analysis.

Because the director was correct in denying the petition because the beneficiary is not qualified to serve in the marketing analyst specialty occupation in accordance with 8 C.F.R. § 214.2(h)(4)(iii)(C), the director's decision shall not be disturbed.

Aside from the director's decision, the AAO noted that record's descriptions of the proposed duties were too abstract, generalized, and lacking in concrete details about the work which would occupy the beneficiary. Consequently, the petitioner did not establish that the proffered position is a genuine marketing analyst position or any other type of position which would qualify as a specialty occupation under any criterion of 8 C.F.R. § 214.2(h)(4)(iii)(A). The petition should be denied on this ground also.

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.