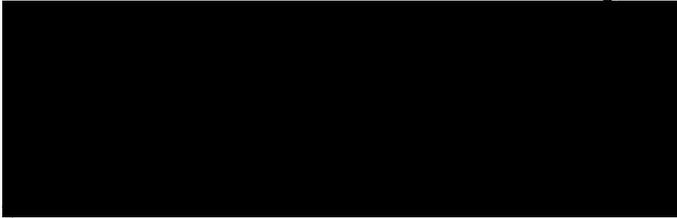


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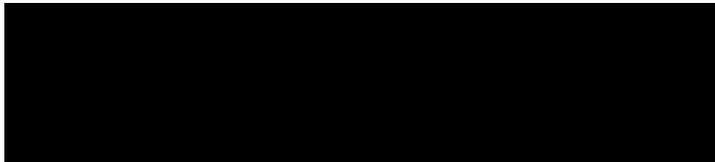
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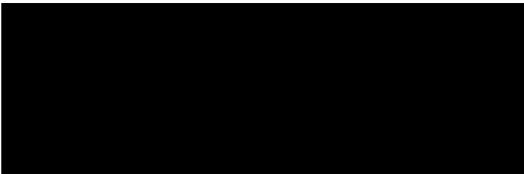
IN RE: Petitioner:



Beneficiary:

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 materials 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. The matter is now on appeal before the Administrative Appeals Office (AAO). The appeal will be sustained. The petition will be approved.

The petitioner is an importer and wholesaler of fabrics. It seeks to employ the beneficiary as a market research analyst and to extend her classification 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 on the ground that, although the proffered position was a specialty occupation, the beneficiary was not qualified to perform the services of the position because she did not have the requisite educational degree.

Section 214(i)(1) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1184(i)(1), defines the term "specialty occupation" as an occupation that requires:

- (A) theoretical and practical application of a body of highly specialized knowledge, and
- (B) attainment of a bachelor's or higher degree in the specific specialty (or its equivalent) as a minimum for entry into the occupation in the United States.

Section 214(i)(2) of the Act, 8 U.S.C. § 1184(i)(2), provides that an alien applying for classification as an H-1B nonimmigrant worker must possess:

- (A) full state licensure to practice in the occupation, if such licensure is required to practice in the occupation, [and]
- (B) completion of the degree described in paragraph (1)(B) for the occupation, or
- (C) (i) experience in the specialty equivalent to the completion of such degree, and
(ii) recognition of expertise in the specialty through progressively responsible positions relating to the specialty.

As further explained in 8 C.F.R. § 214.2(h)(4)(iii)(C), to qualify to perform services in a specialty occupation the 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: (1) Form I-129 and supporting documentation; (2) the director's request for evidence (RFE); (3) the petitioner's response to the RFE; (4) the notice of decision; and (5) Form I-290B, counsel's appeal brief, and supporting materials. The AAO reviewed the record in its entirety before issuing its decision.

The petitioner, in business since 1996, is an importer and distributor of fabrics manufactured primarily in Korea, Taiwan, China, Thailand, and the Philippines. In 2000 it filed an H-1B petition on behalf of the beneficiary to employ her as a market research analyst. The petition was approved by the California Service Center, valid for a two and a half year period. The instant petition seeks to extend the beneficiary's H-1B classification for three additional years.

In his decision the director found that the duties of the proffered position accorded with the description of a market research analyst in the Department of Labor (DOL)'s *Occupational Outlook Handbook (Handbook)*, which CIS routinely consults as an authoritative source of information about the duties and educational requirements of particular occupations. The director quoted an excerpt from the *Handbook* stating that most market research analyst positions in the private sector required advanced degrees in economics, business administration, marketing, statistics, or a closely related discipline, thus satisfying the statutory definition of a specialty occupation. The director noted that the beneficiary had only a bachelor's degree in business administration, not a master's degree in any of the specialty areas cited in the *Handbook*, and concluded that the beneficiary was not qualified to perform the services of the specialty occupation of market research analyst.

On appeal counsel asserts that a master's degree is not required for a market research analyst or, alternatively, that the beneficiary's education and work experience are equivalent to a master's degree. The AAO agrees with the latter argument. As provided in 8 C.F.R. § 214.2(h)(4)(iii)(D), whether a beneficiary's education, specialized training and/or experience is equivalent to a U.S. baccalaureate or higher degree – thereby making the beneficiary qualified under 8 C.F.R. § 214.2(h)(4)(iii)(C)(4) to perform the services of the specialty occupation – 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 [CIS] 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 For equivalence to an advanced (or Masters) 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 documentations such as: (i) Recognition of expertise in the specialty occupation by at least two recognized authorities in the same specialty occupation

The record shows that the beneficiary earned a bachelor of business administration with a major in management from Silliman University in Dumaguete City, the Philippines, on March 18, 1979. According to an evaluation report of the Foundation for International Services, Inc., an education credentials evaluator in Bothell, Washington, the beneficiary's degree is equivalent to a bachelor's degree in business administration with a major in management from an accredited college or university in the United States. On appeal a letter has been submitted from Gigi L. Alino, a real estate consultant and freelance sales executive in the Philippines, who states that the beneficiary was employed from June 1984 to September 1991 as a buyer/analyst for a Filipino garment importer and exporter, JVC International Apparel, Inc. (JVC). Mr. Alino, who indicates that he has a bachelor's degree in clothing technology, states that he was JVC's general manager and directly supervised the beneficiary from January 1989 until her departure from the company in September 1991. The beneficiary was initially hired by JVC as a buyer, Mr. Alino states, and was promoted to buyer/analyst after a year. Mr. Alino proceeded to give a detailed description of the beneficiary's duties as buyer/analyst, which included some supervisory tasks. The record also includes photocopied letters from the general manager of personnel at Philtex Consultants & Traders, Inc., stating that the beneficiary worked for the company as a buyer/analyst in the marketing department from November 1991 to January 1998, and from the general manager of McHome Builders Depot, Inc., stating that the beneficiary worked for that company as a buyer in the purchasing department from March 1998 to May 1999. Both companies are located in the Philippines. In addition, the record includes a letter from the petitioner's president, which accompanied the instant petition, explaining the beneficiary's functions as market research analyst. These are the same functions she has performed for the company since commencing her employment with the fabrics importer and distributor in 2000. Lastly, letters have been submitted on appeal from two university professors in the United States – specializing in the fields of management, information systems, and marketing – who conclude that the beneficiary's baccalaureate degree in business administration from a Filipino university and extended work experience are equivalent to a master's degree in business administration from a U.S. university.

Based on the foregoing evidence, the AAO determines that the beneficiary meets the evidentiary requirements of 8 C.F.R. § 214.2(h)(4)(iii)(D)(5). The beneficiary's work experience – especially her seven years as a buyer/analyst for JVC International Apparel, Inc. and her tenure with the petitioner since the fall of 2000 as a market research analyst – includes the theoretical and practical application of specialized knowledge required by a market research analyst, particularly in the product field of fabrics. Furthermore, the letters of Mr. Alino and the two university professors show that the beneficiary satisfies the criteria of having worked with a supervisor who has a degree or its equivalent in the specialty occupation as well as having recognition of expertise in the specialty. The beneficiary's post-baccalaureate work experience in the specialty exceeds the five-year minimum for equivalence to a master's degree.

The AAO concludes that the beneficiary has education and progressively responsible work experience equivalent to a U.S. master's degree in business administration and is qualified, under 8 C.F.R. § 214.2 (h)(4)(iii)(C)(4), to perform the services of the specialty occupation of market research analyst.

ORDER: The appeal is sustained. The petition is approved.