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FILE: WAC 03 165 52717 Office: CALIFORNIA SERVICE CENTER

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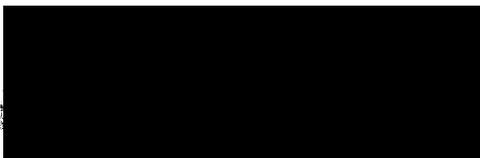
IN RE: Petitioner:
Beneficiary:



MAY 17 2005

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, Director
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 federal contractor that is licensed to sell goods and services to federal agencies. It seeks to employ the beneficiary as a market research 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 a specialty occupation. On appeal, counsel submits a brief.

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 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.

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; (3) the petitioner's response to the director's request; (4) the director's denial letter; and (5) Form I-290B. The AAO reviewed the record in its entirety before issuing its decision.

The petitioner is seeking the beneficiary's services as a marketing analyst. The petitioner stated that the beneficiary is qualified for the proposed position based on her bachelor's degree in business administration with a concentration in marketing.

The director determined that the beneficiary is not qualified for the proffered position because the beneficiary's education, experience, and training are not equivalent to a graduate degree in economics, business administration, marketing, statistics or a closely related discipline.

In the appeal brief, counsel contends that the beneficiary is qualified for the proffered position based on her education.

Upon review of the record, the petitioner has not established that the beneficiary is qualified to perform the duties of the proffered position.

The AAO routinely consults the Department of Labor's *Occupational Outlook Handbook* (the *Handbook*) for the duties and educational requirements of particular occupations. The *Handbook* reveals that the duties of the proposed position are performed by market or marketing research analysts. The *Handbook* further reveals that:

A master's degree is the minimum requirement for many private sector market and survey research jobs, and for advancement to more responsible positions. Market and survey researchers may earn advanced degrees in business administration, marketing, statistics, communications, or some closely related discipline. . . .

...

Bachelor's degree holders who majored in marketing and related fields may qualify for many entry-level positions that might or might not be related to market and survey research. These positions include research assistant, administrative or management trainee, marketing interviewer, and salesperson, among others.

The beneficiary does not hold a baccalaureate degree from an accredited U.S. college or university in any field of study. The credentials evaluation from the Trusteforte Corporation states that the beneficiary holds the educational equivalent to a bachelor of business administration degree with a concentration in marketing from an accredited college or university in the United States. Although a bachelor of business administration degree with a concentration in marketing is appropriate for the proposed position, the record does not contain a copy of the beneficiary's baccalaureate degree and transcripts, even though counsel's May 5, 2003 letter states that the petitioner was submitting this evidence. The AAO may, in its discretion, use as advisory opinion statements submitted as expert testimony. Where an opinion is not in accord with other information or is in any way questionable, the AAO is not required to accept or may give less weight to that evidence. *Matter of Caron International*, 19 I&N Dec. 791 (Comm. 1988). Here, because the record does not contain

the degree and transcript that the Trusteforte Corporation bases its conclusion upon, the AAO is not required to accept or may give less weight to the credentials evaluation.

The regulation at 8 C.F.R. § 214.2(h)(4)(iii)(B) states that the petitioner is required to submit evidence with the H-1B petition which shows that the alien qualifies to perform services in the specialty occupation, and the regulation at 8 C.F.R. § 214.2(h)(4)(iv) describes the documentary evidence which includes degrees, diplomas, and school records. In the September 8, 2003 request for evidence, the director had requested that the petitioner submit the beneficiary's original degree and transcripts. Because the petitioner failed to submit evidence of the beneficiary's degree and transcript in accordance with regulation at 8 C.F.R. § 214.2(h)(4)(iii)(B) and in response to the director's request for evidence, the petitioner fails to establish that the beneficiary qualifies to perform the duties of the proposed position, which is a specialty occupation.

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

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.