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FILE: WAC 07 145 53874 Office: CALIFORNIA SERVICE CENTER Date: **APR 02 2009**

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:

[REDACTED]

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.

If you believe the law was inappropriately applied or you have additional information that you wish to have considered, you may file a motion to reconsider or a motion to reopen. Please refer to 8 C.F.R. § 103.5 for the specific requirements. All motions must be submitted to the office that originally decided your case by filing a Form I-290B, Notice of Appeal or Motion, with a fee of \$585. Any motion must be filed within 30 days of the decision that the motion seeks to reconsider or reopen, as required by 8 C.F.R. § 103.5(a)(1)(i).

John F. Grissom
Acting Chief, Administrative Appeals Office

DISCUSSION: The Director, 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 Japanese restaurant that seeks to employ the beneficiary as a business development officer. The petitioner 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, finding that the beneficiary is not qualified to perform the duties of a specialty occupation. On appeal, counsel submits a brief and the beneficiary's transcript.

Section 214(i)(2) of the Immigration and Nationality Act (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: (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 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 business development officer. The petitioner indicated in a letter dated April 2, 2007 that it wished to hire the beneficiary "to administer and evaluate business affairs and marketing affairs of the restaurant business activities." Specifically, the petitioner claimed that the beneficiary would perform the following duties:

- Develop and execute the implementation of marketing strategies and programs to increase customer base and income;
- Supervise the development and implementation of marketing plans which will attract more customers, and improve the restaurant's reputation;
- Collaborate with the management to integrate improved marketing strategies and programs;
- Supervise the development and production of appropriate advertising and promotional materials in accordance with prescribed budgetary and quality standards;
- Consult and collaborate with the management of the restaurant concerning advertising, promotional programs, and marketing strategies which require time out of the office[.]

The petitioner also provided a breakdown of the percentage of time the beneficiary would devote to each of her tasks, and concluded by stating:

In sum, a Business Development Officer will not just publicize the company's potential, but will also understand the needs and requirements of our customers. She will communicate this information to management to help to help formulate sound policy. She will ensure that there is no lack of communication and will utilize his [sic] knowledge and experience to establish and maintain cooperative relationships with customers.

The petitioner continued by claiming that it would not hire anyone with less than a baccalaureate degree or its equivalent to fill the proffered position. It further claimed that the proffered position "is a specialty position requiring at least a Bachelor's Degree in Marketing or a similar discipline or its equivalent." Finally, the petitioner concluded by claiming that the beneficiary was a qualified candidate for the position by virtue of her Bachelor of Science in Business Administration – Management Information Systems from California State University, Long Beach, and submitted a copy of the beneficiary's transcript in support of this contention.

The director issued a request for evidence (RFE) on May 18, 2007, and requested the petitioner provide additional documentation to establish that the proffered position was a specialty occupation and that the beneficiary was qualified to perform the duties of the specialty occupation. In an undated response, counsel for the petitioner provided a detailed discussion of the beneficiary's qualifications and the manner in which she was qualified to perform the duties of the proffered position. While he repeated much of the information provided by the petitioner in the April 2, 2007 letter, counsel added that "the candidate must possess at least a bachelor degree in business administration, marketing, economics or related business field."

The director found that the beneficiary was not qualified for the proffered position, because the beneficiary's education, experience, and training were not equivalent to a baccalaureate degree in a specialty required by the occupation. On appeal, counsel again restates much of the information previously set forth in the petitioner's April 2, 2007, and simply restates that the beneficiary is qualified for the proffered position by virtue of the coursework taken while studying for her degree. Other than resubmitting the beneficiary's college transcript, no additional documentary evidence has been submitted.

Consonant with section 214(i)(1) of the Act and the regulation at 8 C.F.R. § 214.2(h)(4)(ii), U.S. Citizenship and Immigration Services (USCIS) consistently interprets the term "degree" in the criteria at 8 C.F.R. § 214.2(h)(4)(iii)(A) to mean not just any baccalaureate or higher degree, but one in a specific specialty that is directly related to the proffered position. Applying this standard, USCIS regularly approves H-1B petitions for qualified aliens who are to be employed as engineers, computer scientists, certified public accountants, college professors, and other such professions. These occupations all require a baccalaureate degree in the specific specialty as a minimum for entry into the occupation and fairly represent the types of professions that Congress contemplated when it created the H-1B visa category.

