

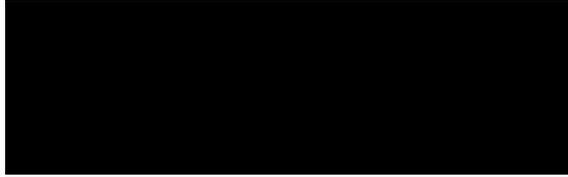
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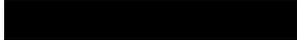


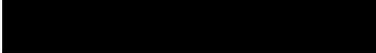
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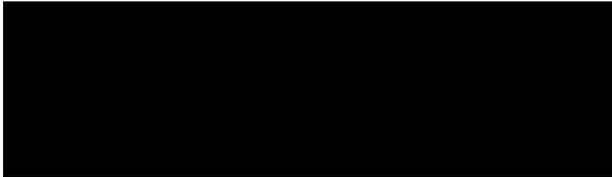


FILE:  Office: CALIFORNIA SERVICE CENTER Date: MAY 24 2005

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

Robert P. Wiemann, Director
Administrative Appeals Office

DISCUSSION: The service center director denied the nonimmigrant visa petition. It was reopened and denied again by the service center director. The matter is now on appeal before the Administrative Appeals Office (AAO). The appeal will be dismissed. The petition will be denied.

The petitioner is a [REDACTED]. It seeks to employ the beneficiary as a management analyst and to classify her 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 the beneficiary is not qualified to perform services in the specialty occupation.

Section 214(i)(1) of 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 must have the following credentials to be qualified to perform the services of a specialty occupation:

- (A) full state licensure to practice in the occupation, if such licensure is required to practice in the occupation,
- (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), an alien must meet one of the following criteria to qualify to perform the services of a specialty occupation:

- (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.

For the purpose of deciding whether the beneficiary is qualified under 8 C.F.R. § 214.2(h)(4)(iii)(C)(4), 8 C.F.R. § 214.2(h)(4)(iii)(D) provides that the determination shall be based on 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 purposes of determining equivalency to a baccalaureate degree in the specialty, 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 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 documentation such as: (i) Recognition of expertise in the specialty occupation by at least two recognized authorities ¹ in the same specialty

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

occupation; (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.

The record of proceeding before the AAO contains: (1) Form I-129 and supporting documentation; (2) the director's requests for evidence (RFEs); (3) the petitioner's responses to the RFEs; (4) the notices of decision; and (5) Form I-290B, and appeal brief, and photocopies of previously submitted materials. The AAO reviewed the record in its entirety before issuing its decision.

As evidence of the beneficiary's qualifications to perform the services of a management analyst position, the record includes the beneficiary's transcript from EWHA Womans University in Seoul, South Korea, showing that she graduated with a bachelor of business administration, and a minor in economics, on February 26, 2001. The record also includes an academic evaluation report from Educational Assessment, Inc. in Athens, Georgia, declaring that the beneficiary's Korean degree is equivalent to a bachelor of business administration degree, with a minor in economics, from an accredited college or university in the United States.

In his initial decision the service center director found that the beneficiary was not qualified to perform the services of a specialty occupation because a bachelor's degree in business administration was too general to qualify an individual for a specialty occupation unless the academic coursework and knowledge gained were realistic prerequisites to a particular position. The petitioner filed a motion to reopen/reconsider, arguing that the beneficiary's degree in business administration included a minor in economics and coursework in accounting and economics that were realistic prerequisites to a management analyst position, thus qualifying the beneficiary for the specialty occupation. The director granted the motion, but denied the petition again on the ground that the minimum educational requirement for entry into a management analyst position in the private sector is a master's degree in business administration (M.B.A.) or a related discipline. The beneficiary did not have such a degree, the director noted, nor a combination of education, training, and experience equivalent thereto.

