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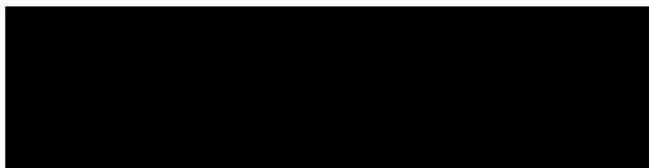
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FILE: SRC 04 251 52374 Office: TEXAS SERVICE CENTER Date: JUN 06 2006

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 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, Chief  
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 dismissed. The petition will be denied.

The petitioner is a real estate development company. It seeks to employ the beneficiary as a management analyst and to classify him 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 record failed to establish that the beneficiary is qualified to perform services in the specialty occupation.

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.

As provided in 8 C.F.R. § 214.2(h)(4)(iii)(A), to qualify as a specialty occupation the position must meet one of the following criteria:

- (1) A baccalaureate or higher degree or its equivalent is normally the minimum requirement for entry into the particular position;
- (2) The degree requirement is common to the industry in parallel positions among similar organizations or, in the alternative, an employer may show that its particular position is so complex or unique that it can be performed only by an individual with a degree;
- (3) The employer normally requires a degree or its equivalent for the position; or
- (4) The nature of the specific duties is so specialized and complex that knowledge required to perform the duties is usually associated with the attainment of a baccalaureate or higher degree.

Citizenship and Immigration Services (CIS) interprets the term "degree" in the criteria at 8 C.F.R. § 214.2(h)(4)(iii)(A) to mean not just any baccalaureate or higher degree, but one in a specific specialty that is directly related to the proffered position.

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 <sup>1</sup> in the same specialty 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 request for evidence (RFE); (3) the petitioner's response to the RFE; (4) the director's decision; and (5) Form I-290B, an appeal brief, and supporting materials. The AAO reviewed the record in its entirety before issuing its decision.

In its initial submission, including the Form I-129 and an accompanying letter, the petitioner described itself as a real estate development company "specializing in investing, purchasing, leasing, and reselling properties in major metropolitan areas." The petitioner also stated that it develops properties, either alone or in joint ventures, and offers investment opportunities to South American and European investors. The petitioner indicated that it was established in 2004, has two employees, and estimated that its gross annual receipts would total \$200,000. The petitioner declared that it wished to employ the services of a full-time management analyst "who is knowledgeable in analyzing business operations and successful in running a business." According to the petitioner, the proffered position requires at least a bachelor's degree in business management or the equivalent. The beneficiary is qualified for the position, the petitioner

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<sup>1</sup> *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).

indicates, by virtue of his 24 years of business management experience in Venezuela, which an evaluator of foreign education and work experience deems to be equivalent to a bachelor of science in business administration, with a major in management, from a U.S. college or university.

In response to the RFE the petitioner provided a detailed list of the proffered position's duties, which reads as follows:

- Analyze processes and procedures (business related and operational) to develop an appropriate framework and methodology that allows for improved productivity and efficiency in daily activities performed by the company's personnel in the areas of supply-chain management, sales operations, vendor management.
- Develop the annual budget plan to support the corporation in [its] objectives and goals. Study and expose to Latin American investors the tax exposure, if any, related to their investments in the company. Analyze data gathered, develop information, and consider available solutions or alternate methods of proceeding in benefit of the company and its investors.
- Provide technical assistance related to management policies and practices to improve program operation. Organize and document findings of studies and develop recommendations for the implementation of new systems, procedures, or organizational changes to the entity's structure and operations.
- Understand the principles of debits and credits, basic accounting ledgers and reporting forms, cash flow management, inventory management, accounting reports, budgets, costs and revenues, accounting controls, break even analysis, pro forma projections, etc.
- Prepare monthly reports for the local and Latin American investors and company's members detailing company's results for each month. Use statistical tables and data, as well as understand basic statistics in terms of distributions, descriptive reports of business data (charts and diagrams).
- Make financial decisions on behalf of the local and Latin American clients or investors, which requires an understanding of cash management, hedging cash flows and budgeting. Suggest marketing planning which entails the analysis of the transportation market based on detailed analysis of the needs of the corporation. Understand client/investors service systems and standards, client relations and fulfillment, post-sales service, customer affairs, customer satisfaction, etc.
- Analyze financial conditions and deal with financial challenges, such as budgeting of financial resources, cost of funds, capital structure, and corporate planning and control.
- Understand the fundamentals of prospecting, planning including use of credit, cash flow management, banking accounts, insurance, investments, taxes and dealing with economic conditions, such as inflation. Understand the monetary policy and the forces affecting domestic and international investments.

In her decision the director quoted information in the Department of Labor (DOL)'s *Occupational Outlook Handbook (Handbook)* concerning the educational requirements for management analysts, and determined that the proffered position would require a master's degree or its equivalent. Since the petitioner claims that the beneficiary has the equivalent of a bachelor's degree, the director concluded that the beneficiary is not qualified to perform services in the specialty occupation under any of the criteria enumerated at 8 C.F.R. § 214.2(h)(4)(iii)(C).

