

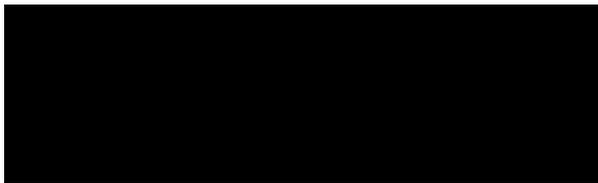
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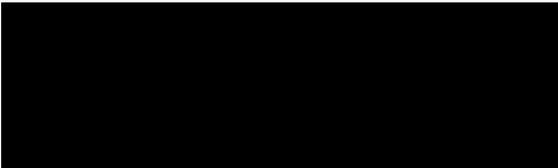


FILE: WAC 03 145 54509 Office: CALIFORNIA SERVICE CENTER Date: JUL 06 2005

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 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 independent operator of two "Una Mas" restaurants. It seeks to employ the beneficiary as an operations management analyst. The petitioner endeavors to classify the beneficiary as a nonimmigrant worker in a specialty occupation pursuant to § 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 submits a brief and additional evidence, including the following: curricula in business and management from various universities; job postings from similar businesses; an Internet article from the website at <http://www.jobweb.com> entitled *Careers in Food Service*; a printout entitled *Occupation Report* from the website of *America's CareerInfonet*; and documents pertaining to the beneficiary's qualifications, including a new credentials evaluation.

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 an operations management analyst. Although not explicitly stated, it appears that the petitioner requires a baccalaureate degree or its equivalent in economics for the proffered position.

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 master's degree in a specialty required by the occupation. On appeal, counsel states, in part, that the beneficiary is qualified for the position because a bachelor's degree is a normal, industry-wide requirement for an operations management analyst position for private industry. Counsel submits information from various Internet sources as supporting documentation. Counsel states further that the beneficiary's foreign bachelor's degree in applied economics and his 15 years of progressive professional experience qualify him for the proffered position. Counsel submits a new credentials evaluation to demonstrate that the beneficiary holds the equivalent of a master's degree in business administration based on his foreign bachelor's degree and more than five years of progressive professional experience in the same specialty.

The record contains the following documentation pertaining to the beneficiary's qualifications:

- Copy of the beneficiary's Bachelor of Science in Applied Economics degree conferred by a Filipino institution;
- Uncertified copy of the beneficiary's transcripts;
- Credentials evaluation, dated September 10, 2001, certifying that the beneficiary's foreign degree is comparable in level to a Bachelor of Science Degree in Economics awarded by regionally accredited U.S. colleges and universities;
- Evidence of the completion of training in a variety of areas, such as computer skills, marketing, and crisis management;
- Undated certificate of employment from the Filipino business Amtrust Leisure Corporation, certifying that the beneficiary was employed from October 3, 1994 to June 20, 2001, as manager of the food services department;
- Certificate of employment, dated August 29, 2001, from the Filipino business Jollibee Foods Corporation, certifying that the beneficiary was employed from December 15, 1986 to September 21, 1994, and his "leaving position" was that of "store manager";
- Evidence of the beneficiary's H-1B employment with the U.S. business Empbase, Inc.;
- Beneficiary's resume; and
- Credentials evaluation, dated January 26, 2004, concluding that the beneficiary's foreign bachelor's degree and 16 years of qualifying experience and training are equivalent to a U.S. master's degree in business administration.

