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U.S. Department of Homeland Security

Citizenship and Immigration Services

ADMINISTRATIVE APPEALS OFFICE
CIS, AAO, 20 Mass, 3/F
425 I Street, N.W.
Washington, DC 20536

[redacted]

FILE: SRC 02 163 53402 OFFICE: TEXAS SERVICE CENTER DATE: JAN 06 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 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.

If you believe the law was inappropriately applied or the analysis used in reaching the decision was inconsistent with the information provided or with precedent decisions, you may file a motion to reconsider. Such a motion must state the reasons for reconsideration and be supported by any pertinent precedent decisions. Any motion to reconsider must be filed within 30 days of the decision that the motion seeks to reconsider, as required under 8 C.F.R. § 103.5(a)(1)(i).

If you have new or additional information that you wish to have considered, you may file a motion to reopen. Such a motion must state the new facts to be proved at the reopened proceeding and be supported by affidavits or other documentary evidence. Any motion to reopen must be filed within 30 days of the decision that the motion seeks to reopen, except that failure to file before this period expires may be excused in the discretion of Citizenship and Immigration Services (CIS) where it is demonstrated that the delay was reasonable and beyond the control of the applicant or petitioner. *Id.*

Any motion must be filed with the office that originally decided your case along with a fee of $110 as required under 8 C.F.R. § 103.7.

Robert P. Wiemann, Director
Administrative Appeals Office

DISCUSSION: The Director of the Texas 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 an international restaurant developer that employs an unknown number of persons and has an unspecified gross annual income. It seeks to employ the beneficiary as a marketing analyst. The director denied the petition because the proffered position was not found to be a specialty occupation, nor was the beneficiary found to be qualified to perform a specialty occupation.

On appeal, counsel submits a statement which asserts, in part, that the proffered position is a specialty occupation which the beneficiary is qualified to perform.

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), provides for the classification of qualified nonimmigrant aliens who are coming temporarily to the United States to perform services in a specialty occupation.

The first issue to be discussed in this proceeding is whether the position offered to the beneficiary qualifies as 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 is so specialized and complex that knowledge required to perform the duties is usually associated with the attainment of a baccalaureate or higher degree.

In the original petition, the petitioner described the proposed job duties as follows:

> [The beneficiary] will plan, design and conduct research to interpret economic relationships of company services. . . . [The beneficiary] will also review and analyze marketing and economic data to report results of marketing initiatives and provide economic and financial advice concerning the company's market potential in the area. . . . [The beneficiary] will consult with executive members on his research findings. In addition, he will be responsible for the formulation of pricing initiatives and the evaluation of competitive pricing actions.

The petitioner added that the position requires a minimum of a bachelor's degree in business administration, marketing, finance, economics, management information systems, or its equivalent. The original filing also included an equivalency

evaluation rendered by Professor [redacted] of the Zicklin School of Business Administration, Baruch College, The City Univerity of New York. The evaluation states that, based on the beneficiary's foreign law degree and seven years and two months of work experience, the beneficiary can be considered to possess the equivalent of a U.S. bachelor's degree in business administration. The petitioner also submitted two brief letters from the beneficiary's former employers.

On May 9, 2002, the director requested more evidence regarding the job duties and the petitioner's need for a marketing analyst. In response to this Request for Evidence, counsel elaborated on the proposed job duties as follows:

> As with many start-up companies, [the petitioner] will rely on [the beneficiary's] experience to assist with some duties in addition to that of his primary responsibility (80-90%) Marketing Analyst. As the primary professional employee, [the beneficiary] will be expected to assist in the implementation of the initial development of the eLatinFood business plan, hiring and training staff, and many of the day-to-day functions of the business for the U.S. entity.

Counsel also submitted financial and other basic information about the petitioner's business.

The director denied the petition on July 12, 2002, determining that the petitioner had not established that the proffered position could be classified as a specialty occupation or that the beneficiary was qualified to perform a specialty occupation. The director noted that the record failed to show the petitioner's need for a marketing analyst. She also pointed out that the documentation on record failed to establish that the beneficiary held the equivalent of a U.S. bachelor's degree in business administration.

On appeal, counsel asserts that the director erred in requesting evidence that the proffered position actually exists. Counsel also states that the director incorrectly disregarded the equivalency evaluation of the beneficiary's education and work experience.

The record refers to the proffered position alternately as "marketing analyst" and "marketing manager". Counsel refers to the proffered position once on appeal as "financial analyst." As will be discussed below, the job duties listed on the record

appear to contain some elements of market analysis, marketing management, and restaurant management. The position will be referred to as a marketing analyst, as this is the job title found on the Form I-129.

Citizenship and Immigration Services (CIS) often looks to the Department of Labor's *Occupational Outlook Handbook (Handbook)* for definitive guidance on the classification of positions according to their corresponding duties and responsibilities. The *Handbook*, 2002-2003 edition, on page 239, discusses the duties of a market research analyst. The *Handbook* states that market research analysts gather and analyze statistical data on past sales, competitors, and prices in order to predict future sales and make recommendations on the promotion, distribution, design, and pricing of products or services. There appears to be some responsibility for market research analysis in the proffered position.

