

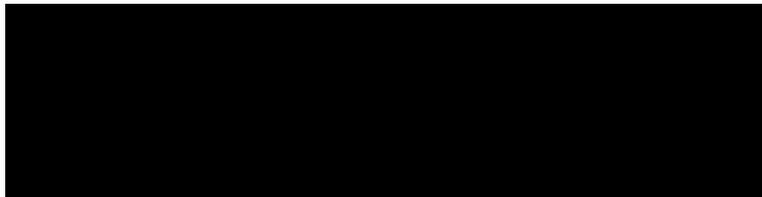
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U.S. Department of Homeland Security
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U.S. Citizenship
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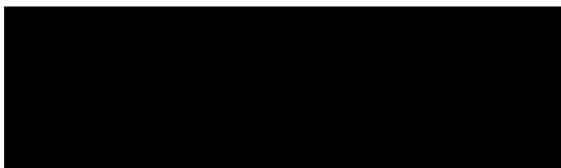
FILE: WAC 04 047 51956 Office: CALIFORNIA SERVICE CENTER Date: **SEP 09 2005**

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:



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.

Robert P. Wiemann, Director
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 is a medical equipment provider that seeks to employ the beneficiary as a business development specialist. The petitioner endeavors to classify the beneficiary as a nonimmigrant worker in a specialty occupation pursuant to § 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 proffered position is not a specialty occupation. On appeal, counsel submits a brief.

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.

Pursuant to 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 additional evidence; (3) the petitioner's response to the director's request; (4) the director's denial letter; and (5) Form I-290B and supporting documentation. The AAO reviewed the record in its entirety before issuing its decision.

The petitioner is seeking the beneficiary's services as a business development specialist. Evidence of the beneficiary's duties includes: the I-129 petition; the petitioner's December 4, 2003 letter in support of the

petition; and the petitioner's response to the director's request for evidence. According to this evidence, the beneficiary would perform duties that entail: conducting product, demographic, financial, economic, operational, market, or developmental research; compiling and analyzing information on national, statewide, and local demographic, market, and developmental conditions and trends; performing market research studies and market analysis for existing and new medical supplies and equipment; and performing special projects and independent work, as required by the petitioner's president. The petitioner indicated that a qualified candidate for the job would possess a bachelor's degree in business administration or a related field.

The director found that the proffered position, which is similar to that of a marketing manager, was not a specialty occupation. Citing to the Department of Labor's *Occupational Outlook Handbook*, 2004-2005 edition, the director noted that the minimum requirement for entry into the position was not a baccalaureate degree or its equivalent in a specific specialty. The director found further that the petitioner failed to establish any of the criteria found at 8 C.F.R. § 214.2(h)(4)(iii)(A).

On appeal, counsel states that the director misclassified the proffered position. According to counsel, the petitioner has satisfied two criteria of 8 C.F.R. § 214.2(h)(4)(iii)(A). Counsel states that a baccalaureate degree or its equivalent is normally the minimum requirement for entry into the particular position, and that the proffered position is so specialized and complex that the knowledge required to perform the duties is usually associated with the attainment of a baccalaureate degree. Accordingly, the AAO will address these two criteria only.

The AAO turns first to the criterion at 8 C.F.R. § 214.2 (h)(4)(iii)(A)(I) – a baccalaureate or higher degree or its equivalent is normally the minimum requirement for entry into the particular position. Counsel asserts that the proffered position meets this criterion because the petitioner is an extensively sales and marketing dependent enterprise, thereby necessitating the services of a professional; however, the AAO disagrees. In this case, although the petitioner was established in 1999, information on the petition reflects only an “anticipated” number of employees and an “anticipated” gross annual income. Although the petitioner's president asserts that the petitioner currently has a “skeletal workforce” and 300 existing clients, the record contains no evidence in support of these assertions, such as quarterly wage reports and federal income tax returns. As such, the exact nature of the proffered position is unclear. Going on record without supporting documentary evidence is not sufficient for purposes of meeting the burden of proof in these proceedings. *Matter of Soffici*, 22 I&N Dec. 158, 165 (Comm. 1998) (citing *Matter of Treasure Craft of California*, 14 I&N Dec. 190 (Reg. Comm. 1972)). Accordingly, the petitioner has not established that the position is a specialty occupation based upon the normal minimum requirement of a baccalaureate or higher degree or its equivalent for entry into the particular position.

The AAO now turns to 8 C.F.R. § 214.2(h)(4)(iii)(A)(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. Counsel asserts that the proffered position meets this criterion because the duties entail complex and sophisticated elements; however, the AAO disagrees. Again, as discussed above, although the petitioner was established in 1999, information on the petition reflects only an “anticipated” number of employees and an “anticipated” gross annual income. Although the petitioner's president asserts that the petitioner currently has a “skeletal workforce” and 300 existing clients, the record contains no evidence in support of these assertions, such as quarterly wage reports and federal income tax returns. As such, the exact nature of the proposed duties is unclear. Again, going on record without supporting documentary evidence is not sufficient for purposes of meeting the burden of proof in these proceedings.

Matter of Soffici, 22 I&N Dec. 158, 165 (Comm. 1998) (citing *Matter of Treasure Craft of California*, 14 I&N Dec. 190 (Reg. Comm. 1972)). Accordingly, the petitioner has not established that the position is a specialty occupation based upon the complexity of its duties.

As related in the discussion above, the petitioner has failed to establish that the proffered position is a specialty occupation. Accordingly, the AAO shall not disturb the director's denial of the petition.

Beyond the decision of the director, the record contains inconsistencies regarding the beneficiary's birth date, which is reflected as May 17, 1969 on the petition and the beneficiary's transcripts, as opposed to May 17, 1968 in the beneficiary's passport. The record contains no explanation for these inconsistencies. It is incumbent upon the petitioner to resolve any inconsistencies in the record by independent objective evidence. Any attempt to explain or reconcile such inconsistencies will not suffice unless the petitioner submits competent objective evidence pointing to where the truth lies. *Matter of Ho*, 19 I&N Dec. 582, 591-92 (BIA 1988). Doubt cast on any aspect of the petitioner's proof may, of course, lead to a reevaluation of the reliability and sufficiency of the remaining evidence offered in support of the visa petition. *Matter of Ho*, 19 I&N Dec. 582, 591 (BIA 1988).

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.

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