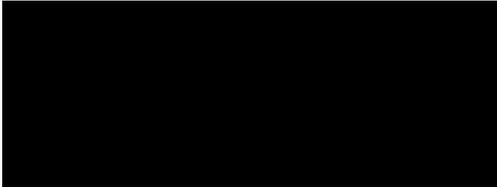




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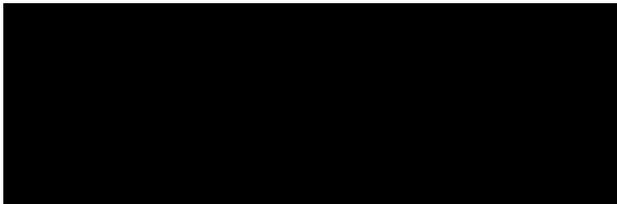
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FILE: WAC 03 071 53195 Office: CALIFORNIA SERVICE CENTER Date: JUL 20 2005

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

Robert P. Wiemann, Director
Administrative Appeals Office

DISCUSSION: The service center director denied the nonimmigrant visa petition and the matter was appealed to the Administrative Appeals Office (AAO). The AAO issued a summary dismissal based on the petitioner's failure to specify any erroneous conclusion of law or statement of fact for the appeal. The petitioner filed a motion to reopen. The motion will be granted. The appeal will be dismissed. The petition will be denied.

The petitioner is a jewelry wholesaler that seeks to employ the beneficiary as a market research 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; (5) Form I-290B and supporting documentation; (6) the AAO's summary dismissal; and (7) the petitioner's motion to re-open 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 market research analyst. The petitioner indicated in a December 18, 2002 letter that it wished to hire the beneficiary because she possessed the equivalent of a bachelor's degree in marketing.

The director found that the beneficiary was not qualified for the proffered position because the petitioner did not establish that the beneficiary had recognition of expertise in the specialty occupation. On appeal, counsel states that the beneficiary had recognition of her expertise by two marketing professors who provided credentials evaluations, one of which was submitted with the initial petition and one on appeal.

The petitioner submitted evidence to establish that the beneficiary has the equivalent to a bachelor's degree in marketing, which the director accepted. The AAO does not concur with the director. The beneficiary has a bachelor's degree in Chemistry, and five years of experience in the marketing field. The petitioner submitted an evaluation of the beneficiary's education and work experience, provided by an evaluator for Morningside Evaluations and Consulting.

Section 214(i)(2) of the Immigration and Nationality Act (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.

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- (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 petitioner indicated in its December 18, 2002 letter of support that it wished to hire the beneficiary as a marketing research analyst, and implied that the beneficiary's experience, supported by a credentials evaluation, was equivalent to a bachelor's degree in marketing, which it requires for the position.

Upon review of the record, the petitioner has failed to establish that the beneficiary is qualified to perform a specialty occupation that requires a master's degree. The AAO routinely consults the Department of Labor's *Occupational Outlook Handbook (Handbook)* for its information about the duties and educational requirements of particular occupations. The *Handbook* indicates that the qualifications for a market research analyst generally include a master's degree in economics, business administration, marketing, statistics, or a closely related discipline. The beneficiary does not hold a baccalaureate degree from an accredited U.S. college or university in any field of study. The petitioner submitted two credentials and experience evaluations, one with the initial petition, and one on appeal, which state that the beneficiary's foreign degree is equivalent to a degree from a U.S. college in marketing. However, 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).

Each of the evaluators states that he has authority to grant credit for experience and training. The regulations state that 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 may determine that a beneficiary has the equivalent of a bachelor's degree or higher. See 8 C.F.R. § 214.2(h)(4)(iii)(D)(1). Nothing in the record indicates that either of the universities where the evaluators teach have programs for granting credit based on an individual's training, nor is there evidence to support the evaluators' claims that they have authority to grant credit for training or experience. 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)). With respect to those portions of the evaluations analyzing the beneficiary's work experience, the evaluations carry no weight in these proceedings. *Matter of Sea, Inc.*, 19 I&N Dec. 817 (Comm. 1988).

The AAO notes that the beneficiary possesses a bachelor's degree, and not a master's degree, as required by the occupation. Therefore, the petitioner must demonstrate that the beneficiary meets the criterion at 8 C.F.R. § 214.2(h)(4)(iii)(C)(4), which requires the beneficiary to "[h]ave 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."

