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U.S. Department of Homeland Security
U.S. Citizenship and Immigration Services
Office of Administrative Appeals MS 2090
Washington, DC 20529-2090



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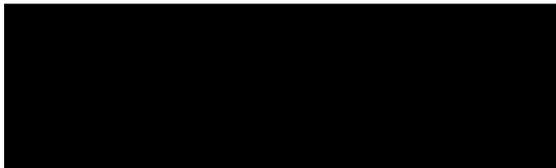
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FILE:  Office: CALIFORNIA SERVICE CENTER Date: NOV 02 2010

IN RE: Petitioner: 
Beneficiary: 

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)

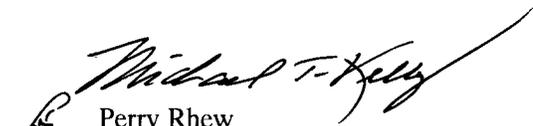
ON BEHALF OF PETITIONER:



INSTRUCTIONS:

Enclosed please find the decision of the Administrative Appeals Office in your case. All of the documents related to this matter have been returned to the office that originally decided your case. Please be advised that any further inquiry that you might have concerning your case must be made to that office.

If you believe the law was inappropriately applied by us in reaching our decision, or you have additional information that you wish to have considered, you may file a motion to reconsider or a motion to reopen. The specific requirements for filing such a request can be found at 8 C.F.R. § 103.5. All motions must be submitted to the office that originally decided your case by filing a Form I-290B, Notice of Appeal or Motion. The fee for a Form I-290B is currently \$585, but will increase to \$630 on November 23, 2010. Any appeal or motion filed on or after November 23, 2010 must be filed with the \$630 fee. Please be aware that 8 C.F.R. § 103.5(a)(1)(i) requires that any motion must be filed within 30 days of the decision that the motion seeks to reconsider or reopen.


Perry Rhew
Chief, Administrative Appeals Office

DISCUSSION: The service center director denied the instant nonimmigrant visa petition. The Administrative Appeals Office (AAO) initially rejected the appeal, then subsequently withdrew that rejection and reopened the appeal for its consideration and determination. Thus, the matter is now before the AAO on appeal. The appeal will be dismissed. The petition will be denied.

On the Form I-129 visa petition the petitioner stated that it is a financing firm. To employ the beneficiary in a position it designates as a credit analyst position, the petitioner endeavors to classify him 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 petitioner failed to establish that the beneficiary is qualified for the proffered position. On appeal, counsel asserted that the director's basis for denial was erroneous, and contended that the petitioner satisfied all evidentiary requirements.

The AAO bases its decision upon its review of the entire record of proceedings, which includes: (1) the petitioner's Form I-129 and the supporting documentation filed with it; (2) the service center's request for additional evidence (RFE); (3) the response to the RFE; (4) the director's denial letter; (5) the Form I-290B and counsel's initial brief in support of the appeal; and (6) counsel's submissions in support of withdrawing the rejection and reopening the matter.

Section 214(i)(1) of the Act, 8 U.S.C. § 1184(i)(1), defines the term "specialty occupation" as an occupation that requires:

- (A) theoretical and practical application of a body of highly specialized knowledge, and
- (B) attainment of a bachelor's or higher degree in the specific specialty (or its equivalent) as a minimum for entry into the occupation in the United States.

The degree referenced by section 214(i)(1)(B) of the Act, 8 U.S.C. § 1184(i)(1)(B), means one in a specific specialty that is characterized by a body of highly specialized knowledge that must be theoretically and practically applied in performing the duties of the proffered position. The requirement of a college degree for the sake of general education, or to obtain what an employer perceives to be a higher caliber employee, also does not establish eligibility. *See Matter of Michael Hertz, Assoc.*, 19 I&N Dec. 558, 560 (Comm. 1988).

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:

- (A) full state licensure to practice in the occupation, if such licensure is required to practice in the occupation,
- (B) completion of the degree described in paragraph (1)(B) for the occupation, or

(C) (i) experience in the specialty equivalent to the completion of such degree, and

(ii) recognition of expertise in the specialty through progressively responsible positions relating to the specialty.

