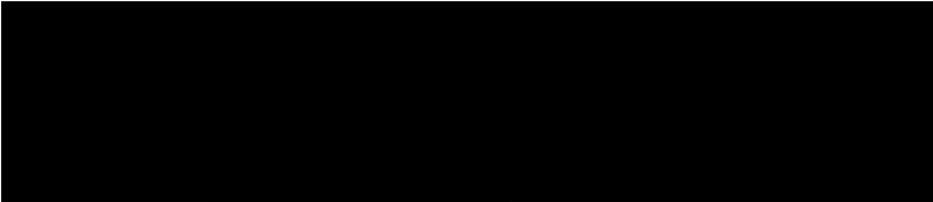




U.S. Citizenship
and Immigration
Services

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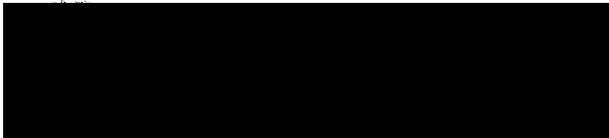
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FILE: [redacted] Office: CALIFORNIA SERVICE CENTER Date: JUL 05 2005

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:



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 California 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 residential care facility for the elderly, with 14 employees. It seeks to employ the beneficiary as a management analyst. The director denied the petition because he found the beneficiary was not qualified to perform the duties of a specialty occupation.

The record of proceeding before the AAO contains: (1) Form I-129 and supporting documentation; (2) the director's request for evidence; (3) counsel's response to the director's request for evidence; (3) the director's denial letter; and (4) Form I-290B, with counsel's brief and previously submitted evidence. The AAO reviewed the record in its entirety before reaching its decision.

The only issue before the AAO is whether the beneficiary is qualified to perform the duties of the proffered position. In determining whether an alien is qualified to perform the duties of a specialty occupation, Citizenship and Immigration Services (CIS) looks to the petitioner to establish that the beneficiary meets one of the requirements set forth at Section 214(i)(2) of the Act, 8 U.S.C. § 1184(i)(2) -- full state licensure to practice in the occupation, if such licensure is required; completion of a degree in the specific specialty; or 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.

Further discussion of how an alien qualifies to perform services in a specialty occupation is found at 8 C.F.R. § 214.2(h)(4)(iii)(C), and requires the individual to:

- (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 beneficiary does not possess a U.S. baccalaureate degree required by the specialty occupation, nor does the proffered position require a license or certification. Although the record contains evidence that the beneficiary holds a foreign degree deemed to be the equivalent of a U.S. bachelor of business administration in management, the beneficiary's degree equivalency does not satisfy the requirements at 8 C.F.R. § 214.2(h)(iii)(C)(2) as the proffered position is that of management analyst which requires those seeking employment to hold degrees at the

master's level. Accordingly, the AAO turns to the record before it to determine whether the beneficiary's combined education, training and employment experience establish her eligibility to perform the duties of a specialty occupation under the fourth and final criterion at 8 C.F.R. § 214.2(h)(4)(iii)(C).

For the purposes of 8 C.F.R. § 214.2(h)(4)(iii)(C)(4), equivalence to a U.S. baccalaureate or higher degree shall mean the achievement of a level of knowledge, competence, and practice in the specialty occupation that has been determined to be equal to that of an individual who has a baccalaureate or higher degree in the specialty, and shall be determined by one or more of the following requirements at 8 C.F.R. § 214.2(h)(4)(iii)(D):

- (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 evaluating a beneficiary's qualifications under the fifth criterion, CIS considers three years of specialized training and/or work experience to be the equivalent of one year of college-level training. To establish equivalence to an advanced or master's degree, the beneficiary must have a baccalaureate degree followed by at least five years of experience in the specialty. The record must also establish that the beneficiary's training and/or work experience has included the theoretical and practical application of the specialized knowledge required by the specialty occupation, that this experience was gained while working with peers, supervisors, or subordinates who have degrees or the equivalent in the specialty occupation and that the beneficiary's expertise in the specialty has been recognized, as evidenced by one of the following: recognition of expertise in the specialty occupation by at least two recognized authorities in the same specialty occupation; membership in a recognized foreign or U.S. association or society in the specialty

occupation; published material by or about the alien in professional publications, trade journals, books or major newspapers; licensure or registration to practice the specialty in a foreign country; or achievements which a recognized authority has determined to be significant contributions to the field of the specialty occupation.

At the time of filing, the petitioner stated that the beneficiary had employment experience in business administration and management as the owner and manager of ██████████ Preserve, a wholesale/retail business selling dried fruit, nuts and other specialties, and located in The Philippines. The petitioner also indicated that the beneficiary had employment experience in accounting as an accounting supervisor in a life insurance company between May 1997 and April 2001 and prior to that as an accounting clerk at a Philippine electric company from March 1990 to April 1997. In response to the director's request for evidence, the petitioner submitted documentation to establish the beneficiary's ownership and management of ██████████ Preserve. This documentation included: a declaration from the beneficiary regarding her duties as owner and manager of ██████████ a statement from the beneficiary's daughter, who is serving as the interim manager of ██████████ regarding these same duties; three affidavits from the beneficiary's employees attesting to the beneficiary's management of ██████████ and copies of business permits issued to the beneficiary for the operation of ██████████

While the petitioner has established that the beneficiary has been the owner and manager of ██████████ Preserve from 1996 to the present, the documentation submitted in support of her employment does not satisfy the requirements at 8 C.F.R. § 214.2(h)(4)(iii)(D)(5). The statements given by the beneficiary, her daughter and employees do not establish that the beneficiary's work experience has included the theoretical and practical application of the specialized knowledge required by management analysts, nor that this experience was gained while working with peers, supervisors, or subordinates who held degrees or the equivalent required for employment as management analysts. Further, there is no documentation of the beneficiary's expertise as a management analyst, e.g., recognition from two authorities in her field, proof of her membership in a recognized foreign or U.S. professional association or society, articles by or about the beneficiary in professional publications, trade journals, books or major newspapers; or evidence of the beneficiary's achievements in her field, which a recognized authority has determined to be significant. Absent such evidence, the petitioner cannot establish that the beneficiary's experience, when combined with her academic degree, provides her with the equivalent of a master's of business administration in management.

For reasons related in the preceding discussion, the petitioner has failed to establish that the beneficiary is qualified to perform the duties of a specialty occupation. Accordingly, the AAO will 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 met that burden.

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