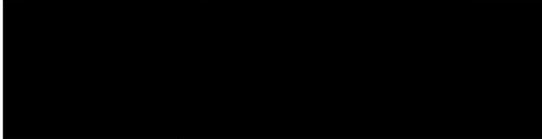




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U.S. Department of Justice  
Immigration and Naturalization Service

**Identifying data deleted to  
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OFFICE OF ADMINISTRATIVE APPEALS  
425 Eye Street N.W.  
ULLB, 3rd Floor  
Washington, D.C. 20536

File: LIN-01-190-51625 Office: Nebraska Service Center Date:

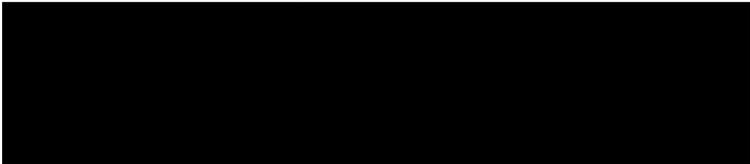
**DEC 18 2002**

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)

IN BEHALF OF PETITIONER:



**PUBLIC COPY**

**INSTRUCTIONS:**

This is the decision 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.

If you believe the law was inappropriately applied or the analysis used in reaching the decision was inconsistent with the information provided or with precedent decisions, you may file a motion to reconsider. Such a motion must state the reasons for reconsideration and be supported by any pertinent precedent decisions. Any motion to reconsider must be filed within 30 days of the decision that the motion seeks to reconsider, as required under 8 C.F.R. 103.5(a)(1)(i).

If you have new or additional information that you wish to have considered, you may file a motion to reopen. Such a motion must state the new facts to be proved at the reopened proceeding and be supported by affidavits or other documentary evidence. Any motion to reopen must be filed within 30 days of the decision that the motion seeks to reopen, except that failure to file before this period expires may be excused in the discretion of the Service where it is demonstrated that the delay was reasonable and beyond the control of the applicant or petitioner. Id.

Any motion must be filed with the office that originally decided your case along with a fee of \$110 as required under 8 C.F.R. 103.7.

FOR THE ASSOCIATE COMMISSIONER,  
EXAMINATIONS

*Robert P. Wiemann*  
Robert P. Wiemann, Director  
Administrative Appeals Office

**DISCUSSION:** The nonimmigrant visa petition was denied by the director and is now before the Associate Commissioner for Examinations on appeal. The appeal will be dismissed.

The petitioner is a wholesaler of gifts and related products. It has eight full-time and 18 part-time employees and an approximate gross annual income of \$2.2 million. It seeks to employ the beneficiary as a marketing coordinator for a period of three years. The director determined the petitioner had not established that the proffered position is a specialty occupation.

On appeal, counsel submits a brief.

8 C.F.R. 214.2(h)(4)(ii) defines the term "specialty occupation" as:

an 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.

The director denied the petition because the petitioner had not established that a baccalaureate degree in a specialized area is required for the proffered position. On appeal, counsel states, in part, that a baccalaureate degree in marketing has been required by the petitioner for its marketing coordinator position in the past, and is a normal requirement for the industry. Counsel submits an expert opinion in support of his claim as well as additional support documentation.

Counsel's statement on appeal is not persuasive. The Service does not use a title, by itself, when determining whether a particular job qualifies as a specialty occupation. The specific duties of the offered position combined with the nature of the petitioning entity's business operations are factors that the Service considers. In the initial I-129 petition, the petitioner described the duties of the offered position as follows:

- \* Prepare press releases and monthly newsletters promoting the Association;

- \* Plan events and seminars, including creating and coordinating showroom events, preparing informational literature and coordinating event logistics;

- \* Coordinate preparation of annual directory and other special marketing projects, such as visual office displays and market showcases;
- \* Work within established budgets to develop fiscally creative ideas to maximize effectiveness of allocated funding;
- \* Assist the Association Director and Board Committee in establishing annual marketing goals, including budgeting and special event planning;
- \* Oversee special events and provide marketing assistance to showroom tenants.

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.

The petitioner has not met any of the above requirements to classify the offered position as a specialty occupation.

