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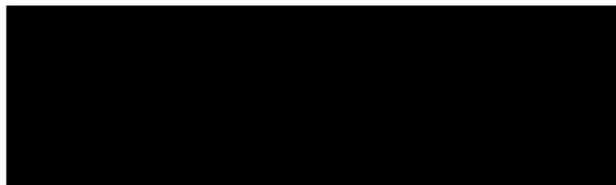
U.S. Department of Homeland Security
20 Mass. Ave., N.W., Rm. 3000
Washington, DC 20529



U.S. Citizenship
and Immigration
Services

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FILE: EAC 04 260 53964 Office: VERMONT SERVICE CENTER Date: JUL 2 8 2006

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 documents have been returned to
the office that originally decided your case. Any further inquiry must be made to that office.

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

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DISCUSSION: The director of the Vermont 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 a travel consulting and document assistance service that seeks to employ the beneficiary as a marketing manager and to classify her 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 basis that the petitioner failed to establish that its proposed position was a specialty occupation.

Counsel submitted a timely Form I-290B on February 10, 2005 and indicated that a brief and/or additional evidence would be submitted to the AAO within 30 days. As of this date, however, the AAO has not received any additional evidence. Therefore, the record is complete.

The issue before the AAO is whether the proposed position qualifies as a specialty occupation. To meet its burden of proof in this regard, a petitioner must establish that the job it is offering to the beneficiary meets the following statutory and regulatory requirements.

Section 214(i)(1) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1184(i)(1) defines the term "specialty occupation" as one 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 above criteria to mean not just any bachelor's or higher degree, but one in a specific specialty that is directly related to the proposed 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) counsel's response to the RFE; (3) the director's denial letter; and

(4) Form I-290B, with the petitioner's brief and supporting documentation. The AAO reviewed the record in its entirety before reaching its decision¹.

The petitioner seeks the beneficiary's services as a marketing manager. Evidence of the beneficiary's duties includes: the Form I-129 and letter of support from the petitioner; and the response to the RFE. At the time of filing, the petitioner stated that the beneficiary's duties would entail, in part, gathering and analyzing information on competitors, prices, sales and methods of marketing and distribution; determining the demand for services offered by the company and competitors; identifying potential customers; monitoring market and competitive trends; developing pricing strategies to maximize the company's profits and ensure customer satisfaction; planning and coordinating marketing of the petitioner's services; using survey results to develop marketing campaigns based on regional preferences; monitoring trends which indicate the need for new services; making recommendations to facilitate expansion of the petitioner's clientele; researching and analyzing market conditions and opportunities; developing new strategies for advertising; designing business opportunities to assist the petitioner in growing internationally; monitoring international legal, economic, and political conditions to the extent applicable to the petitioner's services; developing supporting materials, assembling and coordinating information and documentation to be included in operational documents; and developing information requirements for market and customer analysis. The petitioner stated that the position required a bachelor's degree in economics or a related field.

The director found that the petitioner's list of proposed duties was generic and that the size and nature of the petitioner's business failed to establish that the proposed position qualifies as a specialty occupation based on the complexity or uniqueness of the duties. The director found that the job postings the petitioner submitted did not establish an industry-wide requirement of a specific bachelor's degree for parallel positions. The director found that the duties of a marketing manager at a small company would usually be performed by the company president and that performance of those duties would not necessarily require a specific bachelor's degree.

On appeal, counsel asserts that the director's conclusions were irrelevant and pointless and that the director ignored the petitioner's business plan, submitted in lieu of a brochure. Counsel asserts that the director made errors of law and fact that would be discussed in a brief, but did not submit a brief.

The petitioner need only satisfy one of the criteria at 8 C.F.R. 214.2(h)(4)(iii)(A) to establish that a position is a specialty occupation. Upon a thorough review of the record, the AAO concludes that the petitioner has not established that the proposed position meets any of the criteria outlined in 8 C.F.R. §214.2(h)(4)(iii)(A). Therefore, the proposed position is not a specialty occupation.