On appeal counsel asserts that the director misinterpreted the *Handbook's* language on the educational requirements for management analysts. According to counsel, since the *Handbook* does not state that all employers require a master's degree for management analyst positions, the only logical interpretation is that the minimum entry-level requirement is a bachelor's degree. Counsel submits five internet postings for management analyst positions, each of which specifies that a baccalaureate degree is required.

The record does not establish that the beneficiary is qualified to perform services in a specialty occupation. The beneficiary does not qualify under the first three criteria of 8 C.F.R. § 214.2(h)(4)(iii)(C) because he does not hold a U.S. baccalaureate or higher degree in a specialty field, as required under 8 C.F.R. § 214.2(h)(4)(iii)(C)(1), does not hold a foreign degree that is equivalent to a U.S. baccalaureate or higher degree in a specialty field, as required under 8 C.F.R. § 214.2(h)(4)(iii)(C)(2), and does not as far as the record shows hold a license, registration, or certification authorizing him to work as a management analyst in Florida, the intended state of employment, as required under 8 C.F.R. § 214.2(h)(4)(iii)(C)(3).

Nor does the beneficiary have the combination of education, specialized training, and/or work experience required under 8 C.F.R. § 214.2(h)(4)(iii)(C)(4) to qualify to perform services in a specialty occupation because he does not satisfy any of the documentary criteria set forth in 8 C.F.R. § 214.2(h)(4)(iii)(D). The first and fifth criteria – 8 C.F.R. § 214.2(h)(4)(iii)(D)(1) and (5) – are the only ones applicable to the instant petition.

With respect to 8 C.F.R. § 214.2(h)(4)(iii)(D)(1), the record includes an evaluation of the beneficiary's work experience by a professor of business administration at American Intercontinental University in Sunrise, Florida, who declares that the beneficiary's 24 years of experience in business management positions in Venezuela is equivalent to a bachelor of science in business administration, with a major in management, from an accredited U.S. college or university. The credentials evaluation lacks crucial attributes, however, that are prescribed under 8 C.F.R. § 214.2(h)(4)(iii)(D)(1). It fails to demonstrate that the evaluator has the authority to award academic credit for work experience. Though the evaluator declares that she has "the authority to grant credit waiver to applicants who have completed previous professional training and/or professional work experience," this language does not state that the professor has the authority to grant academic credit based on such experience. Nor is the evaluation supplemented by documentary evidence that the university with which the professor is affiliated has a program for granting academic credit based on an individual's training and/or work experience. No letter has been submitted by a qualified official at American Intercontinental University confirming that the institution has such a program.

CIS may, in its discretion, use as advisory opinions statements from universities, professional organizations, or other sources submitted in evidence as expert testimony. When an opinion is not in accord with other information or is in any way questionable, however, CIS is not required to accept or may give less weight to that evidence. See *Matter of Caron International, Inc.*, 19 I&N Dec. 791, 795 (Comm. 1988). For the reasons discussed above, the evaluation from the professor at American Intercontinental University is not persuasive evidence that the beneficiary's work experience in Venezuela is equivalent to a bachelor of science in business administration, with a major in management, from a U.S. college or university, as required under 8 C.F.R. § 214.2(h)(4)(iii)(D)(1) for the beneficiary to be qualified to perform services in a specialty occupation under 8 C.F.R. § 214.2(h)(4)(iii)(C)(4).

With respect to 8 C.F.R. § 214.2(h)(4)(iii)(D)(5), the regulation requires three years of specialized work experience for each year of college-level training the alien lacks for equivalence to a baccalaureate degree and five years of specialized work experience for each year of college-level training the alien lacks for equivalence to a master's degree. The record indicates that the beneficiary does not have any college-level or post-graduate education. Thus, the beneficiary would have to demonstrate twelve years of progressively responsible work experience in areas related to the specialty to have the equivalent of a bachelor's degree in business, majoring in management. In order to have the equivalent of a master's degree, the beneficiary must be shown to have first obtained a baccalaureate degree, followed by five years of experience in the specialty. *See*, 8 C.F.R. § 214.2(h)(4)(iii)(D)(5). The record includes letters from three Venezuelan companies stating that the beneficiary worked for them in business management positions over a 24-year period between 1980 and 2004. The letters provide no evidence, however, that the beneficiary was working with peers, supervisors, or subordinates who have a bachelor's or master's degree, or its equivalent, in a business-related specialty. Nor is there any documentation in the record showing that the beneficiary has been recognized for his expertise in a business-related specialty. Thus, the record does not establish that the beneficiary has any specialized work experience in management analyst positions that can be counted toward the requisite degree equivalence in the specialty, as required by 8 C.F.R. § 214.2(h)(4)(iii)(D)(5) for the beneficiary to be qualified under 8 C.F.R. § 214.2(h)(4)(iii)(C)(4) to perform services in the specialty occupation.

Based on the foregoing analysis, the AAO determines that the record fails to establish that the beneficiary is qualified to perform services in the specialty occupation.

Beyond the decision of the director, there is no evidence in the record demonstrating that the petitioner is an operating business that would immediately employ the beneficiary as a management analyst. The petitioner states that it was established in 2004, shortly before the instant petition was filed, but the documentation of record does not show that it has commenced business operations. Based on the current record, therefore, the AAO is unable to determine whether the beneficiary would actually perform the services of a management analyst in the proffered position. The petition is deniable on this ground as well.

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.