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U.S. Citizenship
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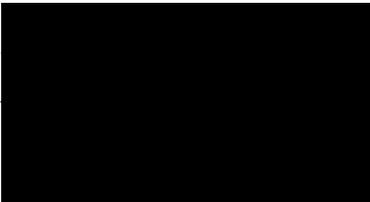


FILE: EAC 02 041 51837 Office: NEBRASKA SERVICE CENTER Date: APR 20 2005

IN RE: Petitioner: [Redacted]
Beneficiary: [Redacted]

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 Nebraska Service Center denied the nonimmigrant visa petition and the Administrative Appeals Office (AAO) dismissed a subsequent appeal. The matter is again before the AAO on motion to reopen or reconsider. The motion will be granted. The previous decision shall be affirmed. The petition will be denied.

The petitioner is a travel agency and ethnic food and magazine distributor that seeks to employ the beneficiary as a marketing specialist. The director denied the petition on the basis that the proffered position is not a specialty occupation.

On motion to reconsider, counsel submits the following documentary evidence:

- 1) an opinion letter from [REDACTED] Lubin Graduate School of Business, Pace University, New York, which is entitled "Professional Position Evaluation";
- 2) Mr. [REDACTED] resume;
- 3) a letter from Mr. Hoefler, Ph.D., Associate Dean and Director of Graduate Programs, Lubin School of Business, Pace University;
- 4) the beneficiary's transcripts;
- 5) the petitioner's July 22, 2002 letter;
- 6) an employment verification letter;
- 7) counsel's January 28, 2004 letter; and
- 8) the AAO's December 30, 2003 decision.

Counsel states that the letters from Mr. [REDACTED] and Mr. [REDACTED] substantiate the petitioner's claim that the proposed position is a professional position, which requires a specific baccalaureate degree. These documents, counsel asserts, were previously unavailable to the AAO. According to counsel, compared to the Department of Labor's *Occupational Outlook Handbook* (the *Handbook*), which the AAO relied on to deny the petition, Mr. [REDACTED] opinion letter is more current, comprehensive, and realistic, since it is an individualized evaluation regarding the proposed position. Counsel asserts that the job descriptions in the *Handbook* are not updated frequently like the records maintained by universities and the private sector; that the *Handbook* is published annually with nearly the same unchanged content; that the DOL does not have the resources to update every significant change in the industry; and that Mr. [REDACTED] is an expert who is involved in academia and the industry, and the DOL does not have this experience. Counsel states that although the proffered position is described in layman's terms, the position has complex technicalities and duties. Counsel refers to, and agrees with, certain language in the AAO decision.

The AAO grants the motion to reconsider.

Counsel's assertions, that the job descriptions in the *Handbook* are not updated as frequently as the records maintained by universities and the private sector; that the *Handbook* is published annually with outdated information; and that the DOL does not have the resources to update every significant change in the industry, is not convincing. The *Handbook's* information, which is updated annually, is based on a wide variety of

sources. It states the following regarding “the nature of the work section or any other section of a *Handbook* statement”:

Many sources are consulted in researching changes to the nature of the work section or any other section of a *Handbook* statement. Usual sources include articles in newspapers, magazines, and professional journals. Useful information also appears on the Web sites of professional associations, unions, and trade groups. Information found on the Internet or in periodicals is verified through interviews with individuals employed in the occupation, professional associations, unions, and others with occupational knowledge, such as university professors and counselors in career assistance centers.

Based on the above excerpt from the *Handbook*, the DOL consults many sources when updating the contents in the *Handbook*, including newspapers, magazines, professional journals, professional associations, unions trade groups, personal interviews with those employed in the occupation and university professors and counselors in career assistance centers. Consequently, the information in the *Handbook* is accurate and reliable.

Furthermore, regarding the training, other qualifications, and advancement section, the *Handbook* states:

Information in this section comes from personal interviews with individuals employed in the occupation or from Web sites, published training materials, and interviews with the organizations that grant the degree, certification, or license. Some occupations have numerous professional designations granted by different organizations. Generally, the most widely recognized organizations are listed in the *Handbook*.

The above passage from the *Handbook* substantiates that the DOL’s information is current: it is a compilation of personal interviews with persons employed in the occupation, web site information, published training materials, and organizations that grant degrees, certification, or licenses.

The opinion letter from Mr. [REDACTED] and the letter from Mr. [REDACTED] are not persuasive. Mr. [REDACTED]’s letter states:

The opinion express herein is based upon my experience as a professor of marketing, business, management, and related fields in the Lubin Graduate School of Business . . . and as a consultant with professional experience in the business and marketing fields. . . . I have gained wide-ranging experience in guiding graduating students into diverse business environments, including small- and medium-sized firms experiencing different stages and forms of corporate growth.

Furthermore, as owner of Research Information Corporation, a Rhode Island consulting firm, I have worked with a wide range of client companies . . . Over the course of my professional and academic experiences, I have had ample opportunity to observe standard industry hiring practices as they pertain to a variety of product marketing and market research positions.

Accordingly, I believe that I am qualified to opine on the requirements for the position of market specialist, as described below.

Mr. [REDACTED] opinion letter is relevant, but it is not supported by independent documentary evidence. Going on record without supporting documentary evidence is not sufficient for purposes of meeting the burden of proof in these proceedings. *Matter of Treasure Craft of California*, 14 I&N Dec. 190 (Reg. Comm. 1972). Unlike Mr. [REDACTED] opinion, which is based principally on his personal experience, the *Handbook's* information is gathered from various sources.

Mr. [REDACTED] letter confirms that Pace University faculty has the authority to grant college-level credit for training and professional experience. However, the relevancy of this authority has little or no bearing on whether the proposed position requires a specific baccalaureate degree.

As related in the discussion above, the petitioner has failed to establish that the proffered position is a specialty occupation.

ORDER: The decision of the AAO is affirmed. The petition is denied.