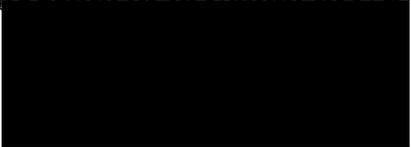


DA2

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

**identifying data deleted to
prevent clearly unwarranted
invasion of personal privacy**



ADMINISTRATIVE APPEALS OFFICE
425 Eye Street N.W.
BCIS, AAO, 20 Mass, 3/F
Washington, D.C. 20536

File: EAC-01-221-57199

Office: VERMONT SERVICE CENTER

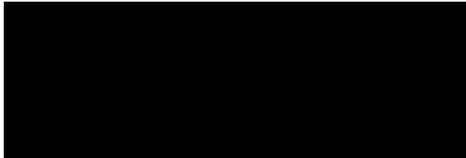
Date: **AUG 21 2003**

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)

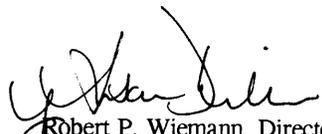
ON BEHALF OF PETITIONER:



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.


Robert P. Wiemann, Director
Administrative Appeals Office

DISCUSSION: The nonimmigrant visa petition was denied by the director and is now before the Administrative Appeals Office (AAO) on appeal. The decision of the director will be withdrawn and the matter will be remanded to him for further consideration.

The petitioner is a Japanese restaurant with 80 employees and an approximate gross annual income of \$3 million. It seeks to employ the beneficiary as a promotion specialist for a period of three years. The director determined the petitioner had not established that the beneficiary is qualified to perform the duties of a specialty occupation.

On appeal, counsel submits a brief.

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), provides in part for nonimmigrant classification to qualified aliens who are coming temporarily to the United States to perform services in a specialty occupation. Section 214(i)(1) of the Act, 8 U.S.C. § 1184(i)(1), defines a "specialty occupation" as an occupation that requires theoretical and practical application of a body of highly specialized knowledge, and 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.

Pursuant to section 214(i)(2) of the Act, 8 U.S.C. § 1184(i)(2), to qualify as an alien coming to perform services in a specialty occupation the beneficiary must hold full state licensure to practice in the occupation, if such licensure is required to practice in the occupation. In addition, the beneficiary must have completed the degree required for the occupation, or have experience in the specialty equivalent to the completion of such degree and recognition of expertise in the specialty through progressively responsible positions relating to the specialty.

The director denied the petition because the petitioner had not demonstrated that the beneficiary's bachelor's degree in philosophy and his employment experience with the Radio Philippines Network qualify him for the proffered position. On appeal, counsel states, in part, that the beneficiary's coursework leading to his degree in philosophy qualifies him for the proffered position, which is similar to that of an advertising, marketing and public relations manager. Counsel further states that the record contains an evaluation report that supports his claim.

In the initial I-129 petition, the petitioner described the duties of the offered position as follows:

1. Direct promotions programs combining advertising with purchase incentives to increase sales of products;
2. Consult newspapers, trade journals, and other publications to learn about contemplated conventions and social functions;
3. Organize prospect files to be used for promotional purposes;
4. Coordinate with our IT consultants to build website for marketing purposes;
5. Direct workers engaged in preparing promotional correspondence with business and social groups;
6. Confers [sic] with department heads to discuss and formulate plans for soliciting business; [and]
7. Deal with newspapers, TV marketing executives in terms of advertising programs.

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 proffered position is primarily that of a public relations, marketing, and advertising manager. A review of the Department of Labor's *Occupational Outlook Handbook*, 2002-2003 edition, at page 28, finds no requirement of a baccalaureate or higher degree in a specific specialty for employment