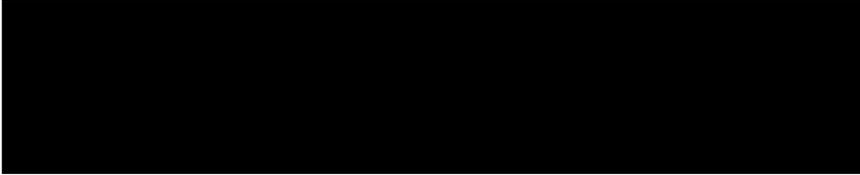




U.S. Citizenship
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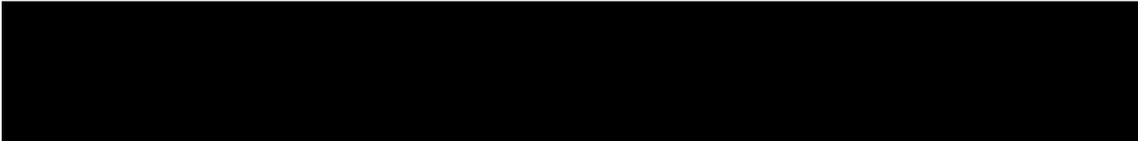
FILE: EAC 06 158 50191 Office: VERMONT SERVICE CENTER Date: JAN 04 2008

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, Chief
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 tour operator/travel agency. It seeks to employ the beneficiary as a market research analyst and endeavors to classify her 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 stating that it had not been established that the beneficiary was qualified to perform the duties of a specialty occupation. On appeal, counsel submits a brief and additional information stating that the beneficiary is qualified to perform the duties of a specialty occupation.

The issue to be discussed in this proceeding is whether the beneficiary is qualified to perform the duties of a specialty occupation.

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

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 are so specialized and complex that knowledge required to perform the duties is usually associated with the attainment of a baccalaureate or higher degree.

Citizenship and Immigration Services (CIS) interprets 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.

The record of proceeding before the AAO contains: (1) the 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) the Form I-290B with counsel's brief. 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. Evidence of the beneficiary's duties includes the Form I-129 petition and the petitioner's letter of April 3, 2006. According to this evidence the beneficiary would:

- Collect and analyze data on customer demographics, preferences, needs, and buying habits, to identify potential markets and factors affecting product demand;
- Prepare reports of findings, illustrating data graphically, and translating complex findings into written text;
- Measure and assess customer and employee satisfaction;
- Forecast and track marketing and sales trends, analyzing collected data;
- Seek and provide information to help companies determine their position in the marketplace;
- Conduct research on consumer opinions and marketing strategies, collaborating with marketing professionals, statisticians, and other professionals; and
- Gather data on competitors and analyze their prices, sales, and methods of marketing and distribution.

The petitioner requires a minimum of a bachelor's degree in business administration or a related field for entry into the proffered position.

As previously stated, the issue to be determined is whether the beneficiary is qualified to perform the duties of a specialty occupation.

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.

The petitioner seeks to qualify the beneficiary by establishing that the beneficiary meets the requirements of 8 C.F.R. § 214.2(h)(4)(iii)(C)(4). In support of this assertion, the petitioner submitted a credentials evaluation from [REDACTED], Associate Professor of Marketing, Associate Dean & Director of Graduate Programs, Seattle Pacific University. The submitted evaluation does not qualify the beneficiary for the offered position under the referenced criterion. The petitioner submitted a statement (dated July 12, 2004) from [REDACTED] Vice President for Academic Affairs from Seattle Pacific University, regarding the authority to grant college-level credit for training and experience by Seattle Pacific University faculty. [REDACTED] states that faculty are capable of forming judgments as to the equivalency between work experience and all aspects of college education, and that faculty use this experience in the course of “advising advanced transfer students, in assessing credentials of students from other universities and from other nations, and in the development of university policies in the areas of general education and educational equivalencies.” He does not state that Seattle Pacific University has a program for granting college-level credit based upon an individual’s training and/or experience. As such, the record does not establish that [REDACTED] is authorized by regulation to issue an evaluation of the beneficiary’s past work experience for degree equivalence purposes, and his evaluation is, therefore, of little evidentiary value. 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).

The petitioner also submitted two credentials evaluations from the Foundation for International Services, Inc. (FIS). The first is dated April 3, 2006 and finds the beneficiary’s foreign education to be equivalent to a bachelor’s degree in foreign language and literature from a regionally accredited college or university in the United States. That degree is not closely related to the position of a market research analyst, and does not qualify the beneficiary to perform the duties of that position. The evaluation further states that the beneficiary’s foreign education and work experience is equivalent to a bachelor’s degree in business administration with a concentration in management from a university in the United States. Credentials evaluation services are not authorized by regulation to evaluate work experience for degree equivalence purposes. Experiential evaluations may only be made by officials who have authority to grant college-level credit for training and/or experience at an accredited college or university which has a program for granting such credit. 8 C.F.R. § 214.2(h)(4)(iii)(D)(1). This evaluation does not qualify the beneficiary to perform the duties of the proffered position.

