



U.S. Citizenship
and Immigration
Services

identifying data deleted to
prevent identity compromise
[Redacted]

D2

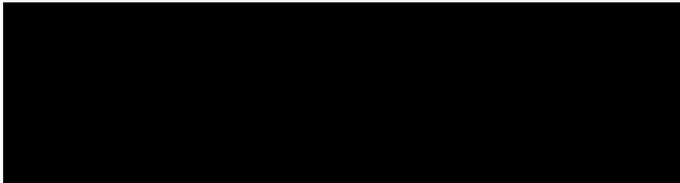


FILE: SRC 03 174 52631 Office: TEXAS SERVICE CENTER Date: JUL 15 2005

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:



PUBLIC COPY

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.

for *Michael T. Kelly*
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 landscaping firm that seeks to employ the beneficiary as a sales and marketing manager. 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 on the basis that the beneficiary did not qualify to perform the duties of the proposed 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 (RFE); (3) the petitioner's RFE response and supporting documentation; (4) the director's denial letter; and (5) the petitioner's 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 sales and marketing manager. Evidence of the beneficiary's duties includes: the Form I-129; the attachments accompanying the Form I-129; the company support letter; the petitioner's RFE response; the attachments accompanying the petitioner's RFE response; the Form I-290B; and the attachments accompanying the Form I-290B. The petitioner's letter of support set forth the following description of the duties of the proposed position:

[The beneficiary] will be responsible for the planning and development of sales and strategies for the [l]andscaping [m]arket. He will compile and analyze marketing data and demographic statistics for targeted areas, and will identify potential expansion into new areas. In addition, he will plan and recommend marketing strategies based upon his assessment of current marketing campaigns and special promotional programs.

The director denied the petition, ruling that the beneficiary did not qualify to perform the duties of a specialty occupation. The director concluded that the FIS evaluation did not satisfy the criteria governing such evaluations, stating the following:

The education evaluation submitted is advisory in nature and indicates that the beneficiary has the equivalence of a United States bachelor's degree in graphic design and an 'educational background the equivalent of an individual with a bachelor's degree in marketing.' However, evidence of marketing classes or work experience was not provided. This evaluation was based on the equivalent of 3 years of undergraduate study and two letters stating the beneficiary's work experience as a Sales Representative and a Sales Manager. The copies of support letters from former employers only indicated the employment duration and job title for the beneficiary. No job duties were described. In the response, an unsigned letter of support from the beneficiary's last employer, Don Pan International Bakery, was provided indicating he was employed from September 2000 through August 2003 as an Assistant Manager, Manager[,] and General Manager at different locations. Again, no detailed description of his job duties was provided. In addition, no evidence was provided to show that the beneficiary has obtained the marketing education and/or work experience required of the specialty occupation position of Sales and Marketing Manager.

On appeal, counsel contends that the beneficiary is in fact qualified to perform the services in a specialty occupation and that the director therefore erred in denying the petition.

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.

In making its determination as to whether the beneficiary qualifies to perform the duties of a specialty occupation, the AAO turns to the criteria at 8 C.F.R. § 214.2(h)(4)(iii)(C), as described above. The beneficiary did not earn a degree from a United States institution of higher education, so he does not qualify under the first criterion.

Nor does the beneficiary qualify under the second criterion, which requires a demonstration that the beneficiary's foreign degree has been determined to be equivalent to a United States baccalaureate or higher degree required by the specialty occupation from an accredited college or university. While the FIS evaluation did determine that the beneficiary's foreign degree is equivalent to a bachelor's degree in graphic design, that course of study is not the degree required by the specialty occupation.

The record does not demonstrate, nor has the petitioner contended, that the beneficiary holds an unrestricted state license, registration or certification to practice the specialty occupation, so he does not qualify under the third criterion, either.

The fourth criterion, set forth at 8 C.F.R. § 214.2(h)(4)(iii)(C)(4), requires a showing that the beneficiary's education, specialized training, and/or progressively responsible experience is equivalent to the completion of a United States baccalaureate or higher degree in the specialty occupation, and that the beneficiary also has recognition of that expertise in the specialty through progressively responsible positions directly related to the specialty.

