

Identifying data deleted to
prevent clearly unwarranted
invasion of personal privacy

U.S. Department of Homeland Security
20 Massachusetts Ave. NW, Rm. A3042
Washington, DC 20529



U.S. Citizenship
and Immigration
Services

PUBLIC COPY



DI

FILE: SRC 04 018 50253 Office: TEXAS SERVICE CENTER

Date: AUG 31 2005

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: Self-represented

INSTRUCTIONS:

This is the decision of the Administrative Appeals Office in your case. All materials have been returned
to the office that originally decided your case. Any further inquiry must be made to that office.

A handwritten signature in cursive script, appearing to read "Robert P. Wiemann".

Robert P. Wiemann, Director
Administrative Appeals Office

DISCUSSION: The service center director denied the nonimmigrant visa petition. The matter is now on appeal before the Administrative Appeals Office (AAO). The appeal will be dismissed. The petition will be denied.

The petitioner markets and distributes satellite television services. It seeks to employ the beneficiary as a logistics and operations manager and 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 on the ground that the proffered position is not a specialty occupation.

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.

As provided in 8 C.F.R. § 214.2(h)(4)(iii)(A), to qualify as a specialty occupation the position must meet one of the following criteria:

- (1) A baccalaureate or higher degree or its equivalent is normally the minimum requirement for entry into the particular position;
- (2) The degree requirement is common to the industry in parallel positions among similar organizations or, in the alternative, an employer may show that its particular position is so complex or unique that it can be performed only by an individual with a degree;
- (3) The employer normally requires a degree or its equivalent for the position; or
- (4) The nature of the specific duties is so specialized and complex that knowledge required to perform the duties is usually associated with the attainment of a baccalaureate or higher degree.

Citizenship and Immigration Services (CIS) 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.

The record of proceeding before the AAO contains: (1) Form I-129 and supporting documentation; (2) the director's request for evidence (RFE); (3) the petitioner's response to the RFE; (4) the director's decision; and (5) Form I-290B and an appeal brief. The AAO reviewed the record in its entirety before issuing its decision.

The petitioner describes itself as a marketer and distributor of subscriptions to satellite signals from television broadcasts. The business was established in 2003 and had one employee at the time the petition was filed. In Form I-129 the petitioner stated that it proposed to hire the beneficiary as logistics and operations manager to “plan, direct, and coordinate logistics and operations.” The duties of the position, and the percentage of time required by each duty, were described as follows in Form I-129 and the petitioner’s subsequent response to the RFE:

- 35%** Formulation of policies, management of daily operations, and planning the use of materials and human resources. Interpret and implement company policies and develop operational procedures to facilitate office operations. Conduct management studies, collecting and interpreting economic and statistical data to prepare budget estimates, determine work load, personnel and equipment requirements, and to forecast future company needs. Approve office personnel assignments, requisitions, and installation of new equipment. Inspect office installations and facilities to ensure that company service and operating standards are followed. Ensure that hardware suppliers (of antennae, decode devices, filters, etc.) have sufficient inventory for timely deliveries to customers.
- 25%** Subscribers – Logistics planning and optimization. Follow up with subscribers in the installation process. Make sure equipment is being properly delivered. Solve logistical problems.
- 15%** Suppliers inventory – Follow up on suppliers’ inventory, schedule of delivery, and release of new products.
- 10%** Reports and management meetings – Submit periodic reports on activities to the general manager.
- 5%** New subscribers review – Review and process new orders.
- 5%** New region logistics – Ensure that logistics of delivery and installation are available and set prior to launching of service in a new region.
- 5%** Training and travel – Participate in new products development, services and regional needs. Travel to new regions and suppliers.

The record indicates that the beneficiary took some courses in the advertising and marketing program at Americo Vespucio University Institute of Technology in Caracas, Venezuela, in the years 1993-1997, and some additional courses at the University Institute of New Professions in Valencia, Venezuela, in the years 1998-1999. The record does not indicate that the beneficiary received a baccalaureate degree from either institution.

In his decision the director determined that the duties of the proffered position reflected those of a marketing manager as described in the Department of Labor’s *Occupational Outlook Handbook (Handbook)*. The director cited an excerpt from the *Handbook* indicating that a baccalaureate level of study in a specific field is not the normal minimum requirement for entry into the occupation. The

petitioner did not show that it had required applicants for the position in the past to have a baccalaureate or higher degree in a specific field, the director noted, or that a bachelor's degree is common to the petitioner's industry for parallel positions in similar organizations. Though the petitioner had submitted a series of Internet job announcements for logistics managers, the record did not show that the companies were similar to the petitioner in their business activities or scale of operations. The director concluded that the proffered position did not qualify as a specialty occupation under any of the criteria enumerated at 8 C.F.R. § 214.2(h)(4)(iii)(A).

On appeal the petitioner asserts that the director erred in classifying the proffered position as that of a marketing manager. The petitioner states that there are two key functions in its business – marketing and distribution – and that the proffered position is concerned with the latter function. The petitioner reiterates its contention that the duties of the position are those of a logistics and operations manager.

