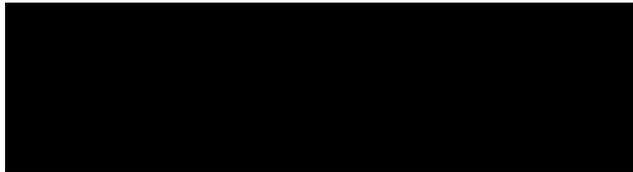


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U.S. Citizenship
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FILE: WAC 04 044 52563 Office: CALIFORNIA SERVICE CENTER Date: JUN 28 2005

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:



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.

for *Michael T. Kelly*
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 is an importer and wholesaler of leather goods. It seeks to employ the beneficiary as an accounts executive 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 grounds that the proffered position was 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 notice of decision; and (5) Form I-290B and a letter from the petitioner. The AAO reviewed the record in its entirety before issuing its decision.

In Form I-129 and an accompanying letter the petitioner described itself as a leather goods importer and wholesaler, established in 1998, with three employees and gross annual income of \$800,000. The petitioner stated that it proposed to hire the beneficiary as an accounts executive – the duties of which, and the percentage of time required by each duty, were listed as follows:

- Organize, plan, and implement marketing and sales strategies for leather goods, which are geared toward retailers and directly to consumers – 15%.
- Analyze sales trends in the leather goods industry – 15%.
- Direct and coordinate various activities to design new solution programs applicable to business issues of client companies, modify and improve existing programs – 20%.
- Confer with management and project team to determine cost based on client's needs, demand, and budget – 20%.
- Act as liaison between clients and company – 10%.
- Prepare technical proposals and negotiate schedules, deliveries and payments – 15%.

In response to the RFE the petitioner submitted an organizational chart showing the accounts executive position to be subordinate to the president and superior to three sales representatives, one of whom had not yet been hired. According to the petitioner the accounts executive required at least a bachelor's degree. The beneficiary graduated from the University of the East in Manila, the Philippines, with a bachelor of science in business administration on March 29, 1978.

In his decision the director determined that the duties of the proffered position paralleled those of a securities, commodities, and financial services sales representative as described in the Department of Labor's *Occupational Outlook Handbook (Handbook)*, 2002-03 edition. The director quoted excerpts from the *Handbook* indicating that a baccalaureate level of study in a specific field is not the normal, industry-wide minimum requirement for entry into the occupation. The record did not establish that the petitioner normally required applicants for the position to have a baccalaureate or higher degree in a specific field, the director declared, or that the duties of the proffered position and its level of responsibility were beyond the scope of what is normally encountered in the occupational field. The evidence failed to establish, the director concluded, that the proffered position could not be performed by an experienced individual with a sub-baccalaureate level of education.

On appeal counsel asserts that the director erred in classifying the proffered position as that of a sales representative in the securities, commodities, or financial services field. The petitioner emphasizes that it is in a different line of business – importing leather goods and selling them wholesale to department stores – and that the accounts executive will conduct the petitioner's business with these clients and direct overall sales and marketing strategies. The petitioner reiterates its contention that the position requires a bachelor's degree.

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 securities, commodities, and financial services sales agents. Rather, the position fits within the *Handbook's* broad category of advertising, marketing, promotions, public relations, and sales managers, whose duties are described generally on page 23 of the *Handbook*, 2004-05 edition, as "coordinat[ing] market research, marketing strategy, sales, advertising, promotion, pricing, product development, and public relations activities." The duties of the proffered position combine the duties of a marketing manager and a sales manager:

Marketing managers develop the firm's detailed marketing strategy. . . . [T]hey determine the demand for products and services offered by the firm and its competitors. In addition, they identify potential markets Marketing managers develop pricing strategy with an eye towards maximizing the firm's share of the market and its profits while ensuring that the firm's customers are satisfied. . . . [T]hey monitor trends that indicate the need for new products and services and oversee product development. Marketing managers work with advertising managers to promote the firm's products and services and to attract potential users.

Handbook, at 23-24.

Sales managers direct the firm's sales program. They assign sales territories, set goals, and establish training programs for the sales representatives They analyze sales statistics gathered by their staffs to determine sales potential and inventory requirements and monitor the preferences of customers

Id. at 24. As for the educational requirements for entry into marketing or sales manager positions, the *Handbook* clearly indicates that a baccalaureate or higher degree in a specific specialty is not the normal, industry-wide standard:

A wide range of educational backgrounds is suitable for entry into advertising, marketing, promotions, public relations, and sales managerial jobs, but many employers prefer those with experience in related occupations plus a broad liberal arts background. A bachelor's degree in sociology, psychology, literature, journalism, or philosophy, among other subjects, is acceptable.

Id. Thus, the accounts executive 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 to enter into the position.

With regard to the second alternative criterion of a specialty occupation, there is no documentation showing that a degree requirement in a specific specialty is common to the industry in parallel positions among similar organizations. Thus, the proffered position does not qualify as a specialty occupation under the first prong of 8 C.F.R. § 214.2(h)(4)(iii)(A)(2). Nor has the petitioner demonstrated that the

proffered position is so complex or unique that a degree in a specific specialty is required to perform the job. The evidence of record indicates that the scope and complexity of the position are in line with those of a typical marketing or sales manager, for which a specialty degree is not required. 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).

Since the proffered position is newly created the petitioner has no history of requiring a specialty degree or its equivalent. Accordingly, the position does not qualify as a specialty occupation under the third alternative criterion at 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. As previously noted, the evidence does not demonstrate that the duties of the position exceed those of a typical marketing or sales manager in their scope or complexity. Accordingly, the position does not require baccalaureate level knowledge in a specific specialty, as required to 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 accounts executive position meets any of the criteria enumerated in 8 C.F.R. § 214.2(h)(4)(iii)(A) to qualify as a specialty occupation. Thus, 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.