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**U.S. Citizenship
and Immigration
Services**

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Dr

FILE: WAC 03 151 52877 Office: CALIFORNIA SERVICE CENTER Date: OCT 31 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 California 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 retailer of imported men's clothing, with ten employees. It seeks to employ the beneficiary as a management analyst 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 he found the beneficiary was not qualified to perform the duties of a specialty occupation.

The record of proceeding before the AAO contains: (1) Form I-129 and supporting documentation; (2) the director's request for evidence; (3) counsel's response to the director's request for evidence; (3) the director's denial letter; and (4) Form I-290B, with previously submitted evidence. The AAO reviewed the record in its entirety before reaching its decision.

The only issue before the AAO is whether the beneficiary is qualified to perform the duties of a management analyst. In determining whether an alien is qualified to perform the duties of a specialty occupation, Citizenship and Immigration Services (CIS) looks to the petitioner to establish that the beneficiary meets one of the requirements set forth at Section 214(i)(2) of the Act, 8 U.S.C. § 1184(i)(2) -- full state licensure to practice in the occupation, if such licensure is required; completion of a degree in the specific specialty; or 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.

The proffered position is that of a management analyst. As management analysts are not licensed, the petitioner must, therefore, establish that the beneficiary has the academic credentials necessary for employment as a management analyst or experience that is the equivalent of such credentials. To determine what academic background prepares individuals to seek employment as management analysts, the AAO turns to the discussion of that occupation in the Department of Labor's *Occupational Outlook Handbook (Handbook)*, the resource on which the AAO routinely relies for information about the educational requirements of particular occupations. The *Handbook*, at page 89, states:

Educational requirements for entry-level jobs in this field vary widely between private industry and government. Most employers in private industry generally seek individuals with a master's degree in business administration or a related discipline

Accordingly, as the petitioner seeks to employ the beneficiary as a management analyst, it must establish that he holds a master's degree or its equivalent in business administration or a related field.

Specific discussion of how an alien qualifies to perform services in a specialty occupation is found at 8 C.F.R. § 214.2(h)(4)(iii)(C), and requires the individual to:

- (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 beneficiary does not possess a U.S. master's degree in business administration or a foreign degree that is the equivalent of a U.S. master's degree in this field. Nor, as previously noted, does the proffered position require a license or certification. Accordingly, the AAO will review the record before it to determine whether the beneficiary's combined education, training and employment experience establish his eligibility to perform the duties of a specialty occupation under the fourth and final criterion at 8 C.F. R. § 214.2(h)(4)(iii)(C).

For the purposes of 8 C.F.R. § 214.2(h)(4)(iii)(C)(4), equivalence to a U.S. baccalaureate or higher degree shall mean the 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 requirements at 8 C.F.R. § 214.2(h)(4)(iii)(D):

- (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.

On appeal, counsel resubmits an evaluation of the beneficiary's academic and employment history that was initially provided at the time of filing. Counsel contends that the evaluation, prepared by a professor of information systems and management at Seattle Pacific University, establishes the beneficiary as qualified to perform the duties of the proffered position. The AAO does not agree.

At the time of filing, the petitioner submitted an evaluation of the beneficiary's academic and employment history, prepared by the Foundation for International Services (FIS), Inc. in Bothell, Washington. The FIS report stated that the beneficiary's degree from the Philippine Maritime Institute (PMI) Colleges in Manila was the equivalent of a U.S. bachelor of science degree and, when combined with his work experience, provided him with the equivalent of a U.S. bachelor's degree in business administration. For its conclusions regarding the academic equivalency generated by the beneficiary's employment history, the FIS report cited the expert opinion of the Seattle Pacific University professor noted above.

The AAO will accept the FIS evaluation of the beneficiary's degree in customs administration as the equivalent of a U.S. baccalaureate degree. However, its statements regarding the academic equivalency of the beneficiary's work experience will be discounted. A credentials evaluation service may only evaluate an alien's foreign academic credentials. 8 C.F.R. § 214.2(h)(4)(iii)(D)(3). As a result, the AAO will not accept FIS' conclusions related to an analysis of the beneficiary's employment history. An evaluation by a credentials evaluation organization serves CIS as an advisory opinion only. Where an evaluation is in any way questionable, the AAO may discount it or give it less weight. *Matter of Sea, Inc.*, 19 I&N Dec. 817 (Comm. 1988). While the FIS evaluation establishes that the beneficiary holds the equivalent of a U.S. baccalaureate degree, it is not a degree at the master's level or in a field directly related to the specialty. Accordingly, it cannot establish the beneficiary as qualified to perform the duties of a management analyst.

The AAO now turns to the evaluation on which the FIS report relied for its conclusions concerning the academic equivalency of the beneficiary's employment experience – the expert opinion provided by the Seattle Pacific University professor.