In implementing section 214(i)(2) of the Act, 8 U.S.C. § 1184(i)(2), the regulation at 8 C.F.R. § 214.2(h)(4)(iii)(C) states that an alien must also meet one of the following criteria in order to qualify to perform services in a specialty occupation:

(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 [a] 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 [b] have recognition of expertise in the specialty through progressively responsible positions directly related to the specialty.

Therefore, to qualify an alien for classification as an H-1B nonimmigrant worker under the Act, the petitioner must establish either that the beneficiary has completed a degree in the specialty that the occupation requires, or that, if he or she does not possess the required degree, that the alien has [1] experience in the specialty equivalent to the completion of such degree, and [2] recognition of expertise in the specialty through progressively responsible positions relating to the specialty.

In order to equate a beneficiary's credentials to a U.S. baccalaureate or higher degree under 8 C.F.R. § 214.2(h)(4)(iii)(C)(4), the provisions at 8 C.F.R. § 214.2(h)(4)(iii)(D) require 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;¹
- (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. . . .

Evidence in the record shows that the beneficiary has a bachelor's degree awarded by the Kyung Hee University in the Republic of Korea. The beneficiary's major was landscape architecture and he had a minor in venture business.

On June 4, 2009 the service center issued a request for evidence in this matter. The service center requested, *inter alia*, a more detailed job description, and evidence to establish that the beneficiary qualifies for the proffered position in that he has the equivalent of the requisite bachelor's degree in the specific specialty required by the proffered position pursuant to one of the criteria of 8 C.F.R. § 214.2(h)(4)(iii)(D). The service center emphasized that, if the petitioner wished to rely on the beneficiary's experience, in whole or in part, as a substitute for the requisite bachelor's degree, it must provide an evaluation that conforms to the requirements of 8 C.F.R. § 214.2(h)(4)(iii)(D)(1).

In response, counsel submitted a letter from the petitioner's president dated July 10, 2009; an evaluation of the beneficiary's foreign education, dated July 14, 2009, and supporting documents; and a letter from counsel dated July 14, 2009.

The letter from the petitioner's president provides a description of the duties of the proffered position. It states the conclusion that the proffered position "requires theoretical and practical application of a body of highly specialized knowledge in business administration and management principles" and that "attainment of a Bachelor's degree or equivalent with a concentration in Business Administration or a related discipline is required."

The president further noted that the petitioner is a factor, rather than a lender, and stated that, "As such, the Credit Analyst at our organization must use theoretical and practical skills such as financing theories that can only be attained through studies at a university level of education." The

¹ The petitioner should note that, in accordance with this provision, the AAO will accept a credentials evaluation service's evaluation of *education only*, not experience.

president did not explain in what way the duties of a credit analyst for a factor differ from the duties of a credit analyst for a lender.

The petitioner's president described the duties of the proffered position as follows:

Analysis (80%)

- Initiate gathering appropriate credit and financial data of potential clients upon receipt of applications for credit by running a credit reports [sic] and credit checks, requesting copies of receipts, purchase orders, invoices, financial statements, cash flow reports, regulatory filings, band statements, etc.;
- Create and suggest lending proposals, credit models, credit factors and terms of credit by preparing reports based on evaluation of client's profile and supporting financial reports using software such as Factor SQL and gFactor;
- Communicate and consult with clients or potential clients regarding loan or credit terms including payment plans or forbearance options;
- Prepare monthly, quarterly, or yearly reports as needed after compiling and analyzing financial data of existing client accounts or potential clients, such as Client Summary Reports, Account Master Reports, Client Ledger Reports, Reserve Account Reports, Invoice Aging Reports, Concentration Reports, etc.;
- Prepare reports regarding current market trends and its [sic] effect on the company's projected profits and losses by researching articles, journals, and other reports on both domestic and international trade trends;
- Monitor ongoing client and company transactions by reviewing client profiles on the CICS database on a daily basis to ensure that credit is not being extended to potentially high[-]risk accounts or clients;
- Compare and examine client's credit profile to determine if additional credit should be extended or if credit should be reduced based on factors such as payment patterns (delinquencies), credit limit, purchase activity, earnings data, credit ratings, etc.
- Liaise with staff members of other departments to gather information or data and to communicate any issues with client's credit;
- Initiate periodic client profile reviews as necessary to identify accounts that have or are about to exceed authorized credit lines and to identify remaining credit.

