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U.S. Department of Justice
Immigration and Naturalization Service

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OFFICE OF ADMINISTRATIVE APPEALS
425 Eye Street N.W.
ULLB, 3rd Floor
Washington, D.C. 20536



File: LIN-01-276-53876

Office: Nebraska Service Center

Date: JUL 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, Director
Administrative Appeals Office

DISCUSSION: The nonimmigrant visa petition was denied by the Director, Nebraska Service Center, and is now before the Associate Commissioner for Examinations on appeal. The appeal will be dismissed.

The petitioner is a business specializing in the sale of office furniture. It has 13 employees and a stated gross annual income of \$6.8 million. It seeks to employ the beneficiary as a specialized marketing communication manager for a period of three years. The director denied the petition because the petitioner had not established that the offered position is a specialty occupation.

On appeal, counsel submits a brief and additional documentation.

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 determined that the offered position most closely resembles that of a marketing manager, an occupation that does not require a baccalaureate degree in a specific field of study.

On appeal, counsel states that the offered position is a specialized marketing position that involves soliciting business for minority group markets in several cities to which the petitioner wishes to expand. Counsel asserts that the duties of the position are so unique and specialized that the knowledge required to perform the duties is usually associated with the attainment of a baccalaureate or higher degree.

The Service does not rely solely on the title of a position in determining whether that position qualifies as a specialty occupation. The Service considers the specific duties of the offered position combined with the nature of the petitioning entity's business operations. In the initial I-129 petition, the petitioner described the duties of the offered position as follows:

Managing and executing the marketing plan focusing specifically on minority consumer planning. Developing and implementing strategies targeting minority consumers. Building brand identity and raising awareness through

effective promotional programs. Direct creative production in developing and producing advertisements and support collateral. Ensure marketing programs support corporate strategies and objectives.

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 job being offered is that of a marketing manager specializing in marketing to minority group markets. According to Department of Labor's (DOL) Occupational Outlook Handbook (Handbook), 2002-2003 edition, at page 27:

Marketing managers develop the firm's detailed marketing strategy. With the help of subordinates, including *product development managers* and *market research managers*, they 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. In collaboration with sales, product development, and other managers, they monitor trends that indicate the need for new products and services and oversee product development.

Information at page 28 of the Handbook does not indicate that a marketing manager position requires a bachelor's degree in a specific field of study. Rather, most employers prefer a wide

range of educational backgrounds or promote individuals from within companies.

Counsel on appeal cites the DOL's description of the educational requirements for marketing managers in the Handbook as follows:

For marketing, sales, and promotional 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.

While some employers may prefer a bachelor's or master's degree in business administration with an emphasis on marketing, the information cited above does not indicate that a bachelor's degree in business administration with an emphasis on marketing is the minimum requirement for entry into the occupation of marketing manager.

Counsel argues on appeal that the offered position is more specialized and complex than most marketing manager jobs because the job involves creating strategies to increase brand awareness and market the company's products to minority group markets. In support of his argument, counsel submits photocopies of two advisory opinion letters previously submitted by the petitioner in response to a Service request for additional evidence.

██████████ Ph.D., Associate Professor of Marketing at Roskins College of Business, University of Nebraska at Omaha, states that a bachelor's degree is essential in order to be effective in developing marketing campaigns for minority markets. ██████████ further states that the person should also have lived and worked in a minority community or have developed a significant amount of research background through his or her studies to understand the social and cultural nuances unique to minority markets. Alternately, ██████████ states that the person would have to have several years of equivalent work experience with an agency or firm that specializes in minority marketing communications. However, ██████████ has not cited any relevant authorities upon which he relied to reach this conclusion, nor has he provided any independent evidence to corroborate his statements. It is noted that Dr. Hafer does not specify that a bachelor's degree in marketing or a related field of study is a minimum requirement for employment as a marketing manager.

██████████ a rehabilitation consultant at Stricklett & Associates, Inc., indicates he has worked in the field of vocational rehabilitation for more than 20 years and is certified as a Vocational Rehabilitation Counselor and Job Placement Specialist with the Nebraska Workers' Compensation Court. Mr.

Utley states that, based on his research using the DOL's Dictionary of Occupational Titles (DOT), 4th Edition; the DOL's Handbook, 2000-2001 edition; and the Nebraska Career Information System, the offered position requires, at a minimum, a bachelor's degree.

A reference in the DOL's DOT, Fourth Edition, standing alone, is not enough to establish that an occupation is a specialty occupation. The DOT classification system and its categorization of an occupation as "professional and kindred" are not directly related to membership in a profession or specialty occupation as defined in immigration law. In the DOT listing of occupations, any given subject area within the professions contains nonprofessional work, as well as work within the professions.

The latest edition of the DOT does not give information about the educational and other requirements for the different occupations. This type of information is currently furnished by the DOL in the various editions of the Handbook. The latter publication is given considerable weight (certainly much more than the DOT) in determining whether an occupation is within the professions. This is because it provides specific and detailed information regarding the educational and other requirements for occupations.

Furthermore, Mr. Utley bases his conclusion on the description of a marketing research analyst job in the sources cited above. A market research analyst position is a more specialized and complex job that normally requires a master's degree in business administration with an emphasis on marketing. The offered position is not that of a market research analyst, but rather that of a marketing manager.