According to the statute and regulations, therefore, H-1B classification is not established merely by the beneficiary's possession of a baccalaureate degree (or equivalent) and the position duties proposed by the petitioner. The required degree must be in a specific specialty, that is, in a discipline that contains a body of highly specialized knowledge that is necessary for the performance of the position. Therefore, unless it is in a specific specialty, a degree or degree-equivalent requirement will not qualify a position as an H-1B specialty occupation.

In this matter, the petitioner operates a Japanese restaurant and seeks to employ the beneficiary as its business development officer. The duties of the proffered position, according to the petitioner's April 2, 2007 letter, counsel's undated response to the RFE, and counsel's appeal dated October 25, 2007, are centered primarily in marketing. Repeated below is an overview of the duties of the proffered position:

- Develop and execute the implementation of *marketing* strategies and programs to increase customer base and income;
- Supervise the development and implementation of *marketing* plans which will attract more customers, and improve the restaurant's reputation;
- Collaborate with the management to integrate improved *marketing* strategies and programs;
- Supervise the development and production of appropriate advertising and promotional materials in accordance with prescribed budgetary and quality standards;
- Consult and collaborate with the management of the restaurant concerning advertising, promotional programs, and *marketing* strategies which require time out of the office[.]

(Emphasis added by the AAO).

Additionally, the petitioner's April 2, 2007 letter indicated that 65% of the beneficiary's duties will be spent as follows:

- Assess and evaluate the management of all *marketing* objectives and identify potential problems and opportunities to implement cost-effective programs according to *marketing* goals;
- Evaluate *marketing* programs against established performance objectives;
- Evaluate the success of *marketing* programs that have been implemented and recommend adjustments and changes to achieve desired results.

(Emphasis added by the AAO).

Clearly, based on the petitioner's own descriptions of the duties of the proffered position, marketing will be the focus of the beneficiary's duties. However, the petitioner, both prior to adjudication and again on appeal, contends that the beneficiary is a qualified candidate for the position by virtue of her Bachelor of Science in Business Administration with a concentration in Management Information Systems.

A degree in business administration alone is insufficient to qualify the beneficiary to perform the services of a specialty occupation, unless the academic courses pursued and knowledge gained is a realistic prerequisite to a particular occupation in the field. The beneficiary's coursework must indicate that he or she obtained knowledge of the particular occupation in which he or she will be employed. *Matter of Ling*, 13 I&N Dec. 35 (Reg. Comm. 1968).

In this matter, a review of the beneficiary's transcript indicates that she took only one marketing course during the course of her degree program. As correctly observed by the director, the upper level courses taken in pursuit of her degree focus on management information systems; however, the petitioner makes no reference to nor draws a nexus between a concentration in this realm of study and the duties of the proffered position.

Upon review, therefore, it does not appear that the petitioner has demonstrated that the beneficiary satisfies any of the criteria at 8 C.F.R. § 214.2(h)(4)(iii)(C). While the beneficiary does in fact possess a baccalaureate degree from an accredited U.S. college or university in business administration with a concentration in management information systems, the beneficiary does not hold a degree in marketing, which is the specific specialty of the proffered position, as required by 8 C.F.R. § 214.2(h)(4)(iii)(C)(1). Moreover, the beneficiary does not possess a foreign degree, nor does the beneficiary hold an unrestricted state license, registration or certification which authorizes her to fully practice the specialty occupation and be immediately engaged in that specialty in the state of intended employment. Therefore, the requirements set forth in 8 C.F.R. §§ 214.2(h)(4)(iii)(C)(2) and (3) are not applicable to these proceedings.

Finally, the petitioner has failed to demonstrate that the beneficiary has education, specialized training, and/or progressively responsible experience that is equivalent to the completion of a United States baccalaureate or higher degree in marketing, and have recognition of expertise in the specialty through progressively responsible positions directly related to the specialty as required by 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;
- (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 petitioner has submitted no credentials evaluations or certifications demonstrating achievement in the field of marketing. Moreover, the petitioner has not submitted the beneficiary's resume or letters from former employers, thereby prohibiting the AAO from evaluating her work history and experience. 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). Despite counsel's contentions on appeal that the beneficiary is qualified to perform the duties of the proffered position, no additional supporting evidence has been submitted to corroborate this claim. Without documentary evidence to support the claim, the assertions of counsel will not satisfy the petitioner's burden of proof. The unsupported assertions of counsel do not constitute evidence. *Matter of Obaigbena*, 19 I&N Dec. 533, 534 (BIA 1988); *Matter of Laureano*, 19 I&N Dec. 1 (BIA 1983); *Matter of Ramirez-Sanchez*, 17 I&N Dec. 503, 506 (BIA 1980).

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.