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U.S. Department of Homeland Security
20 Mass. Ave., N.W., Rm. A3042
Washington, DC 20529

U.S. Citizenship and Immigration Services

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FILE: EAC 02 077 53696 Office: VERMONT SERVICE CENTER Date: DEC 14 2004

IN RE: Petitioner: [redacted]
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:

[redacted]

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, Director
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 a full service travel agency that seeks to employ the beneficiary as a management analyst. 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 because the beneficiary is not qualified to perform the duties of a specialty occupation. On appeal, counsel submits a brief and two new letters of reference from former employers.

Section 214(i)(2) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1184(i)(2), states that an alien applying for classification as an H-1B nonimmigrant worker must possess full state licensure to practice in the occupation, if such licensure is required to practice in the occupation, and completion of the degree in the specialty that the occupation requires. If the alien does not possess the required degree, the petitioner must demonstrate that the alien has experience in the specialty equivalent to the completion of such degree, and 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, 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.

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

(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 record of proceeding before the AAO contains, in part: (1) Form I-129 and supporting documentation; (2) the director's request for additional evidence, dated February 26, 2002; (3) the petitioner's response to the director's request; (4) the director's denial letter; and (5) Form I-290B and supporting documentation. The AAO reviewed the record in its entirety before issuing its decision.

The petitioner is seeking the beneficiary's services as a management analyst. The petitioner indicated in an a letter dated December 18, 2001, that it wished to hire the beneficiary because she possessed a bachelor's degree in the arts, various certificates for courses taken through Singapore Airlines, and over eight years of progressive experience in the marketing/management field. The petitioner indicated that minimum requirements for the position were at least a bachelor's degree in business, management, or commerce with relevant experience in the travel field.

The director found that the beneficiary was not qualified for the proffered position because the beneficiary's university studies in English literature, experience, and training were not equivalent to a baccalaureate degree in a specialty required by the occupation. On appeal, counsel states that the beneficiary's coursework in psychology is highly relevant to the position of management analyst. Counsel states that the beneficiary's coursework included psychology testing and statistics, and industrial organization psychology. Counsel also states that the beneficiary has over four years of professional experience in management analysis. Counsel states that the letters issued by InterGlobe Air Transport, Jetair Limited, and Singapore Airline Ltd., the beneficiary's former employers, confirm her professional expertise in management analysis.

Upon review of the record, the petitioner has failed to establish that the beneficiary is qualified to perform an occupation that requires a baccalaureate degree in management or a related field. The beneficiary does not hold a baccalaureate degree from an accredited U.S. college or university in any field of study, or a foreign degree determined to be equivalent to a baccalaureate degree from a U.S. college or university in any field of study. With regard to 8 C.F.R. § 214.2(h)(4)(iii)(C)(*2*), Dr. Sambandham, Multinational Education and

Information Services, Inc., Atlanta, Georgia, evaluated the beneficiary's university studies and determined that she had the equivalent of three years of a baccalaureate program in English literature from an accredited U.S. college or university. Based on the beneficiary's university studies, work experience, and training, Dr. Sambandham then determined that the beneficiary possessed the equivalent of a baccalaureate degree in business administration from an accredited U.S. college or university. In reaching this conclusion, Dr. Sambandham examined the beneficiary's three years of work experience in airlines ticketing and reserving, and various training programs that she had attended. However, the AAO does not accept his evaluation of the beneficiary's combined education and work experience. Pursuant to 8 C.F.R. § 214.2(h)(4)(iii)(D(*3*), a credentials evaluation service may not evaluate an alien's work experience or training; it can only evaluate educational credentials.

