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20 Mass. Ave. N.W., Rm. A3042
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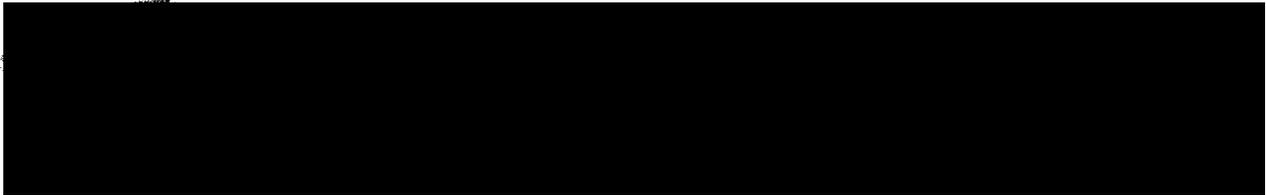


FILE: WAC 04 031 51367 Office: CALIFORNIA SERVICE CENTER Date: **OCT 03 2005**

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 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 director of the 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, a developing agent, seeks to employ the beneficiary as a market research analyst/developer. The petitioner, therefore, 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, stating the following: “[I]t is concluded that the beneficiary does not qualify to perform the services of a marketing research analyst based on education, because the beneficiary does not have the specific or related degree in this specialty occupation.”

The record of proceeding before the AAO contains: (1) the Form I-129 and supporting documentation; (2) the director’s request for additional evidence (RFE); (3) the petitioner’s RFE response and supporting documentation; (4) the director’s denial letter; and (5) the petitioner’s Form I-290B and supporting documentation. The AAO reviewed the record in its entirety before issuing its decision.

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 petitioner’s letter of support set forth the following description of the duties of the proposed position:

Her duties as a market research analyst/developer will be overseeing all aspects of research in new products, and development of area franchises for Arizona and Utah. They will also include providing operational support to new franchises, designing marketing programs for optimum profits[,] and give new real estate guidance [sic]. In addition to this, she will be responsible to test the new products in the market for the franchise mentioned below.

The petitioner provided an expanded description of the duties in the RFE response, as well as the percentages of time to be spent performing each of the tasks:

- a) Working in conjunction with Kahala corp [sic] and A.V.S. LLC to develop future franchisees (60%)
- b) Giving real estate guidance to new franchisee [sic] and to develop marketing strategies for the new stores in the states of Arizona & Utah (20%)
- c) Research of new food products, testing them[,] and marketing it in the above mentioned markets (20%)

Nira will be responsible to market the restaurants by making promos, sampling and generate business by catering to big conferences and other potential businesses [sic]. She will also be responsible to find locations for new restaurants keeping in mind the demography, population[,] and standard of living in and around that location [sic]. In order to open up more units, she will also be required to contact real estate agents or give guidance to new franchises with opening new units. She will have to contact bankers to explore more potential A.V.S. activities to get financial help from financial institutions. She will also research new recipes [sic] in order to expand business for A.V.S.

The record contains a copy of the beneficiary's bachelor's degree in commerce, a three-year program of study at the University of Mumbai, which is located in India, as well as copies of transcripts from that course of study. The record also contains a copy of the beneficiary's diploma in hotel administration and food technology from Sophia-Shree Basant Kumar Somani Memorial Polytechnic, also located in India, and transcripts from that course of study.

The record also contains an evaluation from the International Education Research Foundation, Inc. (IERF), dated November 12, 2003, which concludes that the beneficiary's foreign degrees is equivalent to a Bachelor of Science in Business Administration from a regionally accredited college or university in the United States. IERF concluded the following:

It is the judgment of the International Education Research Foundation, Inc., that Nira Paresh Kinkhabwala has the U.S. equivalent of ninety semester units of undergraduate coursework and completion of a two-year training program in Hotel Administration and Food Technology in the United States.

On appeal, counsel submits a new evaluation, dated March 11, 2004, from James V. Spiers, Assistant to the Chair and Senior Lecturer in the Department of Marketing at Arizona State University, stating the following:

The W.P. Carey School of Business at Arizona State University would recognize the degree as beyond a two[-]year business degree. An overview of her coursework shows she has satisfied the requirements of a BIS degree – Bachelor of Interdisciplinary Studies (1). This is a university-wide program intended for students who have academic interests that might not be satisfied with existing majors.

