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U.S. Citizenship
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Services

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FILE: WAC 04 158 50447 Office: CALIFORNIA SERVICE CENTER Date: JUL 03 2006

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.

for Michael T. Kelly
Robert P. Wiemann, Chief
Administrative Appeals Office

DISCUSSION: The director of the service center 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 engaged in the business of seafood importing and distributing and seeks to employ the beneficiary as a business development specialist. The petitioner, therefore, endeavors to classify the beneficiary as a nonimmigrant 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 proffered position is not a specialty occupation. On appeal, counsel submits a brief and additional evidence.

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 Form I-129; the attachments accompanying the Form I-129; the company

support letter; and the petitioner's response to the director's request for evidence. According to this evidence, the beneficiary would perform duties that entail gathering and analyzing financial data to determine business opportunities domestically, abroad, and over the internet (20% of time); marketing products/services locally and domestically to meet with the rapidly expanding demand (15% of time); directing promotional advertising (10% of time); administering contracts and generating new accounts (15% of time); researching, developing, and marketing new and existing services to take advantage of the potential for revenue in e-commerce based sales (10% of time); interpreting data concerning price, stability, future trends, and economic influences pertinent to the food industry (10% of time); using computer programs to repair reports and draw charts and graphs illustrating profit and cost analysis (10% of time); analyzing records of present and past operations, costs, estimated and realized revenues, administrative commitments, and obligations incurred to project future revenue and expenses (10% of time). The petitioner stated that the position requires a bachelor's degree in business related fields.

The director determined that the proffered position was not a specialty occupation. The director found that the duties of the position as described by the petitioner are those of a market research analyst, public relations specialist and marketing manager. The director noted that the Department of Labor's (*DOL Occupational Outlook Handbook* (the *Handbook*) indicated that the positions of advertising, marketing, promotions, public relations, and sales managers are occupations that do not require a baccalaureate level of education in a specific specialty as a normal, industry wide minimum for entry into the occupation. The director stated that the evidence submitted is insufficient to establish that the position being offered requires the attainment of a baccalaureate or higher degree or its equivalent and that a baccalaureate degree is normally the minimum requirement for entry into the particular position; the degree requirement is common to the industry in parallel positions among similar organizations; that the position is so complex or unique that it can be performed only by an individual with a degree; that the employer normally requires a degree or its equivalent for the position; or that 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.

On appeal, counsel asserts that the position of business development specialist incorporates budgeting, public relations and marketing duties. Counsel contends that each of the enumerated duties requires a degree. Counsel asserts that the proffered position has significant marketing related duties as a market research analyst. Counsel asserts that the proffered position is more of a market research analyst than that of a marketing manager. Counsel refers to the Department of Labor's *Dictionary of Occupational Titles (DOT)* as assigning a Specific Vocational Preparation (SVP) index of 7 to market research analyst positions. The AAO notes that the DOL has replaced the *DOT* with the *Occupational Outlook Network (O*Net)*. Both the *DOT* and *O*Net* provide only general information regarding the tasks and work activities associated with a particular occupation, as well as the education, training education and experience required to perform the duties of that occupation. The *DOL Handbook* provides a more comprehensive description of the nature of a particular occupation and the education, training and experience normally required to enter into and advance within an occupation. Neither the *DOT* nor the *O*Net* indicate that a specific degree is required for an occupation. For this reason, the AAO is not persuaded by a claim that the offered position is a specialty occupation simply because DOL has assigned it a specific SPV rating in the *DOT*.

Upon review of the record, the petitioner has established none of the four criteria outlined in 8 C.F.R. § 214.2(h)(4)(iii)(A). Therefore, the proffered position is not a specialty occupation.

The AAO considers the criteria at 8 C.F.R. §§ 214.2(h)(4)(iii)(A)(1) and (2): a baccalaureate or higher degree or its equivalent is the normal minimum requirement for entry into the particular position; a degree

requirement is common to the industry in parallel positions among similar organizations; or a particular position is so complex or unique that it can be performed only by an individual with a degree. Factors often considered by CIS when determining these criteria include: whether the *Handbook* reports that the industry requires a degree; 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*, 712 F. Supp. 1095, 1102 (S.D.N.Y. 1989)).

In determining whether a position qualifies as a specialty occupation, CIS looks beyond the title of the position and determines, from a review of the duties of the position and any supporting evidence, whether the position actually requires the theoretical and practical application of a body of highly specialized knowledge, and the attainment of a baccalaureate degree in a specific specialty as the minimum for entry into the occupation as required by the Act.

Counsel contends that many of the duties of the proffered position are those of a budget analyst. The *Handbook* states that budget analysts have many responsibilities in organizations, but their primary task is providing advice and technical assistance in the preparation of annual budgets. At the beginning of each budget cycle, managers and department heads submit proposed operational and financial plans to budget analysts for review. These plans outline prospective programs, including proposed funding increases and new initiatives, estimated costs and expenses, and capital expenditures needed to finance these programs. The *Handbook* further notes that after the initial review process, budget analysts consolidate individual departmental budgets into operating and capital budget summaries. These summaries contain comments and statements that support or argue against funding requests. Budget summaries then are submitted to senior management, or, as is often the case in local and State governments, to appointed or elected officials.

