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U.S. Citizenship
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Services

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FILE: EAC 06 144 51032 Office: VERMONT SERVICE CENTER

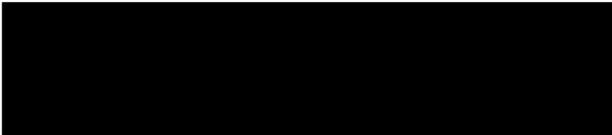
Date: OCT 02 2007

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, Chief
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 an importer and wholesaler of jewelry, and seeks to employ the beneficiary as a marketing consultant. The petitioner endeavors to classify the beneficiary 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 because the position did not qualify as a specialty occupation, and because the beneficiary was not qualified to perform the duties of a specialty occupation. On appeal, the petitioner submits a brief asserting that the proffered position is a specialty occupation.

The issue to be discussed in this proceeding is whether the proffered position qualifies as a specialty occupation.

Section 101(a)(15)(H)(i)(b) of the Act, 8 U.S.C. § 1101(a)(15)(H)(i)(b), provides, in part, for the classification of qualified nonimmigrant aliens who are coming temporarily to the United States to perform services in 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.

The term "specialty occupation" is further defined at 8 C.F.R. § 214.2(h)(4)(ii) as:

[A]n occupation which requires theoretical and practical application of a body of highly specialized knowledge in fields of human endeavor including, but not limited to, architecture, engineering, mathematics, physical sciences, social sciences, medicine and health, education, business specialties, accounting, law, theology, and the arts, and which requires the attainment of a bachelor's degree or higher in a 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 are 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) the Form I-129 and supporting documentation; (2) the director's request for evidence; (3) the petitioner's response to the director's request for evidence; (4) the director's denial letter; and (3) the Form I-290B with supporting documentation. The AAO reviewed the record in its entirety before issuing its decision.

The petitioner is seeking the beneficiary's services as a marketing consultant. Evidence of the beneficiary's duties includes the Form I-129 with supporting documentation, and the petitioner's response to the director's request for evidence. According to this evidence the beneficiary would:

- Establish research methodology and design formats for gathering data such as surveys, questionnaires, etc.;
- Examine and analyze statistical data to forecast future marketing trends;
- Collect data on customer preferences and buying habits, recommendations, policies and plans to aid market interpretation;
- Formulate new tools and technologies to provide results to clients, more efficiently than competitors;
- Develop new client relationships by attending meetings to market the company;
- Select merchandise that is timely, determining what will be bought, selecting resources, and keep effective inventory management to back up physical distribution and marketing efforts;
- Project and monitor the open-to-buy budget, six month merchandise plan, model stock, price points, and automatic stock replenishment to determine how much to buy, using set formulas;
- Execute purchase orders clearly and thoroughly to avoid misrepresentations;
- Research market conditions for different locations according to demographics, psycho graphics and competition and decide on the type of marketing strategy, merchandising, sales promotion, publicity and advertising budget to support the products purchased and be actively involved in the promotion;

- Operate within a framework of laws and rulings of administrative agencies like the Federal Trade Commission seeking the help of trade associations and professionals in the industry in order to comply with all relevant rules and regulations;
- Be familiar with technical terminology of international trade to handle documents;
- Decide the price point, markups, and markdowns, determining merchandise inventory turnover using various software programs; and
- Interact with sales professionals and disseminate information on products using visual presentations.

The petitioner requires a minimum of a bachelor's degree in marketing or a related field for entry into the proffered position.

The AAO routinely consults the Department of Labor's *Occupational Outlook Handbook (Handbook)* for information about the duties and educational requirements of particular occupations. The duties of the proffered position are varied and include duties normally performed by advertising, marketing, promotions, public relations, and sales managers. The *Handbook* notes that a wide range of educational backgrounds is suitable for entry into advertising, marketing, promotions, public relations, and sales manager positions, but that many employers prefer related experience plus a broad liberal arts background. Bachelor's degrees in sociology, psychology, literature, journalism, philosophy, or other subjects are suitable. Requirements will vary, however, depending on the duties of a particular position. For example, some employers prefer a bachelor's or master's degree in business administration with an emphasis in marketing, for marketing, sales, and promotion management positions. In highly technical industries such as computer and electronics manufacturing a degree in engineering or science combined with a business degree may be preferred. In public relations management positions some employers prefer a bachelor's or master's degree in public relations or journalism. The *Handbook* notes that most advertising, marketing, promotions, public relations, and sales management positions are filled by promoting experienced staff or related professional or technical personnel. Many managers are former sales representatives, purchasing agents, or promotions specialists. A baccalaureate or higher degree in a specific specialty or its equivalent is not, therefore, the minimum requirement for entry into the position. A degree in a wide range of disciplines will suffice. The petitioner has failed to establish the first criterion of 8 C.F.R. § 214.2(h)(4)(iii)(A).

The petitioner asserts that a degree requirement, in a specific specialty, is common to the industry in parallel positions among similar organizations. In support of this assertion, the petitioner submitted five copies of employment advertisements for marketing related positions. The advertisements submitted, however, do not establish the petitioner's assertion. Only one advertisement is from an organization similar in nature to that of the petitioner (jewelry industry), and that position requires a college degree, but it does not state that the degree need be in any particular area of study. Of the remaining four advertisements, one requires a degree in marketing, one prefers (but does not require) a bachelor's degree in an unspecified discipline, one requires a degree but does not state that the degree need be in any particular discipline, and another does not state that a college degree is required. These advertisements confirm the *Handbook's* statements about the educational requirements of the position, that a degree in a wide range of disciplines will satisfy the educational

requirements of the position. The petitioner has failed to establish the referenced criterion at 8 C.F.R. § 214.2(h)(4)(iii)(A)(2).

The petitioner does not assert that it normally requires a degree for the proffered position, and offers no evidence in this regard. As such, the petitioner has failed to establish the criterion at 8 C.F.R. § 214.2(h)(4)(iii)(A)(3).

Finally, to the extent they are described in the record, the duties to be performed by the beneficiary are not so specialized and complex that knowledge required to perform them is usually associated with the attainment of a baccalaureate or higher degree in a specific specialty. Nor are the duties so complex or unique that they can be performed only by an individual with a degree in a specific specialty. The duties appear to be routine in the industry for marketing positions in the petitioner's work environment, and are regularly performed by individuals with a wide range of education in a number of different disciplines. For example, the record establishes that the petitioner will:

- Establish research methodology and design formats for gathering data, such as surveys, questionnaires, etc.;
- Examine and analyze statistical data to forecast future marketing trends
- Collect data on customer preferences and buying habits recommendations, policies and plans to aid market interpretation;

These duties are so generally described that it is not possible to determine specifically what tasks the beneficiary would perform in completing the duties. The record does not establish what type of data is being sought, or the purpose of obtaining the data. Nor does the record disclose the processes to be followed in obtaining the data or the methods used in analyzing data. Without this type of information, it is not possible to determine whether the tasks to be performed are so specialized and complex, or unique, that a degree in a specific specialty would be required to perform the tasks. The record does not establish that the specific tasks to be performed in this instance require a specific course of study that conveys a body of highly specialized knowledge closely and directly related to the duties of the proffered position. The petitioner has failed to establish the referenced criteria at 8 C.F.R. § 214.2(h)(4)(iii)(A)(2) or (4).

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 failed to sustain that burden.

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