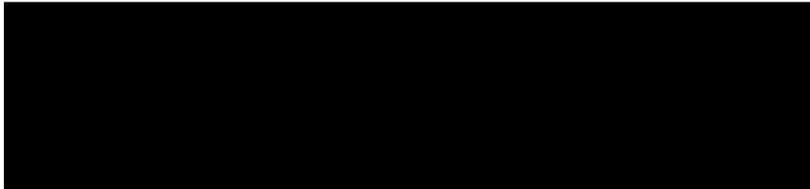




U.S. Citizenship
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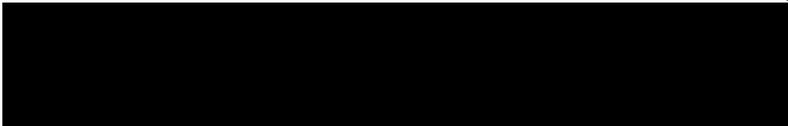
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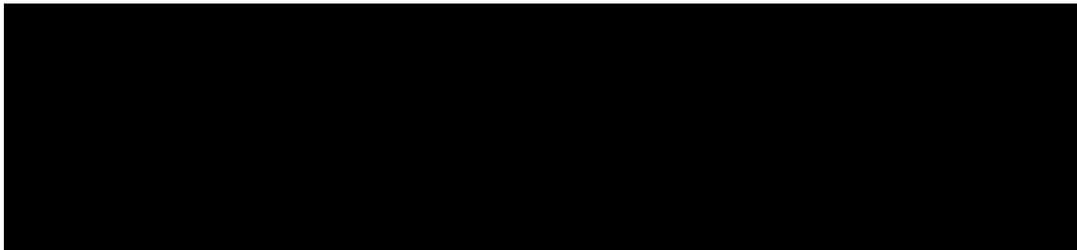
FILE: EAC 06 158 52489 Office: VERMONT SERVICE CENTER Date: JAN 04 2008

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 service center director 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 involved in the manufacture, import and wholesaling of products from Central America. It seeks to employ the beneficiary as a market research coordinator and endeavors 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 stating that it had not been established that the beneficiary was qualified to perform the duties of a specialty occupation. On appeal, counsel submits a brief and additional information stating that the beneficiary is qualified to perform the duties of a specialty occupation.

The first issue to be discussed in this proceeding is whether the beneficiary is qualified to perform the duties of a specialty occupation.

Section 101(a)(15)(H)(i)(b) of the Act, 8 U.S.C. § 1101(a)(15)(H)(i)(b), provides, in part, for the classification of qualified nonimmigrant aliens who are coming temporarily to the United States to perform services in a 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.

The term "specialty occupation" is further defined at 8 C.F.R. § 214.2(h)(4)(ii) as:

[A]n occupation which requires theoretical and practical application of a body of highly specialized knowledge in fields of human endeavor including, but not limited to, architecture, engineering, mathematics, physical sciences, social sciences, medicine and health, education, business specialties, accounting, law, theology, and the arts, and which requires the attainment of a bachelor's degree or higher in a specific specialty, or its equivalent, as a minimum for entry into the occupation in the United States.

Pursuant to 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 are 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.

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

The petitioner is seeking the beneficiary’s services as a market research coordinator. Evidence of the beneficiary’s duties includes the Form I-129 petition with supporting documentation and the petitioner’s response to the director’s request for evidence. According to this evidence the beneficiary would:

- Analyze market international and domestic factors pertaining to the sale of the petitioner’s products;
- Research, design and develop marketing and pricing strategies for promoting Costa Rican brands and products in the United States;
- Analyze the products and pricing of competitors to determine the petitioner’s pricing and marketing strategies;
- Develop marketing strategies for promoting the petitioner’s product brands with distributors;
- Collaborate with distributors to develop promotions, display techniques and price mark ups;
- Work with account executives and sales professionals to gather market data in order to promote and develop new distributorships and new markets;
- Monitor market trends that indicate the need for new products and services, and review international marketing factors affecting the buying and selling of Costa Rican beans and products; and
- Recommend to management marketing initiatives to maximize market share.

As previously stated, the first issue to be determined is whether the beneficiary is qualified to perform the duties of a specialty occupation.

Section 214(i)(2) of the Act, 8 U.S.C. § 1184(i)(2), states 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,
- (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.

Pursuant to 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.

