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U.S. Citizenship
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FILE: SRC 04 090 51598 Office: TEXAS SERVICE CENTER Date: JUN 22 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 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, Chief
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 a travel agency. It seeks to employ the beneficiary as a sales 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.

In its initial submission, including Form I-129 and an accompanying letter, the petitioner described itself as a travel agency which specializes in servicing a French-speaking clientele with tours in Louisiana and other parts of the United States. The petitioner stated that it was established in 1998, has five employees, and gross annual income of \$1.5 million. The petitioner indicated that it wishes to hire the beneficiary for three years as a sales and operations manager, at an annual salary of \$30,000, to perform the following duties:

- Direct overall advertising, promotions, marketing, sales, and public relations responsibilities, and operations of [the petitioner].
- Supervise other employees.
- Serve as a liaison between [the petitioner] and corporate clientele. [The beneficiary] will communicate with French-speaking clientele in their native language.
- Develop programs combining advertising with purchase incentives to increase sales [The beneficiary] will develop and coordinate promotion programs which may involve direct mail, telemarketing, television or radio advertising, catalogs, exhibits, inserts in newspapers, internet advertisements or websites, and special events.
- Develop and refine [the petitioner's] detailed marketing strategy. With the help of subordinates, [the beneficiary] will determine the demand for products and services offered by [the petitioner] and its competitors. In addition, he will identify potential markets – for example, business firms, wholesalers, retailers, government, or the general public. [The beneficiary] will develop pricing strategies with an eye toward maximizing the [petitioner]'s share of the market and its profits while ensuring that the company's customers are satisfied. [The beneficiary] will monitor trends that indicate the need for new products and services and oversee product development. He will work with advertising and promotion subcontractors to promote the [petitioner]'s products and services and to attract potential users.
- [The beneficiary] will evaluate advertising and promotion programs for compatibility with public relations efforts and serve as the eyes and ears of [the petitioner]. He will monitor social, economic, and political trends that might ultimately affect the travel business, especially those involving travelers from French-speaking countries, and make recommendations to enhance the firm's image base on those trends.
- [The beneficiary] will direct [the petitioner]'s sales program. He will assign sales territories, set goals, and establish training programs for the sales representatives. He will advise sales representatives on ways to improve their sales performance. He will analyze sales statistics to determine sales potential and monitor the preferences of customers.
- [The beneficiary] will be responsible for recording and analyzing [the petitioner]'s financial information. He will be responsible for budgeting, performance evaluation, cost management, and asset management.
- [The beneficiary] periodically will examine and evaluate [the petitioner]'s financial and information systems, management procedures, and internal controls to ensure that records are accurate and controls are adequate to protect against fraud and waste. He will review company operations to evaluate their efficiency and effectiveness.

The minimum educational requirement for the proffered position, the petitioner indicates, is a bachelor's degree in tourism, business administration, or a related field. In addition, the job requires proficiency in the French language. The beneficiary qualifies for the position, the petitioner states, by virtue of his bachelor's degree in business administration from the University of Grenoble, awarded on June 26, 1995,

as well as his fluency in French. The beneficiary also has prior experience, in J-2 status, as the petitioner's sales manager.

In response to the RFE counsel reiterated that the beneficiary will be responsible for coordinating the petitioner's market research, marketing strategy, sales, advertising, promotion, pricing, product development, and public relations activities. As explained by the petitioner:

[T]he day-to-day activities will require [the beneficiary] to negotiate hotel and other hospitality industry contracts, organize proposals for international clients, serve as liaison between U.S. suppliers and international clients, coordinate projects for international clients, and supervise lower level employees who assist in the execution of these responsibilities. [The beneficiary] will perform market studies and economic analyses to determine whether [the petitioner]'s pricing structure is allowing for maximum company profit.

[The beneficiary] will constantly analyze and evaluate the demand for products and services offered by [the petitioner]

In addition, [the beneficiary] will oversee day-to-day operations of [the petitioner], particularly in the financial area He will perform accounting and auditing functions, prepare financial reports, and implement cash management strategies. He will develop and implement on a daily basis internal controls to ensure accuracy of company records and to prevent [sic] cost-effective operations

[The beneficiary] will oversee [the petitioner]'s sales team and will be responsible for training, direction, goal-setting, key initiatives and accountability. He will develop internal sales communication platforms which provide updates and decision-making information to subordinate employees.

Counsel asserted that the service center twice previously approved H-1B petitions for the proffered position, and submitted three internet job postings for sales or marketing managers (two from travel agencies) each of which requires a baccalaureate degree for the position.

