



U.S. Citizenship
and Immigration
Services

D,

[REDACTED]

FILE: WAC 08 138 52287 OFFICE: CALIFORNIA SERVICE CENTER DATE: **DEC 03 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).

Perry Rhew
Chief, Administrative Appeals Office

DISCUSSION: The service center director 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 avers that it is an international technology distributor that was established in 2006 and has five employees. It seeks permission to employ the beneficiary as an account manager and, 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 duties of the proffered position. On appeal, counsel submits a brief and additional evidence.¹

When filing the petition, the petitioner indicated that it sought to hire the beneficiary as an account manager and that, although the beneficiary had not completed the requirements for a baccalaureate degree, his education combined with his "progressive work experience" qualified him for the position, which the petitioner indicated required the incumbent to possess a bachelor's degree. Although the petitioner submitted a copy of the beneficiary's resume, coursework, and an employment letter, it did not submit an evaluation of the beneficiary's credentials as discussed at 8 C.F.R. § 214.2(h)(4)(iii)(D).

In an April 25, 2008 request for evidence (RFE), the director asked the petitioner to submit, in part, a foreign educational credentials evaluation. In response, the petitioner submitted two evaluations. The first evaluation was from Career Consulting International. The evaluator stated that the beneficiary's "education is equivalent to US Bachelor's Degree with a Concentration in Business from a Regionally Accredited University or College in the United States of America."² The second evaluation was from Marquess Educational Consultants, which found the beneficiary's combined education and experience to be equivalent to a bachelor's degree with a concentration in business from an institution of postsecondary education in the United States.

On July 28, 2008 the director denied the petition. Citing *Matter of Ling*, 13 I&N Dec. 35 (Reg. Comm. 1968), the director noted that a degree in business studies was a generalist degree that did not inherently involve the theoretical and practical application of a body of highly specialized knowledge. The director therefore concluded that the beneficiary was not qualified to perform the duties of an account manager.

Section 214(i)(1) of the Act, 8 U.S.C. § 1184(i)(1), defines a specialty occupation as one that requires (1) the theoretical and practical application of a body of highly specialized knowledge, and

¹ On appeal, counsel appears to believe that the director denied the petition solely because the offered job was not a specialty occupation; however, nowhere in the director's decision did she state either implicitly or explicitly that the job was not a specialty occupation. Thus, this decision will not reference counsel's arguments on appeal, as they do not relate to the reason why the petition was denied.

² Elsewhere in the evaluation, the evaluator makes clear that her conclusions were based on an assessment of the beneficiary's combined education and experience, not just his education.

(2) 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), 8 U.S.C. § 1184(i)(2), to be qualified to perform the duties of a specialty occupation, a beneficiary 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.

The regulations further define how to determine whether a beneficiary is qualified to perform the duties of a specialty occupation. The specific regulations at 8 C.F.R. § 214.2(h)(4)(iii)(C) and (D) state the following:

(C) Beneficiary qualifications. 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.

(D) Equivalence to completion of a college degree. For purposes of paragraph (h)(4)(iii)(C)(4) of this section, 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 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. For purposes of determining equivalency to a baccalaureate degree in the specialty, three years of specialized training and/or work experience must be demonstrated for each year of college-level training the alien lacks. For equivalence to an advanced (or Masters) degree, the alien must have a baccalaureate degree followed by at least five years of experience in the specialty. If required by a specialty, the alien must hold a Doctorate degree or its foreign equivalent. 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 occupation;

(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 authority³ has determined to be significant contributions to the field of the specialty occupation.

As a preliminary matter, the AAO notes that the director erred in accepting the evaluations of the beneficiary's qualifications that the petitioner had submitted in response to the RFE. According to the regulation at 8 C.F.R. § 214.2(h)(4)(iii)(D), when a petitioner is seeking to qualify a beneficiary for a specialty occupation position based upon a combination of the individual's education and work experience, other than having the U.S. Citizenship and Immigration Services (USCIS) determine such qualifications, a petitioner may submit one 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); or (3) an evaluation of education by a reliable credentials evaluation service which specializes in evaluating foreign educational credentials.