Thus, it is the fourth criterion under which the petitioner seeks to classify the beneficiary's combination of education and work experience. Pursuant to 8 C.F.R. § 214.2(h)(4)(iii)(D), equating a beneficiary's credentials to a United States baccalaureate or higher degree is 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 an evaluation of education and experience prepared by the Foundation for International Services (FIS), dated April 29, 2003. The FIS evaluator determined that the beneficiary's combination of education and experience is equivalent to a bachelor's degree in marketing from an accredited college or university in the United States.

The beneficiary's combination of education and previous experience do not satisfy 8 C.F.R. § 214.2(h)(4)(iii)(D)(1). Although the FIS evaluation does state that the combination of the beneficiary's education and experience is equivalent to a bachelor's degree in marketing, there has been no showing that the evaluator has the authority to grant college-level credit for training and/or experience in marketing at an accredited college or university which has a program for granting such credit based on an individual's training and/or work experience. A credentials evaluation service may evaluate educational credentials only. 8 C.F.R. § 214.2(h)(4)(iii)(D)(3). Thus, the FIS evaluation of education and work experience cannot be accepted for the purpose of establishing the beneficiary's educational credentials.

No evidence has been submitted to establish, nor has counsel contended, that the beneficiary satisfies 8 C.F.R. § 214.2(h)(4)(iii)(D)(2), which requires that the beneficiary submit 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).

Nor does the beneficiary satisfy 8 C.F.R. § 214.2(h)(4)(iii)(D)(3). As was the case under 8 C.F.R. § 214.2(h)(4)(iii)(C)(2), the fact that the beneficiary's foreign degree was determined to be the equivalent of a bachelor's degree in graphic design, and not a degree in marketing, precludes approval under this criterion, since a bachelor's degree in graphic design is not the degree required by the specialty occupation.

No evidence has been submitted to establish, nor has counsel contended, that the beneficiary satisfies 8 C.F.R. § 214.2(h)(4)(iii)(D)(4), which requires that the beneficiary submit 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.

The AAO next turns to the fifth criterion. When Citizenship and Immigration Services (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.

Counsel's submission traces the beneficiary's work history from June 1990 onward, for a total of 13 years (the petition was filed in June 2003). The formula utilized by CIS is three years of specialized training and/or work experience for each year of college-level training that the alien lacks. A baccalaureate degree from a United States institution of higher education would require four years of study. The beneficiary has the equivalent of a four-year university degree, for which the AAO will recognize two years of academic study in general courses leading to a four-year degree. The beneficiary must therefore demonstrate at least six years of qualifying work experience in order to qualify for its equivalency in marketing.

As noted above, the beneficiary appears to have 13 years of work experience. The AAO's next line of inquiry is therefore to determine whether this work experience included the theoretical and practical

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).

application of specialized knowledge required by the specialty occupation, whether it was gained while working with peers, supervisors, or subordinates who held a degree or its equivalent in marketing, and whether the beneficiary achieved recognition of expertise in the specialty evidenced by at least one of the five types of documentation delineated in sections (i), (ii), (iii), (iv), or (v) of 8 C.F.R. § 214.2(h)(4)(iii)(D)(5).

Counsel submits a copy and English translation of a letter from Tubomara Aceros, C.A., which states that the beneficiary worked for the company, in Venezuela, as a sales manager from June 1990 through February 1995. However, no information regarding his duties is provided, which precludes the AAO from determining whether this work experience included the theoretical and practical application of specialized knowledge required by the specialty occupation, whether it was gained while working with peers, supervisors, or subordinates who held a degree or its equivalent in marketing, and whether the beneficiary achieved recognition of expertise in the position.

In the denial, the director noted the lack of specificity in this letter. On appeal, counsel asserts that Tubomara Aceros is no longer in business, and that the beneficiary therefore cannot receive a more detailed letter. While the AAO has no reason to doubt the veracity of this assertion, without this or secondary evidence it nonetheless prevents the AAO from making a determination as to whether this work experience may be credited toward the requisite 12 years.

