

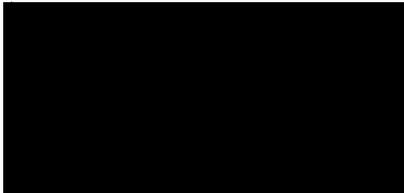
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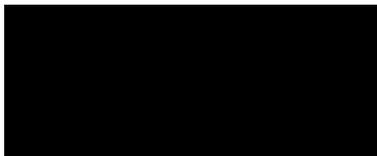
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FILE: EAC 03 227 51714 Office: VERMONT SERVICE CENTER Date: JUN 28 2005

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 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 sports marketing company that develops and sells sports-related products. It seeks to employ the beneficiary as a marketing research analyst. 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 because the beneficiary is not qualified to perform the proffered position. On appeal, counsel states that the beneficiary is qualified for the proffered position and submits additional evidence.

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. The AAO reviewed the record in its entirety before issuing its decision.

The petitioner is seeking the beneficiary's services as a marketing research analyst. The petitioner's July 10, 2003 letter indicated that a candidate must possess a bachelor's degree in marketing.

The director concluded that the beneficiary's education and experience are not sufficient to qualify her for the proposed position. The director stated that the submitted educational evaluation indicated that the beneficiary's degree is the equivalent to a U.S. bachelor of arts in speech and drama; the submitted transcript did not indicate that the beneficiary completed business-related courses; the letter from the beneficiary's former employer did not address the beneficiary's specific duties; and the letters from the [REDACTED] and the family pastor have little or no evidentiary value.

On appeal, counsel submits the beneficiary's transcript from the [REDACTED]. Counsel states that the Department of Labor's (DOL) *Occupational Outlook Handbook* (the *Handbook*) reports that "market and survey researchers may earn advanced degrees in business administration, marketing, statistics, communications, or some closely related discipline." Counsel asserts that the beneficiary qualifies for the proposed position based on her undergraduate studies in speech and communication, and business administration. Counsel also points to the beneficiary's resume and letter from a former employer to establish her qualifications for the proposed position.

Upon review of the record, the petitioner has failed to establish that the beneficiary qualifies to perform the proposed position.

The beneficiary does not hold a U.S. baccalaureate or higher degree required by the specialty occupation from an accredited college or university. 8 C.F.R. §§ 214.2(h)(4)(iii)(C)(1). Although Globe Language Services, Inc. determined that the beneficiary holds a foreign degree which is equivalent to a bachelor of arts in speech and drama from a regionally accredited educational institution in the United States, the petitioner's July 10, 2003 letter indicated that a candidate must possess a bachelor's degree in marketing. Consequently, as the beneficiary does not hold a U.S. baccalaureate or higher degree required by the specialty occupation or a foreign degree determined to be equivalent to a U.S. baccalaureate or higher degree required by the specialty occupation, 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; or
- (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.

No evidence establishes any of the criteria under 8 C.F.R. §§ 214.2(h)(4)(iii)(D)(1), (2), (3), or (4).

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 occupation<sup>1</sup>;
- (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.

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<sup>1</sup> *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).

Upon a review of the record, a combination of the beneficiary's education and work experience is insufficient to establish that she holds the equivalent of a bachelor's degree in marketing. [REDACTED] concluded that the beneficiary holds a foreign degree, which is equivalent to a U.S. bachelor of arts in speech and drama. Only one of the courses, entitled "Principles of Marketing," shown on the transcript from the [REDACTED] relates to the field of marketing. As such, based on the evidence in the record, the beneficiary's education is not equivalent to a U.S. bachelor's degree in marketing.

The beneficiary has prior work experience as a marketing and customer care officer with [REDACTED]. [REDACTED] This employment letter does not establish that the beneficiary's position involved the theoretical and practical application of specialized knowledge required by the specialty occupation. The employer does not describe with any specificity the beneficiary's duties other than indicating that she had good negotiation and people skills and was responsible for the conceptualization and implementation of products. Nor does the letter indicate that the beneficiary's work experience was gained while working with peers, supervisors, or subordinates who have a degree or its equivalent in the specialty occupation. No evidence in the record establishes that the beneficiary has recognition of expertise in the specialty. For these reasons, the petitioner fails to establish the beneficiary's qualifications pursuant to 8 C.F.R. § 214.2(h)(4)(iii)(D)(5).

The AAO notes that although the Form I-129 petition and the certified Form ETA 9035E indicate that the job title of the proposed position is that of marketing research analyst, the petitioner's July 10, 2003 letter states that the petitioner seeks to employ the beneficiary as a director, promotion and marketing. Doubt cast on any aspect of the petitioner's proof may, of course, lead to a reevaluation of the reliability and sufficiency of the remaining evidence offered in support of the visa petition. *Matter of Ho*, 19 I&N Dec. 582, 591-92 (BIA 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 proposed position does not qualify as a specialty occupation.

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.