Research (10%)

- Search and read the internet, newspaper articles, journals, books and magazines to research current market trends in domestic and international trade, financing models, credit models, loan assessments, etc. so that the company can develop and improve its credit factoring system or credit scoring models.

Administrative (10%)

- Attend or initiate meetings with managers, officers, and/or other staff members to discuss or report any issues that arise with client credit accounts;
- Organize, file and maintain client credit applications and other financial documents in accordance with the company's filing system;

- Regularly input, correct, and/or update the company's CICS database with any new information regarding client's credit profile.

The evaluation of the beneficiary's foreign education provided to the petitioner by Morningside Evaluations and Consulting observes that the petitioner has a foreign bachelor's degree with a major in landscape architecture and a minor in venture business, and that this is equivalent to a U.S. bachelor's degree in landscape architecture "with a Concentration in Business Administration." The evaluation states that the evaluator is an admissions counselor, recruiter, and foreign transfer evaluator for the Lehman College of the City University of New York.

In his July 14, 2009 letter counsel stated the conclusion that the duties described in the petitioner's president's letter "involve advanced research and analytical skills." Counsel also noted that the petitioner is a factor, rather than a lender, and stated that the position therefore requires "theoretical and practical skills that can only be attained through studies at a university level of education." Again, although counsel implied that the duties of a credit analyst employed by a factor differ from those of a credit analyst employed by a lender, he did not attempt to describe any such difference.

The petitioner has not established the difference in duties and related educational requirements between a credit analyst working for a lender and one working for a factor. On a common sense level, the duties would seem to be the same except that the factor's credit analyst, rather than confining his inquiry to the creditworthiness of the borrower, would also determine the creditworthiness of the companies whose indebtedness is evidenced by the accounts receivable to be sold to the factor or to be used as security. The record contains no evidence or argument on that point, however, and the AAO will not resolve this issue by speculation.

Counsel stated that the petitioner is relying on the beneficiary's education alone to demonstrate that he has the minimum of a bachelor's degree or the equivalent in a specific specialty required by the proffered position, rather than relying, even in part, on the beneficiary's employment experience.

By stating that the petitioner is not attempting to show that the beneficiary is qualified for the proffered position by his employment experience, or any credentials other than his education, counsel has expressly disclaimed any attempt to show that the beneficiary is qualified for the proffered position pursuant to 8 C.F.R. § 214.2(h)(4)(iii)(C)(4) and 8 C.F.R. § 214.2(h)(4)(iii)(D).

The beneficiary does not meet either of the criteria at 8 C.F.R. §§ 214.2(h)(4)(iii)(C)(1) and (3), as there is no evidence of a U.S. accredited college or university baccalaureate or higher degree, or of an unrestricted state license, registration or certification which authorizes him to fully practice and be immediately engaged in a specialty occupation in the state of intended employment.

The only remaining avenue by which the petitioner could show that the beneficiary is qualified for the proffered position is as an alien holding a foreign degree determined to be equivalent to a U.S. accredited college or university baccalaureate or higher degree required by the pertinent specialty occupation pursuant to 8 C.F.R. § 214.2(h)(4)(iii)(C)(2).

The beneficiary has a foreign degree with a major in landscape architecture and a minor in venture business. The evaluation provided states that this is equivalent to a U.S. baccalaureate degree in landscape architecture with a concentration in business administration.

Whether the evaluator meant to imply, in using the word “concentration,” that the petitioner’s minor in venture business is equivalent to a major in business administration, or whether he was indicating that it is equivalent to a minor in business administration is unclear, perhaps intentionally.