Here, the petitioner submits two evaluations of the beneficiary's combined education and work experience from two credentials evaluation services. However, credentials evaluation services may evaluate education only, not work experiences. Other than USCIS, only an official who has the 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, may evaluate a beneficiary's combination of education, training, and work experience. Therefore, the director should have found these two evaluations insufficient for the petitioner to meet its burden of proof in this matter. Accordingly, neither evaluation carries any weight. The AAO shall assess the beneficiary's qualifications based upon the criteria found in the regulation at 8 C.F.R. § 214.2(h)(4)(iii)(D)(5).

The record indicates that the beneficiary completed two years of study towards a baccalaureate degree from the Hebrew University of Jerusalem. The two years of study were towards a major in East Asian Studies. A review of the beneficiary's coursework does not include any classes related to business studies. The record also includes one letter from K.S. Sales & Marketing that was dated March 10, 2008. The writer states that the beneficiary was employed as a "Principal, Business Development and Account Manager from January 2007 to Present." The final item of evidence relating to the beneficiary's work history is a July 18, 2008 letter from the District Court in Jerusalem, which states that the beneficiary "joined the division 7 years ago and was promoted during his time here from a shift manager to managing the entire facility." The writer of the letter does not indicate when the beneficiary's employment with the court ended.

³ *Recognized authority* means a person or an organization with expertise in a particular field, special skills or knowledge in that field, and the expertise to render the type of opinion requested. Such an 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).

The beneficiary's education and work experience do not equate to a baccalaureate degree in business administration or a related field. The regulation at 8 C.F.R. § 214.2(h)(4)(iii)(D)(5) states that three years of specialized training and/or work experience must be demonstrated for each year of college-level training the alien lacks. With only two years of college courses, the beneficiary needs to establish that he had at least six years of training and/or work experience that is related to the degree that the specialty occupation requires. The beneficiary's letter of reference from his employer, K.S. Sales and Marketing, indicates that the beneficiary had only one year and two months of work experience at the time the petition was filed. Similarly, the letter from the District Court does not indicate the period of the beneficiary's employment, stating only that he "joined the division 7 years ago." Furthermore, the information in either letter does not clearly demonstrate that the beneficiary's work experience included the theoretical and practical application of specialized knowledge, was gained while working with peers, supervisors, or subordinates who have a degree or its equivalent, or that the beneficiary has recognition of expertise in the area of business studies or a related field. As the beneficiary's education and work experience do not equate to a degree in the field of business studies or a related area, he is not qualified for a position that would require such a degree. Accordingly, the petition may not be approved.

Beyond the director's decision, the AAO finds that the proffered position is not a specialty occupation. The position of account manager that the petitioner is offering is, unlike counsel's arguments on appeal, not akin to a market or operations research analyst position. Rather, the position is similar to a marketing or sales manager position. The 2008-2009 edition of the Department of Labor's *Occupational Outlook Handbook (Handbook)* does not indicate that the normal minimum requirement for entering into the occupation is a bachelor's degree in a specific field of study. For this additional reason, the petition may not be approved.⁴

Pursuant to section 291 of the Immigration and Nationality Act, 8 U.S.C. § 1361, the burden of proof is upon the petitioner to establish eligibility for the benefit it is seeking. Here, the petitioner has not met its burden. Accordingly, the AAO affirms the director's decision to deny the petition and dismisses the appeal.

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

⁴ The AAO maintains plenary power to review each appeal on a de novo basis. 5 U.S.C. 557(b) ("On appeal from or review of the initial decision, the agency has all the powers which it would have in making the initial decision except as it may limit the issues on notice or by rule."); *see also, Janka v. U.S. Dept. of Transp., NTSB*, 925 F.2d 1147, 1149 (9th Cir. 1991). The AAO's de novo authority has been long recognized by the federal courts. *See, e.g. Dor v. INS*, 891 F.2d 997, 1002 n. 9 (2d Cir. 1989).