With respect to the education and training necessary to enter the field of market research analysis, the *Handbook* states that individuals with bachelor's degrees usually qualify for entry-level positions such as research assistant, management trainee, interviewer, or sales professional. The *Handbook* points out that a master's degree in economics, business administration, marketing, statistics, or a related field is usually required to qualify for more responsible research positions. According to the position description on record, the proffered position would be considered a more responsible, and not an entry-level, position.

On the position of marketing manager, the *Handbook* discusses such duties as determining the demand for products, identifying potential markets, developing pricing strategies, and collaborating with advertising and promotion managers. The proffered position appears to include similar responsibilities. Regarding the educational and other training requirements of the proffered position, the 2002-2003 edition of the *Handbook* on page 28 discusses the training and other qualifications requirements for marketing managers. The *Handbook* states the following:

> A wide variety of educational backgrounds are suitable for entry into advertising, marketing, promotions, public relations, and sales managerial jobs, but many employers prefer those with experience in related occupations plus a broad liberal arts background. A bachelor's degree in sociology, psychology,

> literature, journalism, or philosophy, among other subjects, is acceptable. However, requirements vary, depending upon the particular job.

The *Handbook* mentions that some employers of marketing and sales managers prefer individuals with a bachelor's or master's degree in business administration with an emphasis on marketing. A preference on the part of some employers, however, does not mean that a degree in business is a minimum entry requirement for the field of marketing.

Although the duties of the proffered position appear to include some responsibilities akin to those of a marketing analyst and manager, other duties listed on the record are more administrative in nature. For example, hiring and training employees and handling many of the day-to-day functions of the business do not fall within the field of marketing. The *Handbook* classification of administrative services manager, as described on page 24, and/or food services manager, discussed on page 55, are appropriate titles for such job duties. Neither of these fields, according to the Handbook, requires a bachelor's degree or its equivalent as a minimum entry qualification.

The job description on record, including information in the original petition and the response to the Request for Evidence, is brief and generalized. The record does not indicate in concrete terms how the petitioner would occupy a marketing analyst on a full-time basis for the next three years. CIS is unable to determine if the proffered position is primarily that of a marketing analyst or if it would be more appropriately classified under a different title. Consequently, it cannot be determined whether a bachelor's degree in a specific specialty or its equivalent is normally the minimum requirement for entry into the particular position. The information on record is insufficient to warrant classifying the proffered position as a specialty occupation.

As the director raised the matter of whether the beneficiary was qualified to perform a specialty occupation, the AAO will examine this issue. 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.

In accordance with 8 C.F.R. § 214.2(h)(4)(iii)(D)(*5*):

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. . . . 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 beneficiary does not hold a U.S. degree in business administration or a related field, and his Colombian degree has not been determined to be the equivalent of a U.S. degree in business administration or a related field. Therefore, pursuant to 8 C.F.R. § 214.2(h)(4)(iii)(C)(4), in order for the beneficiary to qualify, the record must demonstrate that he has education, specialized training, and/or progressively responsible experience equivalent to a U.S. baccalaureate or higher degree in business administration, as well as recognition of his expertise in marketing through progressively responsible positions directly related to this specialty.

Professor [redacted] letter states that the beneficiary's education and experience amount to the equivalent of a U.S. bachelor's degree in business administration. This letter, though, does not meet the standard described in 8 C.F.R. § 214.2(h)(4)(iii)(D)(1). There is no evidence that Professor Harpaz, although a faculty member, has authority to grant college-level credit for training and/or experience in the specialty. The letter is not supported by correspondence from Baruch College with regard to Professor [redacted] ability to grant credit for coursework and/or work experience.

In addition, given the brevity of the beneficiary's former employers' letters, it is difficult to determine on what basis Professor [redacted] assessed the beneficiary's prior work experience. CIS uses such evaluations by a credentials evaluator as an advisory opinion only. Where an evaluation is

not in accord with previous equivalencies or is in any way questionable, it may be discounted or given less weight. *See Matter of Sea, Inc.*, 19 I&N Dec. 820 (Comm. 1988).{PRIVATE }

Pursuant to 8 C.F.R. § 214.2(h)(4)(iii)(D)(5), CIS may determine that the beneficiary has the equivalent of a degree in business administration if he has a combination of education, specialized training, and/or work experience in areas related to this specialty. The evaluation on record is not supported by specific evidence. The two letters from the beneficiary's former employers do not contain enough detail to determine how many years of experience the beneficiary has in marketing, and whether this experience was gained while working with peers, supervisors, and subordinates who have a degree or its equivalent in business, marketing, or a related field. Finally, the record lacks the required showing of the beneficiary's expertise in the field of marketing research. The evidence does not establish that the beneficiary is qualified to perform a specialty occupation.

The evidence on record does not demonstrate that the proffered position is a specialty occupation or that the beneficiary is qualified to perform the duties of a specialty occupation. 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.