



U.S. Citizenship  
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FILE: WAC 05 192 50340 Office: CALIFORNIA SERVICE CENTER Date: **DEC 19 2006**

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, Chief  
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 is a privately owned corporation whose artists create contemporary natural stone sculptures. In order to employ the beneficiary as a marketing manager, the petitioner filed this H-1B petition to attain classification of 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 on the basis that the petitioner had failed to establish that the marketing manager position that is the subject of this petition meets the definition of a specialty occupation at 8 C.F.R. § 214.2(h)(4)(iii)(A). The director's six-page decision explained in detail the petitioner's failure to satisfy any of the criteria of 8 C.F.R. § 214.2(h)(4)(iii)(A).

An officer to whom an appeal is taken shall summarily dismiss any appeal when the party concerned fails to identify specifically any erroneous conclusion of law or statement of fact for the appeal. 8 C.F.R. § 103.3(a)(1)(v).

On the Form I-290B (Notice of Appeal), the petitioner states: "I believe the denial to be unjustified. See attached statement for clarification." The attached statement is a September 21, 2005 letter from the petitioner. The letter contains these statements about the petition that is the subject of this proceeding:

I am writing this letter in response to your denial of Form I-129 [Petition for Nonimmigrant Worker] on behalf of my daughter, [beneficiary's first name]. Basically, you felt that the position applied for could be filled with someone with lesser qualifications and possibly by one of our current employees. Further documentation to support [the beneficiary's] application would be difficult to find in that our business is very unique so therefore I can only add some personal observations and comments.

I believe that we are at a disadvantage because of the size of our firm and the need for such a position applied for by [the beneficiary]. Although our gross sales in 2004 were \$185,000, it **should** be pointed out that sales of almost one third of a million dollars were achieved in 2000 and with [redacted] capabilities this level of sales can again be reached and surpassed. It would be my goal to expand our scope of work not only in Arizona but also in other states, especially in the golf industry [in] which [the beneficiary] has gained invaluable experience under her TN status. I cannot do this alone and my employees are not capable of this achievement, even with additional training.

Furthermore, being almost 65 years of age and although I have no immediate plan of retiring, the future of [the petitioner] has to be considered. Because of the uniqueness of my work, it would be difficult to sell [the petitioner's business] as my clients pay for my sculptures and work that are created and signed only by me. Although [the beneficiary's] application is time limited, I would like to think that she could eventually further [the petitioner], especially since she is very

creative and artistically motivated as well as knowing the business aspect. I know that these qualities are not relative to her application, I just thought it was worth mentioning.

Lastly, the position applied for by [the beneficiary] does suit her to a “tee”. We need to expand our product scope and level of sales. She can do it!

If the above short list of comments are [sic] not enough to reverse the I-129 denial, then I would ask you not to read this letter any further. If, however, this is not the case then please do read further.

**Summary of facts:** Our firm creates one of a kind services and products concerned with energy/water conservation and we negotiate and work closely with architects, developers, and their engineers. Because we never duplicate our products the technical understanding on creating new products takes an incredible knowledge and acumen to understand. We have won awards for our work. [The beneficiary] is unique in her specific qualifications for our position and well suited to step in and identify the products and markets suitable for the growth. . . . We think the compelling facts warrant reconsideration by CIS [Citizenship and Immigration Services].

The petitioner fails to specify how the director made any erroneous conclusion of law or statement of fact in denying the petition. As the petitioner does not present additional evidence on appeal to overcome the decision of the director, the appeal will be summarily dismissed in accordance with 8 C.F.R. § 103.3(a)(1)(v).

Beyond the decision of the director, it is noted that the petitioner has not established that the beneficiary is qualified to serve in a specialty occupation in accordance with 8 C.F.R. §§ 214.2(h)(4)(iii)(C) and (D). The educational equivalency evaluation upon which the petitioner relies depends partly upon an assessment of the beneficiary’s work experience. This assessment is materially deficient, as explained below. For this reason also, the petition must be denied.

First, the evaluator does not provide a reliable analysis of how he arrived at his conclusions as to the educational equivalency of the beneficiary’s work experience. He recounts in generalized terms work experience attributed to the beneficiary without explaining how that work correlates with college-level coursework at an accredited U.S. college or university. Without supporting analysis by which the accuracy of his opinions can be measured, he concludes: “In my judgment, [the beneficiary’s] professional activities involved the application of advanced theoretical concepts and practical methodologies in marketing, market research, marketing planning and execution, promotions, events management, and related areas”; and “Due to the concentrated nature of her work experience and training in marketing, and related areas, it is my judgment that [the beneficiary’s background] would be comparable to university-level training in marketing.” It is noted also that the evaluator does not explain “the concentrated nature” of the beneficiary’s work, and that the evaluator does not identify any of the “applications of advanced theoretical concepts and practical methodologies” that he attributes to the beneficiary’s work experience.

Second, the record of proceeding does not establish the evaluator as qualified to render an opinion as to the educational equivalency of the beneficiary's work experience. In accordance with 8 C.F.R. §§ 214.2(h)(4)(iii)(D)(I) to so qualify a person must be "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." An evaluator's self-endorsement as qualified will not suffice. The AAO requires that qualifying status under 8 C.F.R. §§ 214.2(h)(4)(iii)(D)(I) be established by a detailed letter from an official with authority to speak for the relevant educational institution, such as a dean or provost, that addresses all aspects of the qualifying requirements. The AAO notes that the two endorsement letters from the evaluator's university, dated June 2, 2003 and October 23, 2003, were out of date at the time that the evaluation was prepared in June 2005. Further, the out-of-date endorsement letters do not state that the university has a program for granting college-level credit in marketing on the basis of a student's training or work experience. Also, the more recently dated endorsement letter states that the evaluator only "has authority to make recommendations regarding the granting of college-level credit for experience."

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. Accordingly, the appeal will be dismissed.

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