On appeal counsel asserts that the service center director erred in determining that a master's degree is the minimum educational requirement for entry into a management analyst position. Counsel quotes excerpts from the Department of Labor (DOL)'s *Occupational Outlook Handbook (Handbook)*, which he interprets as confirming that a bachelor's degree in business administration with coursework relevant to a management analyst position is sufficient to qualify an individual for that specialty occupation. The beneficiary's degree satisfies this requirement, counsel maintains, because it contains significant coursework in directly relevant disciplines such as economics, finance, accounting, and management, thus qualifying the beneficiary to perform the services of the specialty occupation under 8 C.F.R. § 214.2(h)(4)(iii)(C)(2).

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 DOL *Handbook* states the following with respect to the education and training required for management analyst positions:

Educational requirements for entry-level jobs in this field vary widely between private industry and government. Most employers in private industry generally seek individuals with a master's degree in business administration or a related discipline. Some employers also require additional years of experience in the field in which the worker plans to consult, in addition to a master's degree. Some will hire workers with a bachelor's degree as a research analyst or associate. Research analysts usually need to pursue a master's degree in order to advance to a consulting position. Most government agencies hire people with a bachelor's degree and no pertinent work experience for entry-level management analyst positions.

. . . . In addition to the appropriate formal education, most entrants to this occupation have years of experience in management, human resources, information technology, or other specialties

In accord with the determination of the service center director, the AAO interprets the language in the *Handbook* as indicating that a master's degree in business administration or a related field is the minimum educational requirement for management analysts hired by employers in private industry. The *Handbook* makes clear that a baccalaureate degree may be sufficient for private sector research analysts or associates, but those positions are not at the same level as the management analyst described in this petition. The AAO interprets the *Handbook's* language to mean that management analysts hired by private companies require an M.B.A., while lesser positions in the field such as research analysts and associates may not. The AAO concludes that a master's degree in business administration or a related field is the industry standard for entry into the management analyst position in this case. Since the beneficiary's foreign degree is not equivalent to an M.B.A. from a U.S. university it does not qualify her under 8 C.F.R. § 214.2(h)(4)(iii)(C)(2) to perform the services of the specialty occupation.

Nor does the beneficiary have the requisite combination of education, training, and experience to qualify under 8 C.F.R. § 214.2(h)(4)(iii)(C)(4) to perform the services of the specialty occupation. The regulation at 8 C.F.R. § 214.2(h)(4)(iii)(D)(5) requires three years of specialized work experience for each year of college-level training the alien lacks for equivalence to a baccalaureate degree, and another five years of specialized work experience for equivalence to a master's degree. The AAO will accept the beneficiary's bachelor of commerce degree in South Korea, with a minor in economics and significant coursework in the fields of finance, accounting, and management, as equivalent to a bachelor of business administration degree in the United States with an academic focus directly related to the proffered position of management analyst. Therefore, the beneficiary must demonstrate five years of progressively responsible work experience in areas related to the specialty to have the equivalent of a master's degree in business administration or a related specialty. There is no evidence in the record of any such work experience by the beneficiary aside from the petitioner's undocumented assertion that the beneficiary has been working voluntarily in a management analyst capacity for the church since February 2001. Furthermore, there is no evidence that the beneficiary has worked with peers, supervisors, or subordinates who have a master's degree or its equivalent in business administration or a related field, or documentation showing that the beneficiary has been recognized for her expertise in the specialty field.

Thus, the record does not establish that the beneficiary has any specialized work experience that can be counted toward master's degree equivalence in business administration or a related field. Accordingly, the beneficiary does not have five years of specialized and progressively responsible work experience in business administration or a related field, as required by 8 C.F.R. § 214.2(h)(4)(iii)(D)(5) for the beneficiary to be qualified to perform the services of the specialty occupation under 8 C.F.R. § 214.2(h)(4)(iii)(C)(4).

Based on the foregoing analysis, the AAO determines that the beneficiary does not qualify to perform the services of the specialty occupation under any of the pertinent criteria enumerated in 8 C.F.R. § 214.2(h)(4)(iii)(C) and 8 C.F.R. § 214.2(h)(4)(iii)(D).

The petitioner bears the burden of proof in these proceedings. *See* section 291 of the Act, 8 U.S.C. § 1361. The petitioner has not sustained that burden. Accordingly, the AAO will not disturb the director's decision denying the petition.

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