Pursuant to 8 C.F.R. § 214.2(h)(4)(iii)(D), for purposes of paragraph (h)(4)(iii)(C)(4) of this section, equivalence to completion of a United States baccalaureate or higher degree shall mean achievement of a level of knowledge, competence, and practice in the specialty occupation that has been determined to be equal to that of an individual who has a baccalaureate or higher degree in the specialty and 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 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 petitioner seeks to qualify the beneficiary by establishing that the beneficiary meets the requirements of 8 C.F.R. § 214.2(h)(4)(iii)(C)(4). In support of this assertion, the petitioner submitted, on appeal, a credentials evaluation from [REDACTED], Associate Professor of Marketing, Associate Dean & Director of Graduate Programs, Seattle Pacific University, and copies of letters detailing the beneficiary's work experience from January of 1991 through March of 2006. The submitted evaluation does not qualify the beneficiary for the offered position under the referenced criterion. The petitioner submitted a statement (dated July 12, 2004) from [REDACTED], Vice President for Academic Affairs from Seattle Pacific University, regarding the authority to grant college-level credit for training and experience by Seattle Pacific University faculty. [REDACTED] states that faculty are capable of forming judgments as to the equivalency between work experience and all aspects of college education, and that faculty use this experience in the course of "advising advanced transfer students, in assessing credentials of students from other universities and from other nations, and in the development of university policies in the areas of general education and educational equivalencies." He does not state that Seattle Pacific University has a program for granting college-level credit based upon an individual's training and/or experience, or that college credit is granted for past work experience. The petitioner also submitted a letter dated September 27, 2005, from [REDACTED], the Seattle Pacific University Registrar. [REDACTED] states that college faculty make decisions of course equivalency and college-level experience for all students. Those decisions by faculty include decisions about "transfer credits, assessing credentials from other institutions both from other nations and within the US according" to university academic policies. They are usually a function of "admission, advising, major acceptance, placement, degree completion and graduate school recommendations." Ms. Adams does not state that Seattle Pacific University has a program for granting college-level credit for past work experience, or that college credit is granted for past work experience alone. As such, the record does not establish that [REDACTED] is authorized by regulation to issue an evaluation of the beneficiary's past work experience for degree equivalence purposes, and his evaluation is, therefore, of little evidentiary value. CIS may, in its discretion, use as advisory opinion 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 petitioner also submitted a credentials evaluation from Multinational Education & Information Services, Inc., a credentials evaluation service, dated April 5, 2006. That evaluation states that the beneficiary's foreign post secondary education is equivalent to "over a one-year program of post-secondary academic studies and transferable to an accredited University in the United States." The credentials evaluation service then states that based on the beneficiary's foreign education and past work experience, the beneficiary has the equivalent of a bachelor's degree in marketing from an accredited institution of higher learning in the United States. Credentials evaluation services are not authorized by regulation to evaluate work experience for degree equivalence purposes.

Experiential evaluations may only be made by officials who have authority to grant college-level credit for training and/or experience at an accredited college or university which has a program for granting such credit. 8 C.F.R. § 214.2(h)(4)(iii)(D)(1). The evaluation, therefore, is of little evidentiary value and does not qualify the beneficiary to perform the duties of a specialty occupation. CIS may, in its discretion, use as advisory opinion 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).

Citizenship and Immigration Services (CIS), may itself determine whether the beneficiary is qualified to perform the duties of the specialty occupation. That determination may be made pursuant to 8 C.F.R. § 214.2 (h)(4)(iii)(D)(5), which provides:

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 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 documentation referencing the beneficiary's work experience is insufficient in detail to determine that: the beneficiary's past work experience included the theoretical and practical application of specialized knowledge required by the specialty occupation; the beneficiary's experience was gained while working with peers, supervisors, or subordinates who have a degree or its equivalent in the specialty occupation; or that the beneficiary has recognition of expertise in the specialty. CIS cannot, therefore, determine that the beneficiary is qualified to perform the duties of a specialty occupation.

Beyond the decision of the director, the petition may not be approved because the proffered position does not appear to qualify as a specialty occupation. As described by the petitioner, the duties of the proffered position are those normally performed by advertising, marketing, promotions, public relations and sales managers as described in the Department of Labor's *Occupational Outlook Handbook (Handbook)*, not those of a market research analyst as claimed by the petitioner. The *Handbook* notes that a wide range of educational backgrounds is suitable for entry into advertising, marketing, promotions, public relations, and sales manager positions, but that many employers prefer related experience plus a broad liberal arts background. Bachelor's degrees in sociology, psychology, literature, journalism, philosophy, or other subjects are suitable. Requirements will vary, however, depending on the duties of a particular position. For example, some employers prefer a bachelor's or master's degree in business administration with an emphasis in marketing, for marketing, sales, and promotion management positions. In highly technical industries such as computer and electronics manufacturing a degree in engineering or science combined with a business degree may be preferred. In public relations management positions some employers prefer a bachelor's or master's degree in public relations or journalism. The *Handbook* notes that most advertising, marketing, promotions, public relations, and sales management positions are filled by promoting experienced staff or related professional or technical personnel. Many managers are former sales representatives, purchasing agents, or promotions specialists. A baccalaureate or higher degree in a specific specialty or its equivalent is not, therefore, the minimum requirement for entry into the position. A degree in a wide range of disciplines will suffice. For this additional reason, the petition must be denied.

The petitioner has not established that the beneficiary is qualified to perform the duties of a specialty occupation, or that the position is a specialty occupation. Thus, the director's decision will not be disturbed.

As always, 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 failed to sustain that burden.

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