First, the Service does not agree with counsel's argument that the proffered position would normally require a bachelor's degree in marketing or a related field. The proffered position appears similar to that of a public relations specialist. A review of the Department of Labor's Occupational Outlook Handbook, 2002-2003 edition, at pages 142-143, finds no requirement of a baccalaureate or higher degree in a specialized area for employment in public relations specialist jobs. There are no defined standards for entry into a public relations career. A college degree combined with public relations experience, usually gained through an internship, is considered excellent preparation for such employment. Many entry-level public relations specialists have a college major in public relations, journalism, advertising, or communications. Other

firms seek college graduates who have worked in electronic or print journalism. Still other employers seek applicants with demonstrated communication skills and training or experience in a field related to the firm's business. Thus, the petitioner has not shown that a bachelor's degree or its equivalent is required for the position being offered to the beneficiary.

Second, although the petitioner's past hiring practices indicate that it normally requires a baccalaureate degree in marketing for the proffered position, the petitioner's reasoning is problematic when viewed in light of the statutory definition of specialty occupation. The petitioner's creation of a position with a perfunctory bachelor's degree requirement will not mask the fact that the position is not a specialty occupation. As with employment agencies as petitioners, the Service 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 or 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 degree in the specific specialty as the minimum for entry into the occupation as required by the Act.<sup>1</sup> To interpret the regulations any other way would lead to absurd results: if the Service was limited to reviewing a petitioner's self-imposed employment requirements, then any alien with a bachelor's degree could be brought into the United States to perform a menial, non-professional, or an otherwise non-specialty occupation, so long as the employer required all such employees to have bachelor's degrees. See id. at 388.

In this case, although the petitioner claimed to have hired only individuals with a bachelor's degree in marketing for its marketing coordinator positions, the position, nevertheless, does not meet the statutory definition of specialty occupation. The position, itself, does not require the theoretical and practical application of a body of highly specialized knowledge. Therefore, even though the petitioner has required a bachelor's degree in the past, the position still does not require a bachelor's degree in a specific specialty.

Third, although the petitioner has submitted various job advertisements, the petitioner did not present any documentary

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<sup>1</sup> The court in Defensor v. Meissner observed that the four criteria at 8 C.F.R. 214.2(h)(4)(iii)(A) present certain ambiguities when compared to the statutory definition, and "might also be read as merely an additional requirement that a position must meet, in addition to the statutory and regulatory definition." Supra at 387.

evidence that businesses similar to the petitioner in their type of operations, number of employees, and amount of gross annual income, require the services of individuals in parallel positions. It is also noted that some of the advertisements indicate that a baccalaureate degree in a marketing-related field is preferred rather than required. Finally, the petitioner did not demonstrate that the nature of the beneficiary's proposed duties is so specialized and complex that the knowledge required to perform the duties is usually associated with the attainment of a baccalaureate or higher degree.

Counsel has provided an opinion from an academic expert who states that the usual requirement for positions such as the proffered position is a baccalaureate degree in marketing. The description of the proposed duties reviewed by the writer, however, appears to be an expanded version of what was initially submitted at the time of the filing of the instant petition. The writer describes the proposed duties, in part, as follows:

The Marketing Coordinator is wholly responsible for organizing and managing marketing duties for the Tri-State Gift Association. Within its company hierarchy, the Marketing Coordinator is a managerial-level position with extensive strategic and tactical responsibilities. This position involves significant marketing strategy and planning, research, budget planning, and public relations duties, and the person in this position is the sole manager responsible for conducting these marketing activities.

The duties described by the writer appear to be more complex than the proposed duties described at the time of the filing of the instant petition. For example, it was initially stated that the beneficiary would perform a variety of duties such as "[a]ssist the Association Director and Board Committee in establishing annual marketing goals, including budgeting and special event planning." The writer, however, now suggests that the beneficiary would be performing or managing such duties on her own. While these expanded duties are noted for the record, they are not indicative of the proposed duties described at the time of filing. As such, the expert opinion is accorded little weight.

Doubt cast on any aspect of the petitioner's proof may lead to a reevaluation of the reliability and sufficiency of the remaining evidence offered in support of the visa petition. Further, it is incumbent on the petitioner to resolve any inconsistencies in the record by independent objective evidence, and attempts to explain or reconcile such inconsistencies, absent competent objective evidence pointing to where the truth, in fact, lies will not suffice. Matter of Ho, 19 I&N Dec. 582. (Comm. 1988).

The petitioner has failed to establish that any of the four factors enumerated above are present in this proceeding. Accordingly, it is concluded that the petitioner has not demonstrated that the offered position is a specialty occupation within the meaning of the regulations.

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.