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FILE: WAC 02 217 51735 Office: CALIFORNIA SERVICE CENTER Date: FEB 03 2005

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 an importer of handmade pottery that seeks to employ the beneficiary as a business 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 a specialty occupation. On appeal, counsel files a brief.

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 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 business analyst. The petitioner indicated in its June 18, 2002 letter that it wished to hire the beneficiary because she possessed a bachelor's degree and work experience equivalent to a bachelor's degree in business. The petitioner stated that it requires a baccalaureate degree or its equivalent in a business-related field for the proffered position.

The director found that the beneficiary was not qualified for the proffered position because the petitioner had not established that the beneficiary's education, experience, and training were equivalent to a baccalaureate degree in a specialty required by the occupation. On appeal, counsel states that the director erred in determining that the evaluator who found that the beneficiary's education was equivalent to a bachelor's degree was not qualified to do so.

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 a business-related field. The beneficiary does not hold a baccalaureate degree from an accredited U.S. college or university in any field of study. The beneficiary does hold a foreign degree determined to be equivalent to a baccalaureate degree from a U.S. college or university in psychology, but since the beneficiary's degree must be in a business-related field, the petitioner must demonstrate that the beneficiary meets the criterion at 8 C.F.R. § 214.2(h)(4)(iii)(C)(4).

The petitioner submitted an evaluation from the Foundation for International Service, Inc., which stated that the beneficiary's bachelor's degree was equivalent to a degree in psychology from a United States college or university. In addition, the evaluator relied on two letters from the beneficiary's previous employers, and a letter from a university professor stating that he believed that the beneficiary's work experience and educational background are equivalent to a bachelor's degree in business administration. The evaluator relied on this expert opinion letter and the employment letters in determining that the beneficiary has the equivalent of a bachelor's degree in business administration from a United States college or university. The evaluation is based upon the beneficiary's education 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). The AAO will accept that portion of the evaluation that analyzes the equivalency of the beneficiary's foreign education. With respect to that portion of the evaluation analyzing the beneficiary's work experience, the evaluation carries no weight in these proceedings. *Matter of Sea, Inc.*, 19 I&N Dec. 817 (Comm. 1988).

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 (PONSJ);

- (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 petitioner also submitted the letter from the professor that the evaluator used in making her assessment. The professor does have 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, as required by the regulations. The professor stated that his determination that the beneficiary had the equivalent of a bachelor's degree in business administration was based on the beneficiary's transcript, indicating that she had taken six courses that would be required for a degree in business administration, as well as on two one-page letters from the beneficiary's previous employers describing her work experience. Copies of these two letters are submitted on appeal. The professor indicates that the beneficiary's work experience "was clearly progressive in nature." In reviewing the two letters from the beneficiary's employers, it is not at all clear that the beneficiary's work experience was progressive in nature, nor is it clear that the beneficiary's duties involved a level of responsibility that would reasonably lead to a determination that they were equivalent to earning a bachelor's degree in business. One letter states that the beneficiary was employed from March 1989 through December 1995, and that she "analyzed over-all business accounting records, financial resources, prepared budget estimates, organized work schedules, computed costs, made recommendations on improving time, cost and human resources on business development options." The second letter states that the beneficiary was employed from January 1996 to January 2001 and that her duties included:

[D]irecting and analyzing local and foreign trade missions to establish relationships between buyers for specific products and services. She conducted research and analysis of various companies, the products and services they offered, which were being exhibited at local trade fairs. She also provided advice on how to develop marketing plans and strategies for clientele in regards to their specific products and services.

These letters provide very little substantive information about the beneficiary's 12-year professional career. While the professor's opinion letter indicates that these duties cover the "core concepts taught in virtually all bachelor's degree programs in business administration," there is simply not enough information in the experience letters to support this opinion. Where an evaluation is in any way questionable, it may be discounted or given less weight. *Matter of Sea, Inc.*, 19 I&N Dec. 817 (Comm. 1988). In this case, since there is so little evidence in the record regarding the beneficiary's actual duties and level of responsibility in

her positions, it is not possible to know how the evaluator determined that the beneficiary's experience is equivalent to a bachelor's degree.

In addition, Section 214(i)(2) of the Act, 8 U.S.C. § 1184(i)(2), states that a petitioner applying for classification of a beneficiary as an H-1B nonimmigrant worker 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. Although 8 C.F.R. § 214.2(h)(4)(iii)(D)(5)(i)-(v) provide guidance within the context of that particular section of the regulation, the regulations do not define how a "recognition of expertise" is to be determined in this instance. The petitioner must provide evidence establishing that the beneficiary has had progressively responsible experience in the specific specialty, in order to establish recognition of expertise. The two employment letters provide little information about the skills and duties required of the beneficiary while employed, and they do not provide any detail regarding the beneficiary's progression in responsibilities while an employee. Without this sort of documentation, the petitioner has not established that the beneficiary has recognition of expertise. The opinion letter from the professor will not be considered, as discussed above.

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.