The professor asserts that he is qualified to evaluate the beneficiary's academic and work experience based on his extensive academic and professional experience. His stated expertise is supported by a letter from Seattle Pacific's associate provost and dean of graduate studies, which indicates that the university's professors have the authority to grant college level credit for training and experience, and are considered appropriate evaluators of academic and professional credentials and work experience for the purposes of admissions, advising, placement in degree programs, substitutions of courses, judgments on petitions, assessments of internship and other routine university evaluations. However, neither the professor, nor the provost, indicates that Seattle Pacific University has a program for granting academic credit based on training or work experience.*

* The Seattle Pacific University website does not indicate that the university, or the department, has a program, for granting such credit.

Pursuant to the requirements at 8 C.F.R. § 214.2(h)(4)(iii)(D)(1), an evaluation of a beneficiary's employment experience must come from an official who has the authority to grant college-level credit for that experience at an accredited college or university which has a program for granting such credit. As the record contains no evidence that Seattle Pacific University has such a program, the AAO will not accept the professor's evaluation of the beneficiary's combined academic and employment experience as the equivalent of a baccalaureate degree in business administration. The AAO notes, however, that even if the professor's evaluation were accepted as evidence, its conclusion, that the beneficiary holds the equivalent of a baccalaureate degree in business administration, would not establish the beneficiary as qualified to perform the duties of the proffered position, which requires a degree in business administration at the master's level.

As the petitioner has failed to establish the beneficiary as qualified to perform the duties of the proffered position under any of the first four criteria at 8 C.F.R. § 214.2(h)(4)(iii)(D), the AAO now turns to an evaluation of the beneficiary's background under the fifth criterion – a determination by CIS that the equivalent of a 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.

When evaluating a beneficiary's qualifications under the fifth criterion, CIS considers three years of specialized training and/or work experience to be the equivalent of one year of college-level training. To establish equivalence to an advanced or master's degree, the beneficiary must have a baccalaureate degree followed by at least five years of experience in the specialty. The record must also establish that the beneficiary's training and/or work experience has included the theoretical and practical application of the specialized knowledge required by the specialty occupation, that this experience was gained while working with peers, supervisors, or subordinates who have degrees or the equivalent in the specialty occupation and that the beneficiary's expertise in the specialty has been recognized, as evidenced by one of the following: recognition of expertise in the specialty occupation by at least two recognized authorities in the same specialty occupation; membership in a recognized foreign or U.S. association or society in the specialty occupation; published material by or about the alien in professional publications, trade journals, books or major newspapers; licensure or registration to practice the specialty in a foreign country; or achievements which a recognized authority has determined to be significant contributions to the field of the specialty occupation.

At the time of filing, the petitioner submitted documentation of the petitioner's degree in customs administration from the PMI Colleges, along with his academic transcripts; a copy of the beneficiary's resume outlining his work experience from October 1984 to the present; and a copy of a letter from his current employer confirming his employment. While this documentation is relevant to these proceedings, the AAO does not find it to satisfy the requirements of the fifth criterion.

As previously noted, the academic records submitted by the petitioner indicate that the beneficiary was awarded a degree in customs administration, which the FIS has found to be the equivalent of a U.S. bachelor of science degree, but not in a field directly related to the proffered position. Therefore, the AAO has considered whether the record before it offers evidence that the beneficiary's employment history, when

combined with his degree in customs administration, would provide him with the equivalent of a master's degree in business administration.

In reaching its decision, the AAO has taken note of the evaluation of the beneficiary's work history provided by the Seattle Pacific University professor. However, it will discount the professor's conclusions regarding the beneficiary's employment history.

With the exception of the letter from the beneficiary's current employer, confirming the length of his employment, the record contains no independent documentation of the beneficiary's work history. To reach his conclusions, the professor's evaluation appears to have relied solely on the beneficiary's resume and his limited descriptions of the work he has performed since 1984. Accordingly, the professor's evaluation is of little evidentiary value for the purposes of these proceedings. The AAO relies on expert evaluations as advisory opinions only. Where an opinion is not in accord with other information or is in any way questionable, CIS is not required to accept that opinion or may give it less weight. *Matter of Caron International*, 19 I&N Dec. 791 (Comm. 1988).

In that the record provides no independent evidence describing the beneficiary's previous employment, the petitioner cannot establish that his work history included the theoretical and practical application of specialized knowledge required of management analysts, was gained while working with others who have business administration degrees or the equivalent, or that his expertise in management analysis was recognized during the course of his employment history. Accordingly, the petitioner has not proved the beneficiary to have acquired the equivalent of a master's degree in business administration through a combination of education, specialized training, and/or work experience, as required to satisfy the requirements of the fifth criterion at 8 C.F.R. § 214.2(h)(4)(iii)(D).

For reasons related in the preceding discussion, the petitioner has failed to establish that the beneficiary is qualified to perform the duties of a specialty occupation. Accordingly, the AAO will 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 met that burden.

ORDER: The appeal is dismissed. The petition is denied.