

identifying data deleted to
prevent clearly unwarranted
invasion of personal privacy



U.S. Citizenship
and Immigration
Services

PUBLIC COPY



D1

MAY 11 2015

FILE: WAC 04 056 53063 Office: CALIFORNIA SERVICE CENTER Date:

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 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 real estate and mortgage brokerage company. It seeks to employ the beneficiary as a business development 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 grounds that the record failed to establish that the proffered position is a specialty occupation or that the beneficiary is qualified to perform the services of 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 notice of decision;

and (5) Form I-290B, the petitioner's appeal brief, and supporting materials. The AAO reviewed the record in its entirety before issuing its decision.

In Form I-129 and an accompanying letter from its president and CEO the petitioner described itself as a real estate and mortgage brokering business with four employees and \$1.5 million in gross annual income. The petitioner stated that it wished to hire the beneficiary as a business development manager on a part-time basis of 20-30 hours/week. The duties of the position, and the percentage of the beneficiary's time required by each, were categorized as follows:

- Plan and formulate aspects of research and development proposals, such as objective or purpose of project, applications that can be utilized from findings, costs of project and equipment and human resource requirements – 15%.
- Review and analyze proposals to determine if benefits derived and possible applications justify expenditures. Submit proposals considered feasible to management for consideration and allocation of funds from the company's budget – 15%.
- Develop and implement a strategic and operational marketing plan, which provides the mechanisms to identify new development opportunities and monitor and measure the effectiveness of marketing activities – 20%.
- Work closely with the division assigned to develop strategic business development programs including identifying prospects, facilitating sales calls, tracking leads, managing major pursuit strategies and proposal efforts – 40%.
- Develop and implement methods and procedures for monitoring projects, such as preparation of records of expenditures and research findings, progress reports and staff conferences, in order to inform management of current status of each project – 10%.

According to the petitioner the beneficiary is qualified for the proffered position by virtue of his bachelor of science in commerce from the University of Santo Tomas in the Philippines, granted in March 1978, and his employment experience in Filipino financial institutions, initially at the Philippine National Bank, 1989-2001, and later at the First Metro Investment Corporation in the Philippines, 2001-present. In its subsequent response to the RFE the petitioner asserted that the proffered position was similar to a director of research and development, a sales manager, or a program manager, as described in the Department of Labor (DOL)'s *Dictionary of Occupational Titles (DOT)*, for which a bachelor's degree or equivalent experience is required. The petitioner also referred to the DOL's *Occupational Outlook Handbook (Handbook)*, quoting passages about the educational preferences of employers in hiring for marketing, sales, and promotion manager positions. In addition, the petitioner submitted internet job announcements from other companies for business development managers, which assertedly show that a bachelor's degree is routinely required for the position.

In his decision the director stated that the *DOT* is not considered a persuasive authority on whether a particular job requires a baccalaureate or higher degree in a specific specialty for entry into the occupation. In the director's view, the record did not establish the petitioner's need for the services of a business development manager. In particular, the petitioner's business did not demonstrate sufficient

organizational complexity to warrant the hiring of a business development manager. The petitioner did not present any documentary evidence, the director stated, that companies similar to the petitioner in the nature of their business activities, number of employees, and gross income level, required the services of a business development manager. Nor did the record show that the petitioner has unique and specific needs requiring an employee to perform the tasks of the proffered position. The director concluded that the position proffered in this case was not a bona fide position which could be considered a specialty occupation. The director also determined that the beneficiary's degree was in the general field of business administration, not a specific business specialty directly related to the proffered position, and therefore did not qualify him to perform the services of a specialty occupation.

On appeal the petitioner asserts that, due to its rapid business growth and prospective expansion, it needs a business development manager to (1) supervise the three employees at the main office, including an accountant and two loan processors, (2) train, coach, guide, and administer about 25 sales agents/loan officers in real estate purchases and sales and loan refinancing, (3) perform market research, evaluate lender products, and assist in financial planning and budgeting, and (4) communicate, coordinate and interact with mortgage lenders, escrow officers, appraising companies and other service providers. The petitioner contends that the duties of the position can only be effectively performed by an individual with a degree in business administration or a related discipline and experience in the field of banking and finance, qualifications which the beneficiary possesses. The petitioner does not explain the relationship of the 25 sales agents/loan officers mentioned above to its business, since the petitioner claims to have only four employees.

In determining whether a position meets the statutory and regulatory criteria of a specialty occupation, CIS routinely consults the DOL *Handbook, supra*, 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, id.*, at 1165-66.

Based on the duties of the proffered position, as described by the petitioner, the AAO is persuaded that the job falls within the occupational category of advertising, marketing, promotions, public relations, and sales managers described in the *Handbook*, 2004-05 edition, at 23-26. The duties of the job most closely resemble those of a marketing manager or a sales manager, which are described as follows:

Marketing managers develop the firm's detailed marketing strategy. With the help of subordinates . . . they determine the demand for products and services offered by the firm and its competitors. In addition, they identify potential markets – for example, business firms, wholesalers, retailers, government, or the general public. 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.

Sales managers direct the firm's sales program. They assign sales territories, set goals, and establish training programs for the sales representatives. Managers advise the sales representatives on ways to improve their sales performance They analyze sales statistics gathered by their staffs to determine sales potential and inventory requirements and monitor the preferences of customers.

Handbook, at 23-24. As for the educational requirements of marketing manager and sales manager positions, the *Handbook* 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.

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.

. . . . For all these specialties, courses in management and completion of an internship while in school are highly recommended.

Id., at 24-25. As the *Handbook* clearly indicates, a baccalaureate or higher degree in a specific specialty is not the normal, industry-wide requirement for entry into a marketing manager or sales manager position. Many employers give favorable consideration to a broad spectrum of degrees in hiring a marketing or sales manager. 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)(1), because a baccalaureate degree in a specific specialty is not the normal minimum requirement to enter into the particular position.

As for the second alternative criterion of a specialty occupation, at 8 C.F.R. § 214.2(h)(4)(iii)(A)(2), the petitioner has submitted a series of internet job postings for business development managers to show that a degree requirement is common to the industry in parallel positions among similar organizations. Of the 16 advertisements in the record, however, only half of them require a baccalaureate degree in a specific job-related specialty. Three of the advertisements require simply a bachelor's degree, without specification, and five of the advertisements require either a degree or equivalent work experience. Moreover, none of the companies is in the same line of business as the petitioner and most or all of them appear to be considerably larger than the petitioner in their scale of operations. Thus, the internet job postings do not constitute credible evidence that a degree requirement in a specific specialty is common to the 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. Rather, the scope and complexity of the position are in line with those of a typical marketing or sales manager, which do not generally require a degree in a specific specialty. 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 meet the third alternative criterion of a specialty occupation 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 knowledge at the level of a baccalaureate or higher degree in a specific specialty. The evidence does not demonstrate that the knowledge required to perform the duties of the job, given the nature and scale of the petitioner's business operations, exceeds that required by a typical marketing manager or sales manager, neither of which normally requires a specialty degree. Accordingly, the proffered position does not 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 position proffered by the petitioner does not qualify as a specialty occupation under any of the criteria set forth in 8 C.F.R. § 214.2(h)(4)(iii)(A). 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).

As previously discussed, the director also determined that the beneficiary was not qualified to perform the services of a specialty occupation. Since the beneficiary's credentials are relevant only if the proffered position is found to be a specialty occupation, which is not the case here, the AAO need not further address the issue of the beneficiary's qualifications.

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.