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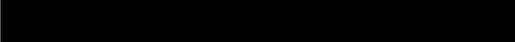
U.S. Citizenship
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FILE: WAC 04 248 52605 Office: CALIFORNIA SERVICE CENTER Date: **JUN 12 2006**

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, Director
Administrative Appeals Office

DISCUSSION: The service center director denied the nonimmigrant visa petition and the matter was appealed to the Administrative Appeals Office (AAO). The director's decision will be withdrawn and the matter remanded for entry of a new decision.

The petitioner, a corporation engaged in the design, manufacture, and sale of network storage products, seeks to employ the beneficiary as its product marketing manager. The petitioner 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 on the basis that the petitioner did not establish that the proffered position is a specialty occupation under any of the criteria set forth in the regulation at 8 C.F.R. § 214.2(h)(4)(iii)(A). The director identified the proffered position as comporting with the Advertising, Marketing, Promotions, Public Relations, and Sales Managers occupational category of the 2004-2005 edition of the Department of Labor's *Occupational Outlook Handbook (Handbook)*, a category for which the *Handbook* indicates that a bachelor's degree, or the equivalent, in a specific specialty is not a normal minimum requirement for entry. The director further found that the petitioner did not establish that the proffered position satisfies any regulatory criterion for qualifying a position as a specialty occupation.

On appeal, counsel contends that the director erred in not classifying the proffered position as a market research analyst position and in not recognizing that, "in the High-Tech industry which requires understanding of complex engineering principles and comprehension of technical aspects of the [petitioner's] products," the proffered position is "so complex or unique that it can only be performed by an individual with a degree." Counsel's submissions on appeal include a four-page letter from a professor of business who also holds a bachelor's degree in engineering and has worked in engineering and marketing capacities for a high technology company; a two-page letter from a human resources specialist in high technology jobs; and a listing of the proposed duties that had been previously submitted.

Section 101(a)(15)(H)(i)(b) of the Act, 8 U.S.C. § 1101(a)(15)(H)(i)(b), provides a nonimmigrant classification for 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.

Thus, it is clear that Congress intended this visa classification only for aliens who are to be employed in an occupation that requires the theoretical and practical application of a body of highly specialized knowledge that is conveyed by at least a baccalaureate or higher degree in a specific specialty.

Consonant with section 214(i)(1) of the Act, the regulation at 8 C.F.R. § 214.2(h)(4)(ii) states that a specialty occupation means an occupation

which [1] 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 [2] 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. (*Italics added.*)

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.

CIS has consistently interpreted 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. Applying this standard, CIS regularly approves H-1B petitions for qualified aliens who are to be employed as engineers, computer scientists, certified public accountants, college professors, and other such professions. These occupations all require a baccalaureate degree in the specific specialty as a minimum for entry into the occupation and fairly represent the types of professions that Congress contemplated when it created the H-1B visa category.

The petitioner has established the specialty occupation status of its product market manager position by the cumulative weight of: the information that the petitioner presented about the proposed duties; the specialized knowledge requirements that the professor and the human resources specialist identified as required for performance of the proffered position; and the detailed documentation that the petitioner presented about its high technology products, business plan, organization for implementing the plan, and finances.

The AAO disagrees with the petitioner’s characterization of the proffered position as primarily a market research analyst position, and the AAO also notes that counsel is mistaken to the extent that he interprets the

Handbook as indicating that market research analyst positions normally require a bachelor's or higher degree in a specific specialty.

The AAO finds that, as depicted in the record of proceeding, the director correctly determined that the duties of the proffered position most closely comport with those of a marketing manager as discussed in the *Handbook*. However, contrary to the director's findings, the evidence in this particular record of proceeding establishes this particular marketing manager position as one that requires the application of highly specialized knowledge usually associated with a specialty degree. Therefore, the petitioner has satisfied the criterion at 8 C.F.R. § 214.2(h)(4)(iii)(A)(4).

