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U.S. Department of Justice

Immigration and Naturalization Service

*OFFICE OF ADMINISTRATIVE APPEALS*
*425 Eye Street N.W.*
*ULLB, 3rd Floor*
*Washington, D.C. 20536*

[redacted]

File: EAC-01-165-51875 Office: Vermont Service Center Date: JUN 24 2002

IN RE: Petitioner: [redacted]
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)

PUBLIC COPY

IN BEHALF OF PETITIONER:

[redacted]

INSTRUCTIONS:
This is the decision in your case. All documents have been returned to the office which originally decided your case. Any further inquiry must be made to that office.

If you believe the law was inappropriately applied or the analysis used in reaching the decision was inconsistent with the information provided or with precedent decisions, you may file a motion to reconsider. Such a motion must state the reasons for reconsideration and be supported by any pertinent precedent decisions. Any motion to reconsider must be filed within 30 days of the decision that the motion seeks to reconsider, as required under 8 C.F.R. 103.5(a)(1)(i).

If you have new or additional information which you wish to have considered, you may file a motion to reopen. Such a motion must state the new facts to be proved at the reopened proceeding and be supported by affidavits or other documentary evidence. Any motion to reopen must be filed within 30 days of the decision that the motion seeks to reopen, except that failure to file before this period expires may be excused in the discretion of the Service where it is demonstrated that the delay was reasonable and beyond the control of the applicant or petitioner. Id.

Any motion must be filed with the office which originally decided your case along with a fee of $110 as required under 8 C.F.R. 103.7.

FOR THE ASSOCIATE COMMISSIONER,
EXAMINATIONS

Robert P. Wiemann, Director
Administrative Appeals Office

**DISCUSSION:** The nonimmigrant visa petition was denied by the Director, Vermont Service Center, and is now before the Associate Commissioner, Examinations, on appeal. The appeal will be dismissed.

The petitioner is a real estate sales and marketing company with 30 employees and an approximate gross annual income of $1 million. It seeks to employ the beneficiary as a marketing specialist for a period of three years. The director determined the petitioner had not established that the beneficiary is qualified to perform services in a specialty occupation.

On appeal, counsel submits a brief and additional documentation.

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), provides in part for nonimmigrant classification to qualified aliens who are coming temporarily to the United States to perform services in a specialty occupation. Section 214(i)(1) of the Act, 8 U.S.C. 1184(i)(1), defines a "specialty occupation" as an occupation that requires theoretical and practical application of a body of highly specialized knowledge, and 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.

Pursuant to section 214(i)(2) of the Act, 8 U.S.C. 1184(i)(2), to qualify as an alien coming to perform services in a specialty occupation the beneficiary must hold full state licensure to practice in the occupation, if such licensure is required to practice in the occupation. In addition, the beneficiary must have completed the degree required for the occupation, or have 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 director determined that the beneficiary does not have a degree closely related to the position of marketing specialist, nor does she have sufficient experience to compensate for the lack of a related degree.

On appeal, counsel argues that the denial of the petition is arbitrary and capricious in that it ignores facts and law both of record and as found in prior Service decisions. Specifically, counsel argues that the beneficiary is in full mastery of the technical requirements for setting forth real estate specifications and legal requirements both in France and in the United States. Counsel further asserts that the beneficiary's computer knowledge permits her to use this interpretation of complex concepts in web site design.

The petitioner is a full service real estate brokerage licensed by the State of New York, with offices in New York and Paris. The petitioner states that its business encompasses all aspects of the residential real estate market in New York City and the rental and sales market in Paris and other French Prefectures. The petitioner indicates that it locates short term and/or long term residences for people who are taking up residence in either New York City or in France. The petitioner wishes to employ the beneficiary as a marketing analyst. In the initial I-129 petition, the petitioner described the duties of the position as follows:

> [The beneficiary's] duties will be to program and translate NY Habitat's website for the European market.

The petitioner states that it is essential that an accurate interpretation and explanation of its services be provided to potential clients. The petitioner indicates that it wishes to employ the beneficiary to ensure that it has a professionally worded website without clumsy and inaccurate word and phrase usage. The petitioner states that the job is one which involves conceptual and linguistic interpretation, not merely translation of words.

In response to a Service request for additional evidence, the petitioner provided the following, expanded description of the duties of the proffered position:

> Formulate and oversee the implementation of an overall domestic and international marketing strategy; [g]enerate increased demand for our services through identifying and exploiting new market opportunities consistent with those strategies; [d]evelop suitable promotional material to advertise our services both nationally and internationally; [d]etermine target audiences in European countries and develop promotion campaigns in each country's own language; [p]repare marketing plans, programs and budgets in consultation with the Financial Department and provide timely, adequate and accurate reports as required; [e]stablish clear communication channels and feedback mechanisms with the real estate & travel industry, the media, our partners and our customers; [i]dentify and attend relevant industry trade shows, conventions and conferences; [m]anage the provision of comprehensive and accurate content, advice and information about our rental services on the Internet, including production of newsletters and magazine articles; [r]esearch and establish strategic alliances abroad to assist in the promotion of our services in specific target markets; [c]onduct market research and surveys to generate information that will facilitate better strategic decision making; [c]reate, support and enhance effective team working relationships

between our NYC headquarters and our satellite office in Paris, and with our strategic partners.