If the evaluator meant that the petitioner’s minor in venture business is equivalent to a major in business administration, then the AAO finds that assertion incredible. If, on the other hand, the evaluator meant that the beneficiary’s minor course of study in venture business at a foreign university is equivalent to a minor course of study in business administration at a U.S. university, the AAO finds that it does not render the beneficiary qualified for a position that, as with all specialty occupations, requires at least a bachelor’s degree in a specific specialty closely related to the proffered position.

The petitioner is attempting to show that the beneficiary is qualified for the proffered position pursuant to 8 C.F.R. § 214.2(h)(4)(iii)(C)(2), which would require the beneficiary to hold a foreign degree determined to be equivalent to a United States baccalaureate or higher degree required by the specialty occupation. The degree required by the specialty occupation is that required by section 214(i)(1) of the Act, that is, the degree in the specific specialty required for entry into the specialty occupation identified in the visa petition. Although this appears to be a question of first impression, the AAO finds that the requisite degree must be a degree with a major in the specific specialty required by the proffered position, not a degree with a minor in that specific specialty.

In any event, the AAO accords no evidentiary weight and no probative value to the skeletal evaluation provided by Morningside Evaluations and Consulting. Several reasons exist for discounting the evaluation. The beneficiary’s academic transcripts nowhere indicate that the beneficiary was awarded a joint Bachelor of Landscape/Bachelor of Business Administration degree as claimed in the first paragraph of the evaluation and in its introductory heading. Further, the evaluator provided no basis of knowledge about the content of the courses that he cited as equivalent to approximately “30 credit hours in Business Administration,” and he provided no explanation of how those 30 hours would equate to even a minor concentration in Business Administration at an accredited United States institution of higher learning, let alone a major or major concentration equivalent to a bachelor’s degree in Business Administration.

Citizenship and Immigration Services (CIS) uses an evaluation by a credentials evaluation organization of a person’s foreign education as an advisory opinion only. Where an evaluation is not in accord with previous equivalencies or is in any way questionable, it may be discounted or given less weight. *Matter of Sea, Inc.*, 19 I&N Dec. 817 (Comm. 1988). If USCIS fails to believe that a fact stated in the petition is true, USCIS may reject that fact. Section 204(b) of the Act, 8 U.S.C. § 1154(b); see also *Anetekhai v. I.N.S.*, 876 F.2d 1218, 1220 (5th Cir.1989); *Lu-Ann Bakery Shop, Inc. v. Nelson*, 705 F. Supp. 7, 10 (D.D.C.1988); *Systronics Corp. v. INS*, 153 F. Supp. 2d 7, 15 (D.D.C. 2001).

Further, the petitioner would not prevail on the beneficiary qualification issue even if it demonstrated that the beneficiary possesses a generalized degree in business administration. A petitioner must demonstrate that the proffered position requires a precise and specific course of study that relates directly and closely to the position in question. Business administration is a general term including both professional and nonprofessional activities. A degree in business administration alone is, consequently, insufficient to qualify the holder as a member of the professions unless the academic courses pursued and the knowledge gained are realistic prerequisites to a particular occupation within the broad field of business administration and unless that person is engaged, or intends to engage, in that occupation. *Matter of Ling*, 13 I&N Dec. 35 (Reg. Comm. 1968).

Even if the proffered position had been shown to require a minimum of a bachelor's degree in business administration, the evidence submitted would not demonstrate that the beneficiary is qualified for the proffered position. The appeal will be dismissed and the petition denied for failure to qualify the beneficiary under 8 C.F.R. §§ 214.2(h)(4)(iii)(C) and (D).

The record suggests an additional issue that was not discussed in the decision of denial.

In his July 14, 2009 letter counsel cited the on-line wage library for the proposition that the proffered position is in a specialty occupation. Counsel also noted that the Department of Labor's (DOL) *Occupational Outlook Handbook* (the *Handbook*) states that Credit Manager positions require a minimum of a bachelor's degree in finance, accounting, or a related field.