The beneficiary's qualification to serve in the proffered position has yet to be resolved, however. The professor and the human resources specialist indicate that performance of the proffered position requires not just a Master of Business Administration degree, which the beneficiary has attained at San Jose State University, but also a bachelor's degree in computer science or engineering. For instance, at page 3 of his opinion letter the professor states:

[T]o perform these duties, the Product Marketing Manager, at a minimum must possess a B.S. degree in Computer Science or Engineering[;] actual engineering work experience plus an MBA is highly essential. Indeed, in the "High Tech" industry, it is considered standard that a B.S. degree in Computer Science or Engineering and actual work experience plus an MBA are the requirements for the Product Marketing Manager position. It is difficult to imagine how one would perform the complex duties involved in the Product Market Manager position in a "High-Tech" company without the above degree and knowledge requirement.

The high-tech human resources specialist states, in part:

Regarding the product marketing discipline, it involves both tactical and strategic duties. The strategic duties are most demanding of an engineering education and degree. . . .

The record, however, does not contain evidence that the beneficiary's foreign degree is equivalent to a U.S. degree.

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.

The degree referenced by section 214(i)(1)(B) of the Act means one in a specific specialty that is characterized by a body of highly specialized knowledge that must be theoretically and practically applied in performing the duties of the proffered position.

In implementing section 214(i)(2) of the Act, 8 U.S.C. § 1184(i)(2), the regulation at 8 C.F.R. § 214.2(h)(4)(iii)(C) states that an alien must meet one of the following criteria in order to qualify to perform services in a specialty occupation:

- (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 under 8 C.F.R. § 214.2(h)(4)(iii)(C)(4) would require 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;¹

¹ The petitioner should note that, in accordance with this provision, the AAO will accept a credentials evaluation service's evaluation of *education only*, not experience.

- (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. . .

According to the express terms of 8 C.F.R. § 214.2(h)(4)(iii)(D)(5), to satisfy this CIS-determination criterion, a petitioner must demonstrate three years of specialized training and/or work experience for each year of college-level training the alien lacks. This provision imposes strict evaluation standards, stating:

[I]t must be clearly demonstrated [1] that the alien's training and/or work experience included the theoretical and practical application of specialized knowledge required by the specialty occupation; [2] 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 [3] 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 occupation²;
- (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.

² *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).

The record reflects that the beneficiary received a diploma in Computer Science and Engineering from Shanghai Jiatong University, People's Republic of China. However, the record does not establish that the degree has been determined to be equivalent to a U.S. baccalaureate degree, as required by 8 C.F.R. § 214.2(h)(4)(iii)(C)(2), above. In particular, the record does not contain an evaluation of education by a reliable credentials evaluation service which specializes in evaluating foreign educational credentials, in satisfaction of 8 C.F.R. § 214.2(h)(4)(iii)(D)(3). It is noted that record of proceeding does not include the "B.S. Degree Evaluation from [REDACTED]" to which the professor's letter refers for the proposition that the beneficiary's foreign degree "has been evaluated as being equivalent to a similar degree from an accredited college or University in the United States." The professor's reference to [REDACTED] evaluation carries no weight, as the evaluation has not been submitted into evidence for review, confirmation of its conclusions, and evaluation of its merits.

The evidence of the beneficiary's work experience does not include documents from former employers that would merit weight under any criterion of 8 C.F.R. §§ 214.2(h)(4)(iii)(C) and (D). The beneficiary's resume and the comments of other than former employers about the beneficiary's work experience are not persuasive as they do not substantiate the actual work that the beneficiary performed; the extent, if any, that he applied theoretical and practical application of specialized knowledge required by the specialty occupation established in this proceeding; the educational qualifications of his peers, subordinates, and supervisors; or recognition of expertise as outlined in the regulation.

As CIS had not previously questioned the beneficiary's educational qualifications, the director must now issue a request for additional evidence on whether the beneficiary possesses the credentials specified at 8 C.F.R. §§ 214.2(h)(4)(iii)(C) and (D). The director must afford the petitioner reasonable time to provide evidence pertinent to this issue, and any other evidence the director may deem necessary. The director shall then render a new decision based on the evidence of record as it relates to the regulatory requirements for eligibility. If the new decision is adverse to the petitioner, the director shall certify it to the AAO for review.

As always, the burden of proving eligibility for the benefit sought remains entirely with the petitioner. Section 291 of the Act, 8 U.S.C. § 1361.

ORDER: The director's decision of September 30, 2004 is withdrawn. The petition is remanded to the director for entry of a new decision, which if adverse to the petitioner, is to be certified to the AAO for review.