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U.S. Citizenship
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FILE: WAC 04 026 52190 Office: CALIFORNIA SERVICE CENTER Date: **OCT 03 2005**

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

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 flower sales and distribution business that seeks to employ the beneficiary as a market research analyst. The petitioner endeavors to classify the beneficiary as a nonimmigrant worker in a specialty occupation pursuant to § 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 additional documentation, including the following: evidence of the beneficiary's membership to the American Management Association, copies of previously submitted certificates from the Chamber of Commerce in Bogotá, Colombia; a new academic opinion; and foreign employment letters.

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 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 market research analyst. The petitioner indicated that a qualified candidate for the job would possess a bachelor's degree in business administration and two years of related experience.

The director found that the beneficiary was not qualified for the proffered position because the beneficiary's education, experience, and training were not equivalent to a baccalaureate degree in a specialty required by the occupation. On appeal, counsel states, in part, that the beneficiary is qualified for the position because his foreign education is equivalent to three years of university-level credit in the United States, he is a member of the American Management Association, and he has more than nine years of relevant and progressive employment experience. Counsel asserts, "[The beneficiary's] three years of university education at the University of Los Andes, his nine years of experience, and his membership in the AMA, satisfy the three-for-one rule and are more than equivalent to a U.S. bachelor's degree in business administration with concentration in business management." Counsel also submits new evidence enumerated above.

The record contains the following documentation pertaining to the beneficiary's qualifications:

- Evaluation report, dated September 29, 2000, from a company that specializes in evaluating academic credentials concluding that the beneficiary holds the U.S. equivalent of a bachelor's degree in business administration, based on his educational background and work experience;
- Evaluation reports, dated January 9, 2004, and February 23, 2004, respectively, from a company that specializes in evaluating academic credentials concluding that the beneficiary holds the U.S. equivalent of a bachelor's degree in business administration with emphasis in marketing, based on his educational background, work experience, and the opinions from U.S. academic experts;
- Academic opinion, dated June 15, 2005, from an assistant professor of an accredited business school at a U.S. university, who states, in part, that the beneficiary's educational background and approximately fourteen years and one month of professional training and work experience in business management, and related areas, are equivalent to a U.S. bachelor's degree in business administration, with a concentration in business management;
- Academic opinion, dated January 5, 2004, from an associate professor of marketing at a U.S. university, who states, in part, that the beneficiary's educational background and work experience are equivalent to a U.S. bachelor's degree specializing in marketing;
- Academic opinion, dated February 21, 2004, from an associate dean of an accredited business school at a U.S. university, who states, in part, that the beneficiary's educational background and work experience are equivalent to a U.S. bachelor's degree in business administration with a specialization in marketing;
- Evidence of the beneficiary's membership to the American Management Association;
- Transcripts reflecting three years (six semesters) of studies in the School of Engineering at the Universidad de Los Andes in Bogotá, Colombia from 1977 to 1981;

- Certificate, issued by the Universidad de Los Andes on December 12, 1990, certifying that the beneficiary attended a 32-hour seminar on the financial evaluation of private investment projects;
- Certificate, issued by the Universidad de Los Andes on August 10, 2000, certifying that, in September 1992, the beneficiary attended a 16-hour seminar on the handling of financial instruments;
- Letter, dated August 9, 2000, from the commercial director of the Seminarium in Bogotá, Colombia, certifying that the beneficiary attended an 8-hour seminar in strategic sales management;
- Certificates from the Chamber of Commerce in Bogotá, Colombia; and
- Two foreign employment letters, both dated May 31, 2005.

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 a marketing-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. Therefore, the petitioner must demonstrate that the beneficiary meets the criterion at 8 C.F.R. § 214.2(h)(4)(iii)(C)(4).

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;
- (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 contains three evaluation reports from a company that specializes in evaluating academic credentials, and three academic opinions, which are enumerated above. The evaluation report, dated September 29, 2000, is based upon the beneficiary's education and work experience. A credentials evaluation service may not evaluate an alien's work experience or training; it can only evaluate educational credentials. See 8 C.F.R. § 214.2(h)(4)(iii)(D)(3). Thus, the evaluation carries no weight in these proceedings. *Matter of Sea, Inc.*, 19 I&N Dec. 817 (Comm. 1988).

