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U.S. Department of Homeland Security  
Bureau of Citizenship and Immigration Services

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

[Redacted]

File: SRC 01 162 55047 Office: TEXAS SERVICE CENTER Date:

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) **APP 81 2003**

ON BEHALF OF PETITIONER:

[Redacted]

**PUBLIC COPY**

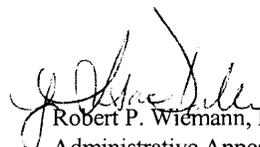
INSTRUCTIONS:

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 Bureau of Citizenship and Immigration Services (Bureau) 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.

  
Robert P. Wiemann, Director  
Administrative Appeals Office

**DISCUSSION:** The nonimmigrant visa petition was denied by the Director, Texas Service Center, and the matter is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed.

The petitioner is a Florida company engaged in the distribution, export and sales of recycled clothing, raw material for the confection industry, and accessories for clothing manufacturing. It has six employees and a gross annual income of \$1,822,823 dollars. It seeks to temporarily employ the beneficiary as a marketing representative for a period of three years. The director determined that the petitioner had not established that the proffered position was a specialty occupation, or that the beneficiary was qualified to perform the duties of the proffered position.

On appeal, counsel asserts that the position of sales representative is a specialty occupation based on the specialized knowledge required to do various job elements, and that the beneficiary is qualified to perform the position based on the educational and work experience equivalency document submitted by the petitioner. Counsel submits additional documentation.

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 defined at 8 C.F.R. § 214.2(h)(4)(ii) as:

an occupation which requires theoretical and practical application of a body of highly specialized knowledge in field 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 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 first issue in this proceeding is whether the petitioner has established that the position offered to the beneficiary is a specialty occupation. In the original petition received by the Texas Service Center on April 24, 2001, the petitioner described the position as marketing representative, and explained the duties of the proffered position as follows:

Will be responsible for the analysis and implementation of marketing data, developing innovative marketing strategies, create and execute marketing solutions, analyze potential new markets and competitors of the company.

The petitioner described its business as follows:

[The petitioner] is a company engaged in the distributing, [sic] export and sales of recycled clothing, raw material for the confection industry as well as accessories for clothing manufacturing. These products acquired are for sale and distribution within the United States, as well as for exportation and distribution to Central America, South America, and the Caribbean.

On December 7, 2001, the director asked for further information with regard to whether the proffered position was a specialty occupation. Additionally the director requested evidence that the position of marketing representative required a baccalaureate degree, that others in the industry commonly required a baccalaureate degree, and that the petitioner normally required such a degree for the marketing representative position.

In response to the request for evidence, the petitioner stated that the position was categorized as a level II position according to the Florida Department of Labor and Employment Security (FDLES). According to the petitioner, the FDLES described a Level II position as follows:

A fully competent employee who has sufficient experience in the occupation to plan and conduct work requiring judgment and the independent evaluation, selection, modification and the application of standard procedures and techniques. Such employees use advanced skills and diversified knowledge to solve unusual and complex problems. They may supervise or provide direction to staff performing tasks requiring skills equivalent to Level I. These employees receive only technical guidance and their work is reviewed for the application of sound judgment and effectiveness in meeting the established procedures and expectations.

The petitioner provided no further documentation with regard to this statement, and stated that the proffered position required the beneficiary "to implement and analyze marketing data, to develop marketing strategies, to execute marketing strategies and solutions for the company to expand operations in Latin America and the Caribbean."

On March 27, 2002, the director denied the petition. First, the director determined that the petitioner had not established that the position of marketing representative at a small recycling center and exporter met any of the criteria of 8 C.F.R. § 214.2 (h)(4)(iii)(A). The director noted that the Department of Labor (DOL) *Occupational Outlook Handbook (Handbook)* did not establish that a bachelor's degree was required for entry into the marketing management field. In addition the director determined that the evidence submitted with regard to the beneficiary's work in Panama did not establish that the beneficiary had used the practical and theoretical application of a specialized knowledge while working with other employees who had degrees in the same areas as the proffered position.