Pursuant to 8 C.F.R. 214.2(h)(4)(iii)(C), to qualify to perform services in a specialty occupation, the 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 shows that the beneficiary received a "Licence" (Licentiate) in June 1998 and has completed some of the requirements for the degree of "Maitrise" (Master). An educational evaluation service found the beneficiary's foreign education to be equivalent to a bachelor's degree, and part of a Master's degree, specializing in Applied Foreign Languages (English and Italian), at an accredited institution of higher education in the United States.

The proffered position, as described by the petitioner, is that of a marketing specialist. A review of the beneficiary's transcripts from the University of Paris reveals that the beneficiary's course work consisted of general studies, French, English, and Italian. The transcript does not show that the beneficiary completed any business or marketing related courses during her studies. In view of the foregoing, it is concluded that the beneficiary does not qualify to perform services in a specialty occupation based on her education alone.

Pursuant to 8 C.F.R. 214.2(h)(4)(iii)(D)(1), equivalence to completion of a United States baccalaureate or higher degree shall mean 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 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.

According to the beneficiary's resume, she worked for SOGEDICOM, a translation and interpretation agency, as a bilingual hostess from October 1997 to May 1999. Counsel submits, on appeal, a letter from David Barchmann, Chief Executive Officer of SOGEDICOM. Mr. Barchmann states that the beneficiary worked for his company as a sales executive from October 1997 to May 1999. He states that the beneficiary's specialty is real estate investment. He further states, "[h]er outstanding cross-country technical and marketing expertise was a key factor in allowing us to get successful cooperation under way with new major Italian, Swiss, French and American customers." However, Mr. Barchmann has not provided a description of the beneficiary's actual duties during her employment for SOGEDICOM.

The beneficiary states in her resume that her duties included the following:

1. Managing a team of three people.

2. Managing [c]ustomer portfolio.

3. Preparing outside communication and marketing strategy.

4. Organizing conferences and trade shows in Paris and abroad.

Although this description is vague and incomplete, it does indicate that one of the duties of the position involved developing marketing strategies. However, the record contains no evidence to show that the beneficiary's foreign education and work experience qualify her to perform the duties of a specialty occupation such as 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.

Pursuant to 8 C.F.R. 214.2(h)(4)(iii)(D)(5), the Service may determine that equivalence to completion of a baccalaureate degree

in a 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 for expertise in the specialty occupation as a result of such training and experience. For purposes of determining equivalency to a baccalaureate degree, 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.

Since the beneficiary lacks at least one year of academic coursework in marketing or a related field, the petitioner must demonstrate that the beneficiary has at least three years of related work experience. In this case, the beneficiary's one year and seven months of work experience are not sufficient to compensate for the lack of a bachelor's degree in marketing or a related field.

Furthermore, the record, as it is presently constituted, does not contain sufficient evidence to show that the beneficiary's work experience included the theoretical and practical application of specialized knowledge required by the specialty occupation; that her 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.

It is noted that the beneficiary's primary responsibility will be to program and translate the petitioner's web site for the European market. The record does not contain any evidence to show that the beneficiary has computer training or relevant work experience which would enable her to program an internet web site. While the beneficiary holds the foreign equivalent of a bachelor's degree in foreign languages, the petitioner has not established that the beneficiary's duties as a translator are of such complexity that a baccalaureate degree in a specific specialty is necessary for the successful completion of the duties of the position.

The beneficiary is not a member of any organizations whose usual prerequisite for entry is a baccalaureate degree in a specialized area. The record contains no evidence that the beneficiary holds a state license, registration, or certification which authorizes her to practice a specialty occupation. In view of the foregoing, it is concluded that the petitioner has not demonstrated that the

beneficiary is qualified to perform services in a specialty occupation.

Beyond the decision of the director, it is noted that the proffered position appears to combine the duties of a technical translator and a marketing research manager. According to the Department of Labor's Occupational Outlook Handbook, 2002-2003 edition, neither position qualifies as a specialty occupation. Counsel, on appeal, argues that the proffered position is a specialty occupation and cites "the developing body of case law" in support of his argument. The petitioner has not persuasively established that the proffered position is a specialty occupation within the meaning of the regulations. As this matter will be dismissed on the grounds discussed, this issue need not be examined further.

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. Accordingly, the decision of the director will not be disturbed.

ORDER: The appeal is dismissed.