The beneficiary did not earn a degree from a United States institution, so she does not qualify to perform services in a specialty occupation under 8 C.F.R. § 214.2(h)(4)(iii)(C)(1).

Nor does the beneficiary qualify under the second criterion, which requires a showing that the beneficiary holds 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.

The U.S. Department of Labor's *Occupational Outlook Handbook (Handbook)* notes that market research analysts generally possess graduate degrees in economics, business administration, marketing, statistics or a closely related discipline. Entry level positions such as research assistants, administrative or management trainees, marketing interviewers, or professional sales positions may be filled by individuals possessing only a bachelor's degree. The position proposed in the petition, however, is not that of a research assistant, administrative or management trainee, marketing interviewer, or a professional sales position, the duties of which could be performed by individuals holding a baccalaureate level education. If a particular specialty occupation requires an educational attainment *higher* than that of a baccalaureate degree, then the beneficiary of the proposed position must possess the requisite higher education. The petitioner has not established that the beneficiary possesses a graduate degree in economics, business administration, marketing, statistics or a closely related discipline. The beneficiary is not, therefore, qualified to perform the duties of a market research analyst under 8 C.F.R. § 214.2(h)(4)(iii)(C)(2).

It has never been stated that the beneficiary holds an unrestricted state license, registration or certification to practice the specialty occupation, so she does qualify under 8 C.F.R. § 214.2(h)(4)(iii)(C)(3).

Nor does the beneficiary qualify under 8 C.F.R. § 214.2(h)(4)(iii)(C)(4), as she does not have the 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, as well as recognition of expertise in the specialty through progressively responsible positions directly related to the specialty. In reaching this conclusion, the AAO noted that the beneficiary has several years of prior work experience in the field.

Pursuant to 8 C.F.R. § 214.2(h)(4)(iii)(D), equating a beneficiary's credentials to a United States baccalaureate or higher degree is 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.

The beneficiary has not met the requirements set forth at 8 C.F.R. §§ 214.2(h)(4)(iii)(D)(1), (2), or (4), as the record contains no evidence to satisfy any of those criteria.

Nor does the beneficiary qualify under 8 C.F.R. § 214.2(h)(4)(iii)(D)(3). As noted above, the AAO has reviewed the evaluation submitted by [REDACTED] from Arizona State University. However, the specialty occupation requires a master's degree. Moreover, this evaluation is deficient, as it conflicts with the earlier evaluation granting the beneficiary 90 semester units of undergraduate coursework and completion of a two-year training program in Hotel Administration and Food Technology in the United States.

CIS may, in its discretion, use as advisory opinions statements submitted 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). The second evaluation is not in accord with the other evidence of record, most notably the first evaluation, and the AAO will not consider it.

Also, the second evaluation is based upon certificates from a nonacademic institution. The first evaluation noted specifically that no transfer-level credit from the beneficiary's experience at [REDACTED] Polytechnic (Sophia Shree) was recommended. The second evaluator did take that experience into consideration. It has not been demonstrated that [REDACTED] provides academic coursework, especially in light of the fact that the earlier evaluation only awarded two years of credit for certificate training. See *Matter of Caron International*, 19 I&N Dec. at 791.

When CIS determines an alien's qualifications pursuant to 8 C.F.R. § 214.2(h)(4)(iii)(D)(5), the alien must have a baccalaureate degree followed by at least five years of experience in the specialty in order to demonstrate equivalency to a master's degree. As the beneficiary does not have a baccalaureate degree, there can be no equivalency determination of a master's degree under the regulation. As the beneficiary does not meet the threshold requirement of a baccalaureate degree, it cannot be established that the beneficiary is qualified to perform the services of the specialty occupation, which requires a master's degree.

Therefore, none of the four criteria set forth at 8 C.F.R. § 214.2(h)(4)(iii)(C) have been satisfied, and the director was correct in finding the beneficiary unqualified to perform the duties of a market research analyst. 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 not sustained that burden.

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