The second FIS evaluation submitted is dated October 6, 2006. It states that the beneficiary’s foreign education is equivalent to a bachelor’s degree in foreign language and literature from an accredited college or university in the United States. It then states that, based upon the opinion letter of [REDACTED] of Seattle Pacific University (referenced above), the beneficiary’s foreign education and work experience is equivalent to a

bachelor's degree in marketing in the United States. Again, credentials evaluation services are not authorized by regulation to issue experiential evaluations for degree equivalence purposes. Further, and as noted above, the record does not establish that [REDACTED] has authority to grant college-level credit for training and/or experience at an accredited college or university which has a program for granting such credit. Thus, his experiential evaluation is of little evidentiary value and is not given any weight by the AAO. 8 C.F.R. § 214.2(h)(4)(iii)(D)(I). This evaluation does not qualify the beneficiary to perform the duties of the proffered position.

Citizenship and Immigration Services (CIS), may itself determine whether the beneficiary is qualified to perform the duties of the specialty occupation. That determination may be made pursuant to 8 C.F.R. § 214.2 (h)(4)(iii)(D)(5), which provides:

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. For equivalence to an advanced (or Masters) degree, the alien must have a baccalaureate degree followed by at least five years of experience in the specialty. . . . 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 documentation referencing the beneficiary's work experience is insufficient in detail to determine that: the beneficiary's past work experience included the theoretical and practical application of specialized knowledge required by the specialty occupation; the beneficiary's experience was gained while working with peers, supervisors, or subordinates who have a degree or its equivalent in the specialty occupation; or that the beneficiary has recognition of expertise in the specialty. CIS cannot, therefore, determine that the beneficiary is qualified to perform the duties of the specialty occupation.

Beyond the decision of the director, the petition may not be approved because the record does not establish that the proffered position is a specialty occupation. As described by the petitioner, the duties of the position are presented in such generalized terms that it is not possible to determine precisely what tasks the beneficiary would perform on a daily basis in the petitioner's business environment. For example, the petitioner states that the beneficiary would:

- Collect and analyze data on customer demographics, preferences, needs, and buying habits, to identify potential markets and factors affecting product demand;

The petitioner does not specifically describe the type of data to be obtained, how that data would be obtained, or what type of analysis would be required in identifying potential markets and factors affecting product demand. The petitioner does not specifically identify the tasks to be performed by the beneficiary in accomplishing this generalized duty description in the petitioner's specific business environment.

- Measure and assess customer and employee satisfaction;

The record does not establish the specific tasks to be performed by the beneficiary in measuring and assessing customer and employee satisfaction, what type of data or information would be required to make those assessments, or how the information would be used in measuring and assessing customer and employee satisfaction.

- Forecast and track marketing and sales trends, analyzing collected data.

The petitioner does not specifically describe the tasks to be performed by the beneficiary in forecasting and tracking marketing and sales trends, and analyzing collected data. Nor does the record establish the type of data to be obtained, how it would be obtained, or how the data would be used in forecasting and tracking marketing and sales trends.

The generalized description of the duties to be performed by the beneficiary in the petitioner's business environment prohibits CIS from analyzing the complexity, uniqueness, or specialized nature of the actual tasks to be performed by the beneficiary. Thus, it is not possible to determine whether performance of the duties of the position require the theoretical and practical application of a body of highly specialized knowledge. The generalized and nonspecific description of the duties to be performed by the beneficiary precludes establishment of the position as a specialty occupation under 8 C.F.R. § 214.2(h)(4)(iii)(A)(2), (3), or (4).

Finally, the Department of Labor's *Occupational Outlook Handbook (Handbook)* notes that a bachelor's degree is the minimum educational requirement for many market and survey research jobs. In addition to completing courses in business, marketing, and consumer behavior, prospective market and survey researchers should take other liberal arts and social science courses, including economics, psychology, English, and sociology. Because of the importance of quantitative skills to market and survey researchers, courses in mathematics, statistics, sampling theory and survey design, and computer science are extremely helpful. A degree in a specific specialty, however, is not required. Thus, the position would not qualify as a specialty occupation under 8 C.F.R. § 214.2(h)(4)(iii)(A)(1). For this additional reason, the petition may not be approved.

The petitioner has not established that the beneficiary is qualified to perform the duties of a specialty occupation, or that the position is a specialty occupation. Thus, the director's decision will not be disturbed.

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As always, 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.