In his decision the director determined that the proffered position falls within the broad occupational category of advertising, marketing, promotions, public relations, and sales managers – and particularly the sub-category of sales manager – in the Department of Labor (DOL)'s *Occupational Outlook Handbook (Handbook)*. The director cited information in 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 internet job postings, the director declared, did not establish that a degree requirement is common to the petitioner's industry in parallel positions among similar organizations. Nor did the petitioner show that it normally requires a bachelor's degree for the proffered position, the director declared, since the notices of approval issued on two previous H-1B petitions did not identify the specific position or indicate the beneficiary's individual qualifications. The director concluded that the proffered position does 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 counsel asserts that the proffered position qualifies as a specialty occupation under three of the four alternative criteria enumerated at 8 C.F.R. § 214.2(h)(4)(iii)(A). According to counsel, the position meets the first criterion because a baccalaureate or higher degree is the normal minimum requirement for entry into a sales and operations manager position. Counsel reiterates the petitioner's contention that it only hires individuals with baccalaureate degrees or the equivalent for the position, referring again to two prior individuals with foreign baccalaureate degrees who were approved for H-1B classification. Counsel also maintains that the duties of the proffered position are so specialized and complex that the knowledge required to perform them is usually associated with a baccalaureate or higher 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.

In accord with the director's decision, the AAO determines that the duties of the proffered position encompass the *Handbook's* broad occupational category of advertising, marketing, promotions, public relations, and sales managers. With respect to the educational requirements of the occupation, the *Handbook*, 2006-07 edition, states the following:

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. However, requirements vary, depending upon the particular job.

As the *Handbook* clearly indicates, a baccalaureate or higher degree in a specific specialty is not the normal, industry-wide requirement for entry into an advertising, marketing, promotions, public relations, and sales managerial position. Many employers give favorable consideration to a broad spectrum of degrees in hiring for such a position. Thus, 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)(I), because a baccalaureate degree in a specific specialty is not the normal minimum requirement for entry into such a position.

Counsel asserts that the beneficiary will also be performing various financial management tasks, including accounting and auditing functions, cash management, and preparing financial reports. No further details are provided as to what these duties entail. Based on counsel's generic description of the duties, as well as the nature and scale of the petitioner's operations, the AAO concludes that financial duties of the proffered position are those of a bookkeeping, accounting and/or auditing clerk. That occupation is described in the DOL *Handbook*, 2006-07 edition, as follows:

Bookkeeping, accounting, and auditing clerks are an organization's financial recordkeepers. They update and maintain one or more accounting records, including those which tabulate expenditures, receipts, accounts payable and receivable, and profit and loss. They represent a wide range of skills and knowledge from full-charge bookkeepers who can maintain an entire company's books to accounting clerks who handle specific accounts. All of these clerks make numerous computations each day and increasingly must be comfortable using computers to calculate and record data.

In small establishments, *bookkeeping clerks* handle all financial transactions and recordkeeping. They record all transactions, post debits and credits, produce financial statements, and prepare reports and summaries for supervisors and managers. Bookkeepers also prepare bank deposits by compiling data from cashiers, verifying and balancing receipts, and sending cash, checks, or other forms of payment to the bank. They also may handle payroll, make purchases, prepare invoices, and keep track of overdue accounts.

In large offices and accounting departments, *accounting clerks* have more specialized tasks . . . such as accounts payable . . . or accounts receivable Entry-level accounting clerks post details of transactions, total accounts, and compute interest charges. They also may monitor loans and accounts, to ensure that payments are up to date.

More advanced accounting clerks may total, balance, and reconcile billing vouchers; ensure the completeness and accuracy of data on accounts; and code documents according to company procedures

Auditing clerks verify records of transactions posted by other workers. They check figures, postings, and documents to ensure that they are correct, mathematically accurate, and properly coded. They also correct or note errors for accountants or other workers to adjust

. . . .
[D]emand for full-charge bookkeepers is expected to increase, because they are called upon to do much of the work of accountants, as well as perform a wider variety of financial transactions, from payroll to billing. Certified bookkeepers and those with several years of accounting or bookkeeper experience will have the best job prospects [emphasis added].

According to the *Handbook*, a two-year associate's degree in business or accounting is often required for bookkeeping, accounting, and auditing clerk positions. A four-year bachelor's degree is not required for entry-level positions, the *Handbook* indicates, though many such degree-holders accept bookkeeping and accounting clerk positions to get into the field or a particular company with the aim of being promoted to professional or managerial positions. *See id.* Thus, the bookkeeping/accounting/auditing clerk duties of the proffered position do not require a baccalaureate degree in a specific specialty, as required for them to qualify as a specialty occupation under 8 C.F.R. § 214.2 (h)(4)(iii)(A)(I).