Counsel also submits a copy and English translation of a letter from [REDACTED], S.A., which states that the beneficiary worked for the company, in Venezuela, as a sales representative from July 1995 through June 1997. Again, no information regarding his duties is provided, which precludes the AAO from determining whether this work experience included the theoretical and practical application of specialized knowledge required by the specialty occupation, whether it was gained while working with peers, supervisors, or subordinates who held a degree or its equivalent in marketing, and whether the beneficiary achieved recognition of expertise in the position.

On appeal, counsel states that due to the recent political turmoil in Venezuela, the beneficiary is unable to obtain a more detailed letter from the company. Again, the AAO has no reason to doubt the truthfulness of this statement. However, absent a letter providing the details regarding this position or other such evidence, the AAO cannot make a determination on whether this work experience may be credited toward the requisite 12 years.

There is no evidence in the record regarding the beneficiary's employment between 1997 and 1999.

Counsel next submits a copy of a letter, dated December 1, 2000, which states that the beneficiary worked for the [REDACTED] in Venezuela, as a general manager from 1999 until at least the time the letter was written. However, the information contained in this letter does not establish that the position included the theoretical and practical application of specialized knowledge required by the specialty occupation, that the beneficiary was working with peers, supervisors, or subordinates who held a degree or its equivalent in marketing, and that the beneficiary achieved recognition of expertise in the position.²

² The AAO notes that this letter was originally submitted to the legacy Immigration and Naturalization Service in an L-1A visa petition.

Finally, counsel submits a letter, dated December 5, 2003, which states that the beneficiary worked for the Don Pan International Bakery, in Florida, as an assistant manager, manager, and general manager from September 2000 through August 2003. However, no information regarding his duties is provided, which again precludes the AAO from determining whether this work experience included the theoretical and practical application of specialized knowledge required by the specialty occupation, whether it was gained while working with peers, supervisors, or subordinates who held a degree or its equivalent in marketing, and whether the beneficiary achieved recognition of expertise in the position. While the December 1, 2000 letter referenced in the previous paragraph provided information regarding certain duties that the beneficiary was expected to perform, no information has been provided regarding the duties he actually performed upon arrival in the United States.

As noted previously, a baccalaureate degree from a United States institution of higher education requires four years of study, so the beneficiary would need to demonstrate at least 12 years of work experience that included the theoretical and practical application of specialized knowledge required by the specialty occupation, that it was gained while working with peers, supervisors, or subordinates who held a degree or its equivalent in marketing, and that the beneficiary achieved recognition of expertise in the position in order to qualify for its equivalency. Such a demonstration has not been made.³

As such, the beneficiary does not qualify under any of the criteria set forth at 8 C.F.R. §§ 214.2(h)(4)(iii)(D)(1)(2)(3)(4), or (5), and therefore by extension does not qualify under 8 C.F.R. § 214.2(h)(4)(iii)(C)(4).

Therefore, the beneficiary does not qualify to perform the duties of a specialty occupation.

The petition may not be approved for an additional reason. The AAO notes that the director requested a list of all employees in the RFE. However, in the RFE response counsel failed to provide such a list, stating “[a]t the present time the company has two employees but has five (5) projected for the year 2004.” In the denial, the director noted this failure to supply requested evidence, stating “[t]he petitioner’s response [to the RFE] stated there are currently only two employees and stated that more employees are expected to be hired. The petitioner failed to list the current employees with their job titles and duties. The petitioner also failed to submit evidence of doing business.” The petitioner has still not supplied the names of these two employees on appeal, and it has failed to document in the record that the petitioner is doing business. The failure to submit requested evidence that precludes a material line of inquiry shall be grounds for denying the petition. 8 C.F.R. § 103.2(b)(14). The petitioner has failed to prove that it is a United States employer as required by the regulations. *See* 8 C.F.R. § 214.2(h)(4)(ii).

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.

³ As 12 years of qualifying experience have not been shown, the AAO need not analyze whether the beneficiary’s previous work experiences satisfy the criteria set forth at 8 C.F.R. §§ 214.2(h)(4)(iii)(D)(5)(i), (ii), (iii), (iv), or (v).