

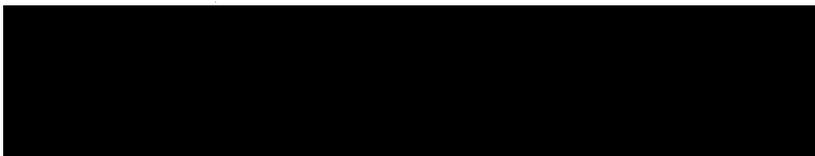


U.S. Citizenship
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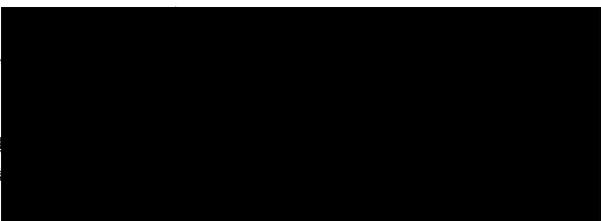


FILE: SRC 04 050 51588 Office: TEXAS SERVICE CENTER Date: OCT 03 2005

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

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 provides automobile transmission service and repair. It seeks to employ the beneficiary as a market 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.

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 seeks the beneficiary's services as a market research analyst. The petitioner's November 21, 2003 letter indicated that it requires a baccalaureate degree in business administration or a related degree for the proposed position.

The director determined that the beneficiary was not qualified for the proffered position because the beneficiary's work experience is not equivalent to a baccalaureate degree in business administration with a major in marketing.

Counsel references two educational evaluations that state that the beneficiary is qualified for the proffered position based on his work experience, and asserts that CIS has already determined that the beneficiary qualifies for the proposed position since CIS approved another, similar petition filed on behalf of the beneficiary by another employer.

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

Counsel claims that CIS has already determined that the beneficiary qualifies for the proposed position since CIS has approved another, similar petition filed on behalf of the beneficiary by another employer. This record of proceeding does not, however, contain all of the supporting evidence submitted to the service center in the prior case. In the absence of all of the corroborating evidence contained in that record of proceeding, the documents submitted by counsel are not sufficient to enable the AAO to determine whether that petition is parallel to the petition under review here. Furthermore, each nonimmigrant petition is a separate proceeding with a separate record. *See* 8 C.F.R. § 103.8(d). In making a determination of statutory eligibility, CIS is limited to the information contained in the record of proceeding. *See* 8 C.F.R. § 103.2(b)(16)(ii).

The beneficiary does not hold a baccalaureate degree from an accredited U.S. college or university in any field of study or a foreign degree determined to be equivalent to a U.S. baccalaureate degree. Therefore, 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 independent evidence in the record reflects that Mr. Christos Koulamas, Ph.D., with Global Education Group, Inc., is 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. Thus, Mr. Koulamas's evaluation is not persuasive in equating the beneficiary's work experience to a U.S. baccalaureate or higher degree pursuant to 8 C.F.R. § 214.2(h)(4)(iii)(D)(I).

The resume and educational evaluation from Mr. Harold W. Berkman, Ph.D., with Josef Silney & Associates, Inc., indicates that Dr. Berkman is the vice dean of the school of business administration at the University of Miami; that on occasion, as an exception to the general admission policy, applicants who do not have a bachelor's degree are admitted into the Executive MBA program; and that the criteria for admission is based on an applicant's level of managerial experience. Dr. Berkman states that in granting admission to the program, he equates work experience as an offset to college credits. Dr. Berkman determined that the beneficiary holds the educational equivalent to a bachelor's degree in business administration with a specialization in management.

Dr. Berkman's evaluation is not persuasive for two reasons. Other than the beneficiary's resume, no independent evidence in the record describes the beneficiary's duties with his prior employers as the letters from the previous employers indicate only the beneficiary's title and dates of employment. Thus, Dr. Berkman's educational evaluation is based on the beneficiary's assertions, which is not corroborated by independent evidence. Going on record without supporting documentary evidence is not sufficient for purposes of meeting the burden of proof in these proceedings. *Matter of Soffici*, 22 I&N Dec. 158, 165 (Comm. 1998) (citing *Matter of Treasure Craft of California*, 14 I&N Dec. 190 (Reg. Comm. 1972)).

Moreover, in order to meet the criterion at 8 C.F.R. § 214.2(h)(4)(iii)(D)(I), the evaluation must be submitted on university letterhead to show that the evaluator is speaking on behalf of the university; since Mr. Beckman's evaluation was done on behalf of an educational evaluation service, it cannot meet the criterion at 8 C.F.R. § 214.2(h)(4)(iii)(D)(I). Furthermore, there is no independent corroborating evidence of record from the University of Miami confirming that the university has a program for granting credit based on work experience or training, and that Dr. Berkman is authorized to award such credit.

According to 8 C.F.R. § 214.2(h)(4)(iii)(D)(3), the beneficiary's credentials can be equated to a U.S. baccalaureate or higher degree based on an evaluation of education by a reliable credentials evaluation service which specializes in evaluating foreign educational credentials. Here, the two educational evaluations are not based on the beneficiary's foreign educational credentials; they are based on the beneficiary's work experience. Since the regulation requires that the evaluations be based on the beneficiary's foreign educational credentials, the evaluations from Josef Silney & Associates, Inc. and Global Education Group, Inc. carry little weight in establishing the beneficiary's qualifications.

No evidence establishes the regulation at 8 C.F.R. § 214.2(h)(4)(iii)(D)(2) 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 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.

The AAO now turns to consider the beneficiary's prior work experience and whether it included the theoretical and practical application of specialized knowledge required by the specialty. The letters from the beneficiary's prior employers do not describe the beneficiary's duties; thus, they cannot demonstrate that the beneficiary's past work experience included the theoretical and practical application of a body of highly

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).

specialized knowledge, which in this case is marketing analysis. Furthermore, neither employer indicates 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. Finally, although there is evidence that the beneficiary has recognition of expertise, no evidence establishes that the beneficiary's prior work experience included the theoretical and practical application of specialized knowledge required by the specialty.

The AAO notes further that the *Handbook* indicates that employers in private industry require master's level education for the position of market research analysts. As the beneficiary does not have a degree in a related field, he cannot be found to have a master's or its equivalent, which requires a baccalaureate followed by five years of progressive work experience. 8 C.F.R. § 214.2(h)(4)(iii)(D)(5).

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.

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.