On appeal, counsel resubmits the petitioner's financial reports and the beneficiary's documentation contained in the original petition. In a cover letter, counsel comments on two marketing strategies that require the beneficiary to use specialized knowledge. Counsel also maintains that courses taken by the beneficiary for her undergraduate degree in interior design, such as Planes and Volume I, and Shadow and Perspective I helped the beneficiary in developing innovative marketing projects. Counsel submits no further evidence to document his assertions.

To examine the first criterion of 8 C.F.R. § 214.2 (h)(4)(iii)(A), the Immigration and Naturalization Service, now the Bureau of Citizenship and Immigration Services (Bureau) often looks to the Department of Labor's (DOL) *Occupational Outlook Handbook (Handbook)* when determining whether a baccalaureate or higher degree or its equivalent is normally the minimum requirement for entry into a particular position.

Upon review of the record, a basic distinction can be made between the reasoning underlying the director's decision and the petitioner's assertions and documentation with regard to the proffered position. The critical element in determining whether the position is a specialty occupation 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>

As stated previously, the statute establishes that the petitioner must show that the proffered position requires a baccalaureate degree or higher, or the equivalent, in a specific specialty. (Emphasis added.) To interpret the criteria in 8 C.F.R. 214.2(h)(4)(iii)(A) as solely requiring a bachelor's degree in any field of study is an incorrect interpretation.

In response to the director's request for further information, the petitioner submitted a generic description from the State of Florida Department of Labor for a level II employee. This document did not explain in any greater depth the specific duties of the proffered position. Utilizing the initial basic description provided by the petitioner, it appears that the position is analogous to a marketing manager position. With regard to marketing managers, the 2002-2003 edition of the *Handbook* on page 26 states:

*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—for example, business firms, wholesalers, retailers, government, or the general public. . . . 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.

With regard to training and educational requirements, the *Handbook* on page 28 states:

A wide range of educational backgrounds are suitable for entry into advertising, marketing promotions,

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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." See *Defensor v. Meissner* 201 F.3d 388 (5<sup>th</sup> Cir. 2000).

public relations, and sales managerial jobs, but many employer 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 promotion management positions, some employers prefer a bachelor's or master's degree in business administration with an emphasis on marketing.

. . . .

Most advertising, marketing, promotions, public relations, and sales management positions are filled by promoting experienced staff or related professional or technical personnel.

Accordingly the *Handbook* establishes that numerous types of degrees or experience are found to be suitable for entry into the marketing representative position. The *Handbook* does not indicate that a bachelor's degree in a specific specialty is required for entry into the position. Without more persuasive evidence, the petitioner has not established that a bachelor's or higher degree or its equivalent is commonly required for entry into the marketing representative position.

With regard to the second and third criteria of 8 C.F.R. § 214.2 (h)(4)(iii)(A), namely that the degree requirement is common to the marketing representative industry in parallel positions, and that the employer normally requires a degree or its equivalent for its marketing representative position, the petitioner has submitted no evidence to establish either criterion. For example, no job vacancy announcements were submitted to document what similar firms are requiring of candidates for marketing representative positions. In addition the petitioner provided no information with regard to whether it had previously hired a marketing representative and what educational credentials it required of any such employee.

With regard to the final criterion of 8 C.F.R. § 214.2 (h)(4)(iii)(A), namely that 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 description provided by the petitioner of the beneficiary's work duties does not document that the duties of the proffered position are any more specialized or complex than the duties of any other marketing manager or representative. Without more information on the complexity or uniqueness of mounting a marketing campaign for Latin American or Caribbean clients for the petitioner, or the

volume and frequency of marketing initiatives in the recycled clothing industry, the record is devoid of any information as to the specialized or complex nature of the proffered position. With regard to the strategies identified by counsel that showed the position required specialized knowledge, the assertions of counsel do not constitute evidence. *Matter of Obaigbena*, 19 I&N Dec. 533, 534 (BIA 1988). Without more persuasive testimony, the petitioner has not established the specialized and complex nature of the duties to be performed by the beneficiary.