Furthermore, in its response to the director's request for further evidence, the petitioner submitted a second educational equivalency document from [redacted] evaluator, International Credentials Evaluations and Translation Services (ICETS), New York, New York. This second evaluation examined the beneficiary's undergraduate studies and her work experience, primarily in management. These duties had not been described or supported by documentary evidence in the first educational evaluation. However, the petitioner submitted letters from the beneficiary's former employers that supported these new duties. For example, in his first letter that accompanied the first educational evaluation, [redacted] sales manager, Eastern India, Singapore Airlines, described the beneficiary's work duties as a reservations and ticketing agent, while in his letter that accompanied the second evaluation, he wrote extensively about the beneficiary's duties in the research and analysis of Singapore Airlines operations, organization polices, and procedures. This second evaluation is given no weight. First, the evaluator examined both the beneficiary's academic studies and the work experiences in reaching his decision. As previously stated, pursuant to 8 C.F.R. § 214.2(h)(4)(iii)(D(*3*), a credentials evaluation service may not evaluate an alien's work experience or training; it can only evaluate educational credentials. Second, the description of the beneficiary's previous work experience with Singapore Air between 1996-2001 changed significantly between the first and second evaluation. Where an evaluation is not in accord with previous equivalencies or is in any way questionable, it may be discounted or given less weight. *Matter of Sea, Inc.*, 19 I&N Dec. 817 (Comm. 1988). In addition, Citizenship and Immigration Services (CIS) regulations affirmatively require a petitioner to establish eligibility for the benefit it is seeking at the time the petition is filed. *See* 8 C.F.R. § 103.2(b)(12). The petitioner must establish eligibility at the time of filing the nonimmigrant visa petition. A visa petition may not be approved at a future date after the petitioner or beneficiary becomes eligible under a new set of facts. *Matter of Michelin Tire Corp.*, 17 I&N Dec. 248 (Reg. Comm. 1978). Therefore, the petitioner must demonstrate that the beneficiary meets the criterion at 8 C.F.R. § 214.2(h)(4)(iii)(C)(*4*).

When CIS determines an alien's qualifications pursuant to 8 C.F.R. § 214.2(h)(4)(iii)(D)(*5*), three years of specialized training and/or work experience must be demonstrated for each year of college-level training the alien lacks. 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[1];

(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.

As stated previously, the documentation does not establish equivalence to a baccalaureate degree in business, management, commerce, or another related field. While the travel industry training certificates indicate the length of training and the subjects that the courses covered, as correctly noted by the director, these courses only establish some twenty-three days of training. In addition, the petitioner did not submit any independent evidence to illustrate how these training certificates relate to the completion of a baccalaureate degree in management analysis. *See Matter of Treasure Craft of California*, 14 I&N Dec. 190 (Reg. Comm. 1972).

The AAO now turns to the beneficiary's prior work experience, and whether it included the theoretical and practical application of specialized knowledge required by the specialty. As described by the letters submitted by the beneficiary's employers in the first educational evaluation submitted by the petitioner, the beneficiary primarily worked as a reservations/ticketing agent for three companies for almost ten years. These job descriptions listed on the beneficiary's resume list the same duties for each position, namely, "responsible for all phases of operations, including city office reservations and ticketing, used KRISCOM reservation systems; handled counter sales, ticketing, reservations, fare calculations, etc". Even when serving as chief agent in charge for Singapore Airlines from June 1997 to March 2001, the beneficiary's duties remained the same. Thus, the AAO cannot conclude that the beneficiary's past work experience included the theoretical and practical application of a body of highly specialized knowledge, which in this case is management analysis. Furthermore, neither employer indicates that the beneficiary's work experience was gained while working with peers, supervisors, or subordinates who have a degree or its equivalent in the specialty occupation. Finally, there is insufficient evidence that the beneficiary has recognition of expertise.

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[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 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).

As related in the discussion above, the petitioner has failed to establish that the beneficiary is qualified to perform the duties of the proffered position. Accordingly, the AAO shall not disturb the director's denial of the petition.

Beyond the decision of the director, the AAO does not find that the proffered position is a specialty occupation because the petitioner did not establish any of the criteria outlined in 8 C.F.R. § 214.2(h)(4)(iii)(A). For this additional reason, the petition may not be approved.

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