The petitioner stated that it had six employees. No tax records have been provided. The petitioner has not described its budget cycle or the different departmental funding that is to be reviewed by the beneficiary and the department heads that will receive the proposals. The petitioner does not relate the financial analysis duties described in response to the request for evidence to its particular business operations. The petitioner must do more than simply recite the duties of a position as listed in the *Handbook*; it must describe how those duties will be executed in the context of its business operations. For these reasons, the AAO is not persuaded that the duties listed as "analyzing records of present and past operations, costs, estimated and realized revenues, administrative commitments, and obligations incurred to project future revenue and expenses" are the duties of a budget analyst, or that they require a bachelor's degree as a minimum for entry into the occupation.

Counsel also asserts that the proffered position is more of a market research analyst position than a marketing manager position. The *Handbook* notes that market research analysts are concerned with the potential sales of a product or service. They gather statistical data on competitors; examine prices, sales, and methods of marketing and distribution; and analyze data on past sales to predict future sales. Market research analysts devise methods and procedures for obtaining the data they need. Often, they design telephone, mail, or Internet surveys to assess consumer preferences. They conduct some surveys as personal interviews, going door-to-door, leading focus group discussions, or setting up booths in public places such as shopping malls. Trained interviewers usually conduct the surveys under the market research analyst's direction. The petitioner has not described the methods and procedures to be devised by the beneficiary or described the surveys to be used. The AAO finds that the record does not support counsel's assertions that the proffered position is similar to that of a market research analyst.

Based on the record of proceeding, the AAO has determined that the proffered position is most similar to that of a marketing manager and a public relations specialist as described in the *Handbook*. According to the *Handbook*, marketing managers develop the firm's detailed marketing strategy. With the help of subordinates, marketing managers determine the demand for products and services offered by the firm and its competitors. In addition, they identify potential markets. According to the *Handbook*, 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. The majority of the duties described by the petitioner fall within the position of marketing manager. The above description of marketing managers is similar to the proffered position in that the duties include marketing products/services locally and domestically to meet with the rapidly expanding demand (15% of time); directing promotional advertising (10% of time); administering contracts and generating new accounts (15% of time); researching, developing, and marketing new and existing services to take advantage of the potential for revenue in e-commerce based sales (10% of time); and interpreting data concerning price, stability, future trends, and economic influences pertinent to the food industry (10% of time).

With respect to the educational qualifications required of marketing managers, the *Handbook* states:

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. For marketing, sales and promotions management positions, some employers prefer a bachelor's or master's degree in business administration with an emphasis on marketing.

The petitioner also asserts that the proffered position is that of a public relations specialist. The *Handbook* reveals that public relations specialists handle organizational functions such as media, community, consumer, industry, and governmental relations; political campaigns; interest-group representation; conflict mediation; and employee and investor relations. They do more than "tell the organization's story." They must understand the attitudes and concerns of community, consumer, employee, and public interest groups and establish and maintain cooperative relationships with them and with representatives from print and broadcast journalism.

The *Handbook* reveals the following about the training and education of public relations specialists:

There are no defined standards for entry into a public relations career. A college degree combined with public relations experience, usually gained through an internship, is considered excellent preparation for public relations work Many entry-level public relations specialists have a college major in public relations, journalism, advertising, or communication. Some firms seek college graduates who have worked in electronic or print journalism. Other employers seek applicants with demonstrated communication skills and training or experience in a field related to the firm's business

Consequently, there is insufficient evidence in the record to establish that a baccalaureate or higher degree or its equivalent in a specific specialty is the normal minimum requirement for entry into the position of marketing manager or public relations specialist.

To establish the second criterion - that a specific degree requirement is common to the industry in parallel positions among similar organizations - counsel submits two internet job postings. This evidence fails to establish that a specific baccalaureate degree is common to the industry in parallel positions among similar

organizations. The evidence does not establish that the organizations are similar to the petitioner. For example, Core Business Solutions, Inc. provides document management software. The second job posting indicates that the employer is in the consulting business. These organizations are not similar to the petitioner, which imports seafood. Consequently, the postings fail to establish that there is a specific baccalaureate degree that is a common industry-wide requirement.

Nor is there evidence in the record to establish the third criterion at 8 C.F.R. § 214.2(h)(4)(iii)(A): that the petitioner normally requires a specific degree or its equivalent for the position.

The fourth criterion at 8 C.F.R. § 214.2(h)(4)(iii)(A) requires that the petitioner establish that the nature of the specific duties is so specialized and complex that the knowledge required to perform the duties is usually associated with the attainment of a baccalaureate or higher degree. To the extent they are described in the record, the duties of the position are not so specialized and complex that the knowledge required to perform them is usually associated with the attainment of a baccalaureate or higher degree in a specific specialty. The duties parallel those in the *Handbook* for a marketing manager and a public relations specialist, occupations that do not require a specific baccalaureate degree. The petitioner therefore fails to establish the fourth criterion.

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.