Upon review of the record, the petitioner has failed to establish that the beneficiary is qualified to perform the duties of an operations management analyst/management analyst, a position for which private industry employers normally require a master's degree in business administration or a related discipline. *See the Handbook*, 2004-2005 ed. at 89. Counsel's supporting documentation and statement on appeal that a bachelor's degree is a normal, industry-wide requirement for an operations management analyst position for private industry are noted. However, even if the AAO were to conclude that a bachelor's degree is sufficient for an operations management analyst/management analyst position, the record does not document that the beneficiary is eligible to perform the duties of the offered position, as there are inconsistencies in the beneficiary's academic credentials. The record reflects that the beneficiary holds a bachelor's degree in applied economics conferred by a Filipino institution. The record contains an evaluation from the International Institute of California, a company that specializes in evaluating academic credentials. The evaluator concluded that the beneficiary "earned 180 units/credits (120 semester units/credits)" and possesses the equivalent of a Bachelor of Science degree in economics from a regionally accredited U.S. college or university. The beneficiary's transcripts, however, reflect only 167.5 units earned. Furthermore, the registrar from the Filipino institution did not certify the transcripts or document pertinent data such as the total number of credits earned. The record, however, contains no explanation for these inconsistencies. It is incumbent upon the petitioner to resolve any inconsistencies in the record by independent objective evidence. Any attempt to explain or reconcile such inconsistencies will not suffice unless the petitioner submits competent objective evidence pointing to where the truth lies. *Matter of Ho*, 19 I&N Dec. 582, 591-92 (BIA 1988). Doubt cast on any aspect of the petitioner's proof may, of course, lead to a reevaluation of the reliability and sufficiency of the remaining evidence offered in support of the visa petition. *Matter of Ho*, 19 I&N Dec. 582, 591 (BIA 1988). In view of the foregoing, the petitioner has failed to establish that the beneficiary is qualified to perform the duties of an operations management analyst/management analyst. 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.

On appeal, counsel submits an evaluation from Morningside Evaluations and Consulting, a company that specializes in evaluating academic credentials. The evaluator concluded that the beneficiary possesses the equivalent of a U.S. Master of Business Administration degree. However, the evaluation is based upon the beneficiary's education, training 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). Furthermore, although the evaluator asserts that, because of the positions he holds at Mercy College, he has the authority to evaluate whether the school is to grant college-level credit for experience, training, and/or courses taken at other U.S. or international universities, the record contains no evidence from the appropriate official at Mercy College in support of his assertion. Going on record without supporting documentary evidence is not sufficient for purposes of meeting the burden of proof in these proceedings. *Matter of Soffici*, 22 I&N Dec. 158, 165 (Comm. 1998) (citing *Matter of Treasure Craft of California*, 14 I&N Dec. 190 (Reg. Comm. 1972)). In view of the foregoing, the evaluation carries no weight in these proceedings. *Matter of Sea, Inc.*, 19 I&N Dec. 817 (Comm. 1988).

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.

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).

The record contains evidence of the completion of training in a variety of areas, such as computer skills, marketing, and crisis management. Such documentation, however, does not establish equivalence to a degree in business administration or a related discipline. The petitioner did not submit any independent evidence to illustrate how these training certificates relate to the completion of the required degree. Going on record without supporting documentary evidence is not sufficient for purposes of meeting the burden of proof in these proceedings. *Matter of Soffici*, 22 I&N Dec. 158, 165 (Comm. 1998) (citing *Matter of Treasure Craft of California*, 14 I&N Dec. 190 (Reg. Comm. 1972)).

The AAO now turns to the beneficiary's prior work experience, and whether it included the theoretical and practical application of specialized knowledge required by the specialty. As described by each employer, the beneficiary's duties did not appear to involve the theoretical and practical application of management analysis. The foreign employers do not provide a description of the beneficiary's duties; no specificity to the beneficiary's daily activities or his level of responsibility is provided. 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. Furthermore, the employers do not indicate 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.

Finally, there is insufficient evidence that the beneficiary has recognition of expertise. The AAO notes that the evaluator from the International Institute of California cannot be considered a "recognized authority" because the evaluator did not provide his or her qualifications as an expert; no resume or other evidence was attached to the evaluation. Nor can the evaluator from Morningside Evaluations and Consulting be considered a "recognized authority" because the evaluator did not specify how his conclusions were reached; it appears that he relied on the information provided by the beneficiary in his resume, as the letters of employment did not contain a description of the beneficiary's duties.

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.

Beyond the decision of the director, the AAO does not find that the proffered position, which is primarily that of a food service manager, is a specialty occupation. For this additional reason, the petition may not be approved.

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.