In determining whether a position meets the statutory and regulatory criteria of a specialty occupation, CIS routinely consults the DOL *Handbook* as an authoritative source of information about the duties and educational requirements of particular occupations. Factors typically considered are whether the *Handbook* indicates a degree is required by the industry; whether the industry's professional association has made a degree a minimum entry requirement; and whether letters or affidavits from firms or individuals in the industry attest that such firms "routinely employ and recruit only degreed individuals." See *Shanti, Inc. v. Reno*, 36 F.Supp. 2d 1151, 1165 (D.Minn. 1999) (quoting *Hird/Blaker Corp. v. Sava*, 764 F.Supp. 1095, 1102 (S.D.N.Y. 1989)). CIS also analyzes the specific duties and complexity of the position at issue, with the *Handbook's* occupational descriptions as a reference, as well as the petitioner's past hiring practices for the position. See *Shanti, Inc. v. Reno, id.*, at 1165-66.

The AAO agrees with the petitioner that the proffered position does not fall within the *Handbook's* occupational category of marketing manager. The AAO determines that the proffered position involves a combination of duties that fall under two different occupational categories in the *Handbook*. One is "operations manager," a sub-category of the broad occupational category called "top executives." The duties of an operations manager are described as follows in the DOL *Handbook*, 2004-05 edition, at 65:

. . . [O]perations managers plan, direct, or coordinate the operations of companies or public and private sector organizations. Their duties include formulating policies, managing daily operations, and planning the use of materials and human resources, but are too diverse and general in nature to be classified in any one area of management or administration, such as personnel, purchasing, or administrative services. In some organizations, the duties of . . . operations managers may overlap the duties of chief executive officers.

The other occupational category applicable to the proffered position is "transportation, storage, and distribution manager," the duties of which are described as follows in the *Handbook, id.*, at 649: "Plan, direct, or coordinate transportation, storage, or distribution activities in accordance with governmental policies and regulations. Includes logistics managers."

The *Handbook* goes on to describe the educational background and experience of top executives, including operations managers, as follows:

The formal education and experience of top executives varies as widely as the nature of their responsibilities. Many top executives have a bachelor's or higher degree in business administration or liberal arts Some top executives in the public sector have a background in public administration or liberal arts. Others might have a background related to their jobs Because many top executive positions are filled by promoting experienced, lower level managers when an opening occurs, many top managers have been promoted from within the organization. In industries such as retail trade or transportation, for instance, it is possible for individuals without a college degree to work their way up within the company and become managers. However, many companies prefer that their top executives have specialized backgrounds and, therefore, hire individuals who have been managers in other organizations.

Id. at 66. While the foregoing excerpt indicates that some operations manager positions may require baccalaureate or higher degrees in a specific specialty, it is not the normal minimum requirement for entry into such a position.

As for transportation, storage, and distribution managers – including logistics managers – the *Handbook* states the following: “Most significant source of education or training: Work experience in a related occupation.” *Id.* at 649.

Based on the foregoing information the AAO concludes that the proffered position does not meet the first alternative criterion of a specialty occupation, at 8 C.F.R. § 214.2(h)(4)(iii)(A)(1), because a baccalaureate degree in a specific specialty is not the normal minimum requirement for entry into the position.

With regard to the second alternative criterion of a specialty occupation, at 8 C.F.R. § 214.2(h)(4)(iii)(A)(2), the record includes the previously referenced Internet job postings for logistics managers. As the director pointed out in his decision, however, none of the advertising companies is comparable to the petitioner in its scale of operations or line of business. Moreover, only one of the five advertisements states that applicants must have a baccalaureate degree in a specific specialty. The other four do not indicate that an applicant's baccalaureate degree must be in any particular specialty, and three of the four indicate that a baccalaureate degree is not even required, merely that it is “preferred.” Thus, the Internet job postings do not establish that a degree requirement in a specific specialty is common to the petitioner's industry in parallel positions among similar organizations, as required for the proffered position to qualify as a specialty occupation under the first prong of 8 C.F.R. § 214.2(h)(4)(iii)(A)(2). Nor does the evidence of record demonstrate that the proffered position is so complex or unique that a degree in a specific specialty is required to perform the job. Accordingly, the proffered position does not qualify as a specialty occupation under the second prong of 8 C.F.R. § 214.2(h)(4)(iii)(A)(2).

As for the third alternative criterion of a specialty occupation, the proffered position is newly created and the petitioner has no hiring history for it. Thus, the petitioner cannot show that it normally requires a baccalaureate or higher degree in a specific specialty, as required for the position to qualify as a specialty occupation under 8 C.F.R. § 214.2(h)(4)(iii)(A)(3).

Finally, the record does not show that the duties of the proffered position are so specialized and complex that they require knowledge at the level of a baccalaureate or higher degree. Accordingly, the position

does not meet the fourth alternative criterion of a specialty occupation at 8 C.F.R. § 214.2(h)(4)(iii)(A)(4).

For the reasons discussed above, the record does not establish that the proffered position meets any of the criteria enumerated in 8 C.F.R. § 214.2(h)(4)(iii)(A) to qualify as a specialty occupation. Therefore, the petitioner has not established that the beneficiary will be coming temporarily to the United States to perform services in a specialty occupation, as required under section 101(a)(15)(H)(i)(b) of the Act, 8 U.S.C. § 1101(a)(15)(H)(i)(b).

The petitioner bears the burden of proof in these proceedings. *See* section 291 of the Act, 8 U.S.C. § 1361. The petitioner has not sustained that burden. Accordingly, the AAO will not disturb the director's decision denying the petition.

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