This Service uses an independent evaluation of a person's foreign credentials in terms of education in the United States as an advisory opinion only. Where an evaluation is not in accord with previous equivalencies or is in any way questionable, it may be rejected or given less weight. See Matter of Sea, Inc., 19 I&N Dec. 817 (Comm. 1988). In this case, Dr. Hafer merely states that a bachelor's degree is needed for a marketing manager position without specifying that the bachelor's degree must be in marketing or a related field. Mr. Utley addresses the educational requirements for a market research analyst position rather than a marketing manager position. The letters do not overcome the basis for the director's decision.

Counsel's statement that the current Vice President of Marketing has a bachelor's degree in marketing is noted. However, the petitioner has not submitted any documentary evidence to demonstrate that it requires a bachelor's degree in business administration with an emphasis on marketing as part of the hiring process, because the proffered position is more complicated or requires more education than the marketing manager position

discussed by the DOL in the Handbook. Thus, the petitioner has not shown that a bachelor's degree or its equivalent is required for the position being offered to the beneficiary.

Counsel argues that the degree requirement is common to the industry in parallel positions among similar organizations. In support of his argument, counsel submits 15 internet job ads for marketing manager positions. While all but one of the job ads state that a bachelor's degree is required, the prospective employers list a variety of educational requirements for the advertised jobs. Five of the positions require a bachelor's degree in a field related to that company's product or service; two positions merely specify "16 years" of education; seven positions state that a bachelor's degree in marketing or business administration is required. Seven job advertisements are not sufficient to demonstrate an industry standard. Additionally, neither counsel nor the petitioner has submitted any evidence to show that these job ads are for marketing manager positions in office furniture companies or that they are marketing manager positions targeting minority group markets. It is concluded that the record does not contain sufficient evidence to demonstrate that the degree requirement is common to the industry in parallel positions among similar organizations.

Counsel asserts that the duties of the offered position are more specialized and complex than those of most marketing manager positions because the job involves targeting minority group markets. Counsel further asserts that the knowledge required to perform these duties can only be acquired through four years of study and research at the baccalaureate level. In support of his assertion, counsel submits photocopies of several articles discussing the significance and potential for future growth of minority group or multicultural marketing. Counsel asserts that these articles underscore the evolving specialization of marketing aimed at minority markets. However, nowhere in any of these articles is it stated that a bachelor's degree in marketing or a related field is required for this type of marketing job.

Counsel also submits a memorandum from [REDACTED] Director of the Nebraska Service Center, providing guidance to service center adjudicators on the question of whether computer-related positions such as computer programmers and programmer/analysts qualify as specialty occupations. The director notes that computer-related jobs are in transition from nonprofessional to professional status. He further states that computer programming and programmer/analyst jobs for computer consulting companies will generally be considered to be specialty occupations. Counsel argues that marketing management positions are also in transition from nonprofessional to professional status and should therefore be found to be specialty occupations. However, the director discussed only the specific duties performed by programmer analysts and systems analysts in his

memorandum. Counsel has not provided any evidence which would support a finding that the director's memorandum also applies to the duties and responsibilities of marketing managers.

Counsel also asserts that the Administrative Appeals Unit (AAU) has previously found that a marketing manager position qualifies as a specialty occupation. In support of his assertion, counsel submits a copy of a previous AAU decision in which it was found that a marketing manager job is a specialty occupation. In the case cited, the offered position was found to combine the duties of a marketing manager with those of a market research analyst. The appeal was sustained, and the petition approved, based on a conclusion that the job contained substantial elements of a market research analyst job, an occupation that normally requires a master's degree in business administration with an emphasis on marketing. In this case, the offered position is that of a marketing manager with no additional market research analyst duties. Therefore, the finding in the cited case has no relevance to the facts of this case.

Finally, counsel states that the beneficiary's master's thesis specifically addresses strategies for marketing to minority group markets. Counsel contends that the Service failed to consider the beneficiary's statements in the introduction to his thesis. Counsel states that the beneficiary's introduction illustrates the uniqueness of the minority group market and the specialized study necessary to function in that market by virtue of research. Counsel further states:

The thesis introduction goes on to point out that the main mistake companies make is thinking that they can reach minority groups through mainstream media and normal immediate approaches. The culture, the media, and the method of approach are distinctly different for minority groups, as opposed to the mainstream customer in the marketplace. . . . research efforts such as focus groups and one-on-one interviews are necessary to a follow-up with respect to ethnic marketing to determine the best methodology to introduce products and to move the minority group customer to purchase them. Specialized study is at the job's very core.

However, the beneficiary's introduction is not evidence that a bachelor's degree in business administration with an emphasis on marketing is necessary in order to become a marketing manager targeting minority group markets. While the beneficiary is clearly well-qualified to perform the duties of the job, the record does not contain sufficient evidence to demonstrate that the duties of the offered position are so specialized and complex that the knowledge required to perform the duties is usually associated with

the attainment of a baccalaureate or higher degree in a specific field of study.

The petitioner has failed to establish that any of the four factors enumerated above are present in this proceeding for the position of a marketing manager. The DOL, which is an authoritative source for educational requirements for certain occupations, does not indicate that a bachelor's degree in a specialized area is the minimum requirement for marketing manager positions. 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. Accordingly, the decision of the director will not be disturbed.

ORDER: The appeal is dismissed.