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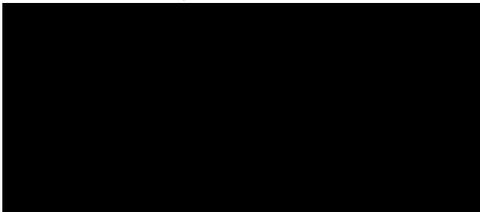
APR 25 2005

FILE: WAC 02 273 55874 Office: CALIFORNIA SERVICE CENTER Date:

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 director of the service center 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 promotional products company that seeks to employ the beneficiary as an operations 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 denied the petition because the beneficiary is not qualified to perform a specialty occupation. On appeal, counsel states that the beneficiary is qualified for the proffered position and submits previously submitted evidence.

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.

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. The AAO reviewed the record in its entirety before issuing its decision.

The petitioner is seeking the beneficiary's services as an operations research analyst. The petitioner indicates that the beneficiary qualifies for the proposed position based on his experience, which Dr. [REDACTED] International Educational Council, considers equivalent to a baccalaureate degree in business administration with a concentration in management from an accredited college or university in the United States.

Referring to the Department of Labor's *Occupational Outlook Handbook's* (the *Handbook*) description and educational requirements of an operations research analyst, the director found the submitted evidence, including a credentials evaluation, unpersuasive in establishing that the beneficiary is qualified for the proposed position, which the director concluded is similar to an operations research analyst as that occupation is described in the *Handbook*.

On appeal, counsel contends that the proposed position resembles a management analyst, and refers to a submitted educational evaluation to demonstrate that the beneficiary is qualified for the proffered position. Counsel cites to the court's decision in *Hong Kong T.V. Video Program, Inc. vs. Ilchert*, 685 F. Supp. 712 (N.D. Cal. 1988) to state that experience alone qualifies a beneficiary for a specialty occupation. According to counsel, in prior decisions CIS has found that a bachelor's degree is sufficient for an operations research analyst position.

Upon review of the record, the petitioner has not established that the beneficiary is qualified for the proposed position.

The record reflects the following documents: an education evaluation and resume from Dr. [REDACTED] International Educational Council; a letter from Mr. [REDACTED] Chairman, Department of Management, California State University, Sacramento, California, College of Business Administration, Department of Management; and employment letters from SalesScope and Maloon's Industrial Wholesalers.

The beneficiary does not hold a baccalaureate degree from an accredited U.S. college or university in any field of study. Nor does the beneficiary hold a foreign degree considered equivalent to a U.S. baccalaureate degree. The petitioner must therefore 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.

Counsel asserts that the credentials evaluation satisfies the regulation at 8 C.F.R. § 214.2(h)(4)(iii)(D)(1). Dr. [REDACTED] determined that the beneficiary holds the educational equivalent to a U.S. baccalaureate degree in business administration with a concentration in management. The letter from Mr. [REDACTED] states that Dr. [REDACTED] evaluates the academic performance of students," and may chose to award, as a consequence of his assessment, "academic credit for college-level work leading to a baccalaureate or master[']s degree."

The AAO observes that the beneficiary's educational evaluation is not on university letterhead; it is on the letterhead of International Education Council, an education evaluation service. Since Dr. [REDACTED] evaluation was done on behalf of an educational evaluation service, it cannot meet the criterion at 8 C.F.R. § 214.2(h)(4)(iii)(D)(1), which states that the evaluation must be 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.

No evidence in the record establishes the criteria at 8 C.F.R. §§ 214.2(h)(4)(iii)(D)(2). The AAO notes that because an education evaluation service can evaluate education only, the petitioner cannot satisfy the regulation at 8 C.F.R. § 214.2(h)(4)(iii)(D)(3). No evidence establishes the criterion under 8 C.F.R. §§ 214.2(h)(4)(iii)(D)(4).

The AAO now considers the beneficiary's qualifications. 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
- (v) Achievements which a recognized authority has determined to be significant contributions to the field of the specialty occupation.

The AAO now turns to the beneficiary's prior work experience to determine whether it included the theoretical and practical application of specialized knowledge required by the specialty. The beneficiary's experience with SaleScope and Maloon's Industrial Wholesalers included the theoretical and practical application of specialized knowledge required by the specialty. Nevertheless, 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, which is a requirement of the regulation. Consequently, the beneficiary fails to establish the criterion at 8 C.F.R. § 214.2(h)(4)(iii)(D)(5).

As an aside, the AAO notes that the beneficiary has recognition of expertise by Dr. [REDACTED] whose resume indicates that he has been published, although not extensively, in the business field. Thus, Dr. [REDACTED] may be considered a "recognized authority" in the field.

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.

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).