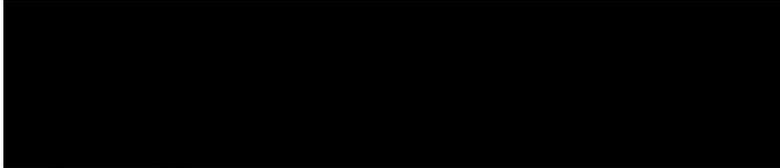


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U.S. Citizenship  
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Services

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FILE: SRC 03 254 54753 Office: TEXAS SERVICE CENTER Date: AUG 18 2005

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.

Robert P. Wiemann, Director  
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 beauty salon. It 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 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 supporting materials. The AAO reviewed the record in its entirety before issuing its decision.

In Form I-129 and an accompanying letter the petitioner described itself as a full service beauty salon established in 2001. The petitioner stated that it proposed to hire the beneficiary as a marketing manager and described the duties of the position as follows:

[The beneficiary] will plan marketing and sales campaigns directed to the Brazilian and Hispanic communities in Kissimmee and Orlando, developing marketing strategies and promotional material such as brochures and advertisement. [She] will be also responsible for the presentation of new hair and body care products to the public or updates on existing ones and creation of special sales and promotions according to sales volume. [She] will also serve as a liaison between the company, suppliers and clients, negotiating new or existing business contracts, also training staff for the introduction of new products to the market.

In response to the RFE the petitioner further described the position as follows:

Marketing managers develop the firm's detailed marketing strategy, determining the demand of products and services offered by the firm and its competitors, identifying potential markets. Marketing managers also develop pricing strategy with an eye towards maximizing the firm's share of the market and its profits while ensuring that the business customers are satisfied, working with advertising and promoting the business services and products, and to attract potential users.

The petitioner asserted that the beneficiary had a combination of college-level education in her native Brazil and work experience in marketing that is equivalent to a U.S. baccalaureate degree in marketing.

In her decision the director referred to the Department of Labor (DOL)'s *Occupational Outlook Handbook (Handbook)*, which indicated that a baccalaureate level of study in a specific field is not the normal minimum requirement for entry into a marketing manager position at a small business or retail store. The director noted that no evidence had been submitted of an industry-wide standard for companies similar to the petitioner's in their type of business, number of employees, and scale of operations that required marketing managers to have the equivalency of a bachelor's degree. Nor had the petitioner demonstrated that the duties of the proffered position were so specialized and complex that baccalaureate level knowledge was required to perform them. The director concluded that the proffered position did 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 marketing manager position requires specialized knowledge and that its duties have been specifically detailed. Along with the appeal form counsel submitted a photocopy of the DOL *Handbook's* occupational entry for "Advertising, Marketing, Promotions, Public Relations, and Sales Managers."

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.

The AAO agrees with the petitioner that the proffered position fits within the *Handbook*’s description of a marketing manager:

*Marketing managers* develop the firm’s detailed marketing strategy. . . . [T]hey determine the demand for products and services offered by the firm and its competitors. In addition, they identify potential markets . . . . 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. . . . [T]hey monitor trends that indicate the need for new products and services and oversee product development. Marketing managers work with advertising managers to promote the firm’s products and services and to attract potential users.

*Handbook*, 2004-05 edition, at 23-24. As for the educational requirements for entry into a marketing manager position, the *Handbook* clearly indicates that a baccalaureate or higher degree in a specific specialty is not the normal, industry-wide standard:

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.

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

*Id.* at 24. Thus, the marketing manager position does not meet the first alternative criterion of a specialty occupation, at 8 C.F.R. § 214.2(h)(4)(iii)(A)(1), because a baccalaureate degree in a specific specialty is not the normal minimum requirement to enter into the position. While the *Handbook* indicates that some employers may prefer a baccalaureate or higher degree in business administration with an emphasis on marketing, it is not an industry standard and the AAO agrees with the director that small businesses and stores, like the petitioner, do not typically require a marketing manager to have a degree in the field.

With regard to the second alternative criterion of a specialty occupation, there is no documentation in the record showing that a degree requirement in a specific specialty is common to the industry in parallel positions among similar organizations. Thus, the proffered position does not 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. 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).

Since the proffered position is newly created the petitioner has no history of requiring a specialty degree or its equivalent. Accordingly, the position does not qualify as a specialty occupation under the third alternative criterion at 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 they require baccalaureate level knowledge in a specific specialty, as required to meet the fourth alternative criterion of a specialty occupation at 8 C.F.R. § 214.2(h)(4)(iii)(A)(4).

For the reasons discussed above, the record does not establish that the marketing manager position meets any of the criteria enumerated in 8 C.F.R. § 214.2(h)(4)(iii)(A) to qualify as a specialty occupation. Thus, 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.