The evaluation reports, dated January 9, 2004, and February 23, 2004, respectively, are based on the beneficiary's educational background, work experience, and the opinions from academic experts. The academic opinions, dated January 5, 2004 and February 21, 2004, respectively, are based on the beneficiary's educational background and work experience. All of the authors of these reports and opinions base their conclusions regarding the beneficiary's foreign employment primarily on the assertions of the beneficiary in his resume. Going on record without supporting documentary evidence, however, is not sufficient for purposes of meeting the burden of proof in these proceedings. *Matter of Soffici*, 22 I&N Dec. 158, 165 (Comm. 1998) (citing *Matter of Treasure Craft of California*, 14 I&N Dec. 190 (Reg. Comm. 1972)). 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).

On appeal, counsel submits an academic opinion, dated June 15, 2005, from an assistant professor of an accredited business school at a U.S. university, who states, in part, that the beneficiary's educational background and approximately fourteen years and one month of professional training and work experience in business management, and related areas, are equivalent to a U.S. bachelor's degree in business administration, with a concentration in business management. The writer of this opinion bases his conclusions regarding the beneficiary's foreign employment on the beneficiary's resume and letters from two of the beneficiary's foreign employers. Both of these letters, however, appear to be authored by former employees of the Colombian businesses, [REDACTED] and C.I. [REDACTED] where the beneficiary states that he worked for more than nine years performing business-related duties. Neither letter is written on official letterhead nor appears to be authored by an authorized representative of the respective business. It is further noted that the record contains no evidence of the beneficiary's employment as a private consultant for the city of Bogotá, though the writer bases his conclusion, in part, upon such employment. 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).

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 occupation¹;
- (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 contains evidence of the beneficiary's three years of coursework related to mechanical engineering, and additional training, such as the business-related seminars enumerated above. The record also contains evidence of the beneficiary's membership to the American Management Association and certificates from the Bogotá, Colombia Chamber of Commerce. This documentation does not establish equivalence to a baccalaureate degree in a business-related field. The record establishes that the beneficiary has two years of general university-level studies toward a degree. The beneficiary would thus need to establish six years of related work experience requiring the theoretical and practical application of a body of highly specialized knowledge.

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 discussed above, both of the foreign employment letters appear to be authored by former employees of the Colombian businesses, *Cointerandina Comercializadora Internacional Andina Ltda.* ("CCIA") and *C.I. Comercializadora Sama Ltda.*, where the beneficiary states that he worked for more than nine years performing business-related duties. Neither letter, however, is written on official letterhead nor appears to be written by an authorized representative of the respective business. Furthermore, the record contains no evidence of the beneficiary's employment as a private consultant for the city of Bogotá. Going on record without supporting documentary evidence is not sufficient for purposes of meeting the burden of proof in these proceedings. *Matter of Soffici*, 22 I&N Dec. 158, 165 (Comm. 1998) (citing *Matter of Treasure Craft of California*, 14 I&N Dec. 190 (Reg. Comm. 1972)).

Finally, there is insufficient evidence that the beneficiary has recognition of expertise. As discussed above, the evaluators and academic experts of the five evaluation reports and opinions dated September 29, 2000, January 9, 2004, February 23, 2004, January 5, 2004 and February 21, 2004, respectively, rely primarily on the beneficiary's resume in making their conclusions about the beneficiary's prior work experience. The

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).

writer of the academic opinion, dated June 15, 2005, relies primarily on employment letters that appear to be written by former employees of the correspondent businesses, as opposed to a legal representative of each business. The record also contains no evidence of the beneficiary's employment as a private consultant for the city of Bogotá, though the writer bases his conclusion, in part, upon such employment. Going on record without supporting documentary evidence is not sufficient for purposes of meeting the burden of proof in these proceedings. *Matter of Soffici*, 22 I&N Dec. 158, 165 (Comm. 1998) (citing *Matter of Treasure Craft of California*, 14 I&N Dec. 190 (Reg. Comm. 1972)). 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). 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 finds that the position requires the services of an employee with a master's degree. The *Handbook* indicates that employers in private industry require a master's degree as the minimum requirement for market and survey research jobs. While bachelor's degrees may be acceptable for entry-level positions such as research assistant, administrative or management trainee, marketing interviewer and salesperson, the duties of the proffered position describe those of a market research analyst. The record indicates that the beneficiary has the equivalent of three years of university-level credit. He thus cannot be determined to have the equivalent of a master's degree. The regulation provides that for equivalence to a master's degree, the alien must have a baccalaureate degree followed by at least five years of progressive experience in the specialty. 8 C.F.R. § 214.2(h)(4)(iii)(D)(5). As he did not obtain a baccalaureate degree, he cannot be determined to have the equivalent of a master's degree. For this additional reason, the petition may not be approved.

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.