The petitioner has failed to establish that any of the four criteria 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 second issue to be addressed in this proceeding is whether the beneficiary is qualified to perform the duties of the proffered position. The petitioner initially submitted a document from Global Education Group, Inc. that examined both the educational and work experience of the beneficiary, and found that the beneficiary's bachelor's degree in interior design from a Panamanian university was the equivalent of a U.S. bachelor's degree in the same field. The same document also stated that the beneficiary's four years of work experience in business administration/marketing was equivalent to a U.S. bachelor's degree in business administration with a major in marketing.

The director asked for further evidence with regard to whether the beneficiary was qualified to perform the position. In particular, the director requested a copy of the beneficiary's degree and transcripts; and letters from the beneficiary's previous employers that showed her work experience included the theoretical as well as the practical application of specialized knowledge required by the specialty and that the experience was gained while working with peers, supervisors, or subordinates who had a degree or its equivalent in the same marketing/business administration specialty.

In response, the petitioner submitted the beneficiary's degree and transcripts, as well as a letter from [REDACTED] in Panama City, Panama, the beneficiary's former employer. The letter described the beneficiary's work with them from 1987 to 2000, and identified employees who had worked under the beneficiary's supervision from 1991 to 2000, or for shorter periods of time.

The Bureau uses an evaluation by a credentials evaluation organization of a person's foreign education as an advisory opinion only. Where an evaluation is not in accord with previous equivalencies or is in any way questionable, it may be discounted or given less weight. See *Matter of SEA, Inc.*, 19 I&N Dec. 820 (Comm. 1988).

In the instant petition, the credentials evaluation letter does not accurately reflect evidence in the record regarding the beneficiary's prior work experience. The letter from the beneficiary's former employer and the beneficiary's resume clearly show that the beneficiary worked for thirteen to fourteen years with [REDACTED] her Panamanian employer, and not for four years as stated in the evaluation. Using the regulatory formula of three years of specialized training for each year of college-level training in the specific specialty that a beneficiary may lack, the beneficiary has four years of college-equivalent work experience. Nevertheless, the record does not establish that the petitioner has met any of the criteria outlined in C.F.R. § 214.2(h)(4)(iii)(D) with regard to establishing that the beneficiary's years of specialized training are the equivalent to the completion of a college degree in the field of business administration or marketing.

For example, 8 C.F.R. § 214.2(h)(4)(iii)(D)(1) provides that an evaluation from an official who has authority to grant college-level credit for training and/or experience in the specific specialty at an accredited university which has a program for granting such credit is sufficient to establish the equivalency of training to completion of a college degree. However, the record is not persuasive that Professor Koulamas, the evaluator of the beneficiary's educational and work experience, has the authority to grant college-level credit for training and/or experience in the specific specialty. Correspondence from Florida International University with regard to Dr. Koulamas' ability to grant credit for coursework would be more probative of this criterion than the assertions contained in the present education and work equivalency evaluation document submitted on Global Education Group, Inc. letterhead.

In addition, with regard to 8 C.F.R. § 214.2(h)(4)(iii)(D)(5), the record does not contain sufficient evidence to establish that the beneficiary's work experience in business administration or marketing was gained while working with peers, supervisors, or subordinates who have a degree or its equivalent in the specialty occupation, or that the beneficiary has recognition of expertise in the specific specialty based on the type of documentation outlined in 8 C.F.R. § 214.2(h)(4)(iii)(D)(5). While the beneficiary's former employer provided substantial detail on the beneficiary's duties and responsibilities with the Panamanian company in its letter submitted for the record, the information submitted with regard to the educational credentials or work experience of the various employees supervised by the beneficiary appears to be incomplete. Since the director's decision is also based on the finding that the proffered position is not a specialty occupation, the issue of whether the beneficiary is qualified to perform the duties of the proffered position will not be examined further in this proceeding.

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 appeal will be dismissed.

**ORDER:** The appeal is dismissed.