The AAO recognizes the *Handbook* as an authoritative source on the duties and educational requirements of a wide variety of occupations.² The *Handbook* states "Credit authorizers, checkers, and clerks review credit history and obtain the information needed to determine the creditworthiness of individuals or businesses applying for credit." The majority of the duties of the proffered position fit handily into that job description. As to the education required for those positions, the *Handbook* states, "Employers may hire clerks with only a high school diploma, but some prefer workers with an accounting education from a trade school or community college. Most employers provide on-the-job training." The *Handbook* offers no support for the proposition that a minimum of a bachelor's degree or the equivalent in a specific specialty is necessary in order to check the creditworthiness of a potential borrower or the debtors identified in accounts receivable.

Counsel, however, asserted that the proffered position is similar to that of a credit manager. Credit manager positions are discussed in the *Handbook* section entitled Financial Managers. That section states, "*Credit managers* oversee the firm's issuance of credit, establishing credit-rating criteria, determining credit ceilings, and monitoring the collections of past-due accounts" The AAO notes that the proffered position might arguably be a position for a credit manager. The AAO will assume, *arguendo*, that the proffered position is for a credit manager so that it may reach counsel's

² The *Handbook*, which is available in printed form, may also be accessed on the Internet, at <http://www.stats.bls.gov/oco/>. The AAO's references to the *Handbook* are to the 2010 – 2011 edition available online, accessed September 13, 2010.

substantive point. The *Handbook* states, “A bachelor’s degree in finance, accounting, economics, or business administration is the minimum academic preparation for financial managers.”

“Finance, accounting, economics, or business administration” does not describe a single specific specialty. A position that one may qualify for by virtue of possessing a bachelor’s degree in any one of those subjects does not, therefore, require a minimum of a bachelor’s degree or the equivalent in a specific specialty. That the proffered position may qualify as a position for a credit manager or financial manager does not, in itself, qualify the proffered position as a position in a specialty occupation. Even if the petitioner had demonstrated that the proffered position is a position for a credit manager or financial manager, the petitioner would still be obliged to demonstrate that the specific duties of the proffered position require a minimum of a bachelor’s degree or the equivalent in a specific specialty.

Although the petitioner has asserted that the duties of the proffered position do, in fact, require a minimum of a bachelor’s degree or the equivalent in business administration or a related discipline, it has not indicated that any one of the described duties, nor all of them together, could not be performed by someone without such a degree.

Since there must be a close corollary between the required specialized studies and the position, the requirement of a degree with a generalized title, such as business administration, without further specification, does not establish the position as a specialty occupation. See *Matter of Michael Hertz Associates*, 19 I&N Dec. 558 (Comm. 1988). To prove that a job requires the theoretical and practical application of a body of specialized knowledge as required by Section 214(i)(1) of the Act, a petitioner must establish that the position requires the attainment of a bachelor’s or higher degree in a specialized field of study. As explained above, USCIS interprets the degree requirement at 8 C.F.R. § 214.2(h)(4)(iii)(A) to require a degree in a specific specialty that is directly related to the proposed position.

USCIS has consistently stated that, although a general-purpose bachelor’s degree, such as a degree in business administration, may be a legitimate prerequisite for a particular position, requiring such a degree, without more, will not justify a finding that a particular position qualifies for classification as a specialty occupation. See *Royal Siam Corp. v. Chertoff*, 484 F.3d 139, 147 (1st Cir. 2007).

The petitioner has not demonstrated that the proffered position qualifies as a specialty occupation. The appeal will be dismissed and the petition will be denied on this additional basis.

An application or petition that fails to comply with the technical requirements of the law may be denied by the AAO even if the Service Center does not identify all of the grounds for denial in the initial decision. See *Spencer Enterprises, Inc. v. United States*, 229 F. Supp. 2d 1025, 1043 (E.D. Cal. 2001), *aff’d*, 345 F.3d 683 (9th Cir. 2003); see also *Soltane v. DOJ*, 381 F.3d 143, 145 (3d Cir. 2004) (noting that the AAO conducts appellate review on a de novo basis).

The petition will be denied and the appeal dismissed for the above stated reasons, with each considered as an independent and alternative basis for the decision. In visa petition proceedings, the

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burden of proving eligibility for the benefit sought remains entirely with the petitioner. Section 291 of the Act, 8 U.S.C. § 1361. Here, that burden has not been met. The appeal will be dismissed and the petition denied.

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