Pursuant to 8 C.F.R. § 214.2(h)(4)(iii)(D), for purposes 8 C.F.R. § 214.2(h)(4)(iii)(C)(4), 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.

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. For equivalence to a master's degree, the alien must have a baccalaureate degree followed by at least five years of experience in the specialty. 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

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).

- (v) Achievements which a recognized authority has determined to be significant contributions to the field of the specialty occupation.

The record contains none of the above-referenced evidence to establish that the beneficiary's education, training and experience are equivalent to a master's degree in a specific specialty required by the specialty occupation. The documentation on record does not establish that the beneficiary possesses the equivalent of a master's degree in any of the specific areas required for the specialty occupation. Her education is equivalent only to a bachelor's degree in chemistry, which, as discussed above, is not the degree required for entry into the field.

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. There are four letters from various individuals in the company where the beneficiary worked. The letter from the general manager stated that the beneficiary was responsible for devising methods to ensure market profitability and that she supported marketing programs with sales oriented activities, as well as supervising two employees who hold degrees in business management with specializations in marketing. A letter from the HRD Manager stated that the beneficiary's duties included: devising means and methods to ensure and/or increase profits; managing expenditures and reducing department overhead; analyzing data and statistics; preparing recommendations for implementation on changes which clients requested; examining future marketing trends; and gathering data on competitors. The other two letters are from purchasing coordinators. One of the letters gives no information regarding the beneficiary's duties. The second letter reviews the different positions that the beneficiary held, but again, gives no information about the actual duties she performed. None of the letters go into any detail regarding the beneficiary's duties, daily activities or her level of responsibility. 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, which in this case is market research analysis. Furthermore, there is no evidence 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. Despite the manager's statement that the beneficiary supervised two individuals with degrees in marketing, there is no evidence in the record to support this statement. As noted above, going on record without supporting documentary evidence is not sufficient for purposes of meeting the burden of proof in these proceedings. *Matter of Soffici.*

Finally, the petitioner did not establish that there was recognition of the beneficiary's expertise. On appeal, counsel states that the two evaluators who submitted credentials evaluations meet the requirements for recognizing the beneficiary's expertise. Only one of the evaluators included a resume with his evaluation, which would be necessary to establish the writer's qualifications as a 'recognized authority.'

In his request for evidence, the directed requested that the petitioner establish that the beneficiary has recognition of expertise in the specialty occupation. In reply, counsel stated that the petitioner did not need to establish that the beneficiary has recognition of expertise because she had a foreign degree determined to be equivalent to a bachelor's degree from a United States university. Counsel also stated that the beneficiary does have recognition of expertise through her employment letters, and brochures used to market property for the beneficiary's former employer.

Counsel's argument that a degree equivalent is sufficient ignores the language of the regulations, which states that the beneficiary must "[h]ave 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." [Emphasis added]. 8 C.F.R. § 214.2(h)(4)(iii)(C)(4). In addition, none of the submitted documentation meets the terms of the regulations for establishing recognition of expertise. Counsel asserts that the second credentials and experience evaluation submitted on appeal combined with the previous evaluation qualifies as a recognition of expertise. As noted, the regulations require a recognition of expertise by two recognized authorities in the field. Beyond a brief statement of background, there is no information about the evaluator whose evaluation was submitted on appeal. Only one of the evaluators qualifies as a recognized authority in this instance. The beneficiary's employment letters, and brochures used to market property for the beneficiary's former employer also do not meet the terms of regulations for establishing expertise. The regulation at 8 C.F.R. § 214.2(h)(4)(iii)(D)(5)(i)-(v) provides guidance on how to establish recognition of expertise, all of which is much more specific to the individual beneficiary and his or her accomplishments than that which was provided in this matter.

In addition, the AAO notes that the evaluation that was submitted on appeal is very similar to the one submitted by an evaluator for Morningside Evaluations and Consulting in response to the director's request for evidence. Indeed, although the evaluation submitted on appeal is on letterhead from Saint Louis University, and with no reference to the author being employed by Morningside Evaluations, the final page twice references Morningside Evaluations in identical language to the first evaluation, raising the question as to whether the evaluation represents the true testimony of the avowed author. CIS may, in its discretion, accept letters and advisory opinion statements as expert testimony. However, where an opinion is not in accord with other information or is in any way questionable, CIS is not required to accept or may give less weight to that evidence. *Matter of Caron International*, 19 I&N Dec. 791 (Comm., 1988).

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.