As previously mentioned, proficiency in the French language is also a requirement of the position, and the job duties appear to include some translating and interpreting functions. The *Handbook*, 2006-07 edition, describes the educational requirements of interpreters and translators as follows:

The educational backgrounds of interpreters and translators vary Although it is not necessary to have been raised bilingual to succeed, many interpreters and translators grew up speaking two languages.

In high school, students can prepare for these careers by taking a broad range of courses that include English writing and comprehension, foreign languages, and basic computer proficiency

Beyond high school, there are many educational options. Although a bachelor's degree is often required, interpreters and translators note that it is acceptable to major in something other than a language. However, specialized training in how to do the work is generally required

As the *Handbook* makes clear, a baccalaureate degree in a specific specialty is not the normal minimum requirement for entry into a translating or interpreting position. Fluency in a second language, which does not require any academic degree, is the primary requirement. While a baccalaureate degree may often be required in the occupation, it need not be in a specific specialty and sometimes may not be required at all. Thus, the translating and interpreting duties of the proffered position do not qualify the position as a specialty occupation under 8 C.F.R. § 214.2(h)(4)(iii)(A)(1).

As for the second alternative criterion of a specialty occupation, at 8 C.F.R. § 214.2(h)(4)(iii)(A)(2), the record includes three internet job listings, two of which are from travel companies seeking a marketing manager and a national sales manager, respectively, and requiring applicants to have a bachelor's degree in marketing or a related field. Neither company is similar to the petitioner in its size or scale of operations, however (one of the companies indicates that it has 5,000 employees), and the job duties include some functions not present in the proffered position. The third job posting – for a sales operations project manager – is from a health services company with \$11 billion in annual revenue. The company bears no similarity to the petitioner in its line of business or scale of operations. The AAO determines that the job postings in the record 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 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 advertising, marketing, promotions, public relations, 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).

As for the third alternative criterion of a specialty occupation, at 8 C.F.R. § 214.2(h)(4)(iii)(A)(3), the petitioner states that it previously hired two other individuals with baccalaureate degrees for the proffered position. The record indicates that two prior H-1B petitions filed by the petitioner were approved by the Texas Service Center in September 1997 and February 2002, respectively. The petitioner has not

supplemented the record with any additional documentation, showing the positions for which the individuals were approved, the job duties they performed, or the educational credentials of the two individuals. Simply going on record without supporting documentation does not satisfy the petitioner's burden of proof. See *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)). Nor has the petitioner indicated whether those are the only two individuals who have worked in the proffered position. Thus, the record fails to demonstrate that the petitioner normally requires a specialty degree or its equivalent for the position, as required for it 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 the knowledge required to perform them is usually associated with a baccalaureate or higher degree in a specific specialty, as required for the position to meet the fourth alternative criterion of a specialty occupation at 8 C.F.R. § 214.2(h)(4)(iii)(A)(4). Counsel asserts on appeal that the performance of the job duties requires a "thorough understanding of general business practices such as marketing, sales, and accounting, as well as an understanding of the travel and tourism business, and an understanding of international business." As previously discussed, however, the documentary evidence submitted by the petitioner does not demonstrate that the duties of the position exceed the occupational scope of an advertising, marketing, promotions, public relations, and sales manager, as described in the *Handbook*, with some additional responsibilities in the occupational realm of a bookkeeping, accounting and auditing clerk. As reflected in the *Handbook*, none of those duties is so specialized or complex that baccalaureate level knowledge in a specific specialty is required to perform them. Though counsel asserts that French language proficiency is required for the job, the *Handbook* indicates that such duties do not require a baccalaureate or higher degree in French or a related specialty. Accordingly, the proffered position does not qualify as a specialty occupation under 8 C.F.R. § 214.2(h)(4)(iii)(A)(4).

Counsel asserts that the service center earlier approved H-1B status for two other individuals in the proffered position, and that those rulings should guide the decision in the instant petition. The AAO does not agree. As previously discussed, there is no evidence in the record of the duties those individuals performed in H-1B status for the petitioner, or of the educational credentials of those individuals. Moreover, each nonimmigrant petition is a separate proceeding with a separate record. See 8 C.F.R. § 103.8(d). The AAO is not obliged to approve applications or petitions in which eligibility has not been demonstrated merely because of a prior approval that may have been erroneous. See, e.g. *Matter of Church Scientology International*, 19 I&N Dec. 593, 597 (Comm. 1988).

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. 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.