To determine whether a particular job qualifies as a specialty occupation, CIS does not simply rely on a position's title, but reviews the specific duties of the proposed position, combined with the nature of the petitioning entity's business operations. CIS must examine the ultimate employment of the alien, and determine whether the position qualifies as a specialty occupation. *Cf. Defensor v. Meissner*, 201 F. 3d 384 (5th Cir. 2000). The critical element is not the title of the position nor an employer's self-imposed standards, but whether the position actually requires the theoretical and practical application of a body of highly specialized knowledge, and the attainment of a bachelor's or higher degree in the specific specialty as the minimum for entry into the occupation, as required by the Act.

¹ All of counsel's representations will be considered, however, the AAO will not send counsel notice of these proceedings as counsel is no longer authorized to practice law.

The AAO routinely consults the *Handbook* for its information about the duties of particular occupations. Based on the petitioner's description and a thorough review of the *Handbook*, the AAO finds that the duties of the proposed position resemble those of marketing managers, who, according to the *Handbook*, identify potential markets and work with advertising and promotion managers to promote the firm's products and services and to attract potential users. 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. With the help of subordinates, they also identify potential markets and determine the demand for products and services offered by the firm and its competitors. These duties are similar to such duties of the proposed position as "gathering and analyzing information on competitors" and "identifying potential customers."

To determine if the proposed position qualifies as a specialty occupation under the criterion at 8 C.F.R. 214.2(h)(4)(iii)(A)(I) -- a bachelor's or higher degree or its equivalent, in a specific field of study is normally the minimum requirement for entry into the particular position -- the AAO turns to the *Handbook's* discussion of the educational requirements for marketing managers. Regarding the educational requirements for those in this field, the *Handbook* notes that:

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.

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. Courses in business law, economics, accounting, finance, mathematics, and statistics are advantageous.

The *Handbook* clearly indicates that jobs in this field do not require a specific bachelor's degree for entry into the field. Employers consider those with liberal arts degrees and relevant work experience suitable for jobs in this area. Employers prefer, but do not require, marketing managers to possess bachelor's degrees in specific fields of study. As no specific course of study is required for these occupations, the petitioner fails to establish that a bachelor's or higher degree in a specific field of study is the normal minimum requirement for entry into the proposed marketing manager position.

The AAO turns next to the first alternative prong of the second criterion at 8 C.F.R. § 214.2(h)(4)(iii)(A) - a specific degree requirement is common to the industry in parallel positions among similar organizations. To determine if a position is a specialty occupation under this criterion, CIS generally considers whether or not letters or affidavits from companies or individuals in the industry attest that such companies "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)). The job postings the petitioner submits to support this criterion have no probative value. The announcements either do not describe the duties with sufficient particularity to determine if they are similar to the proposed position, or are from companies dissimilar to the petitioner, a travel consulting and document assistance service with 1 employee. Thus, the petitioner has failed to establish that a specific degree requirement is common to the industry in parallel positions among similar firms.

The AAO now turns to the third criterion at 8 C.F.R. § 214.2(h)(4)(iii)(A) -- the employer normally requires at least a bachelor's degree or its equivalent, in a specific field of study, for the position. To determine if a

petitioner has established this criterion, the AAO generally reviews the petitioner's past employment practices, including the histories of those employees who previously held the position, as well as their names, dates of employment, and copies of their diplomas. In the instant case, the petitioner has not submitted evidence to establish its normal hiring practices for the proposed position. In the absence of an employment history for the position, the petitioner has not established that its position qualifies as a specialty occupation under the criterion at 8 C.F.R. § 214.2(h)(4)(iii)(A)(3).

Finally, the AAO turns to the criteria related to the complexity, uniqueness, or specialized nature of the proposed position. The second alternative prong of the second criterion at 8 C.F.R. § 214.2(h)(4)(iii)(A)(2) is satisfied by establishing that a particular position is so complex or unique that it can be performed only by an individual with a bachelor's degree in a specific field of study. The criterion at 8 C.F.R. § 214.2(h)(4)(iii)(A)(4) requires a petitioner to 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 bachelor's or higher degree in a specific field of study. To the extent that they are depicted in the record, the duties of the proposed position are routine for marketing managers, which the *Handbook* indicates may be performed by persons without bachelor's degrees in related fields. The petitioner has failed to establish the referenced criteria at 8 C.F.R. §§ 214.2(h)(4)(iii)(A)(2) or (4).

Therefore, for the reasons related in the preceding discussion, the petitioner has failed to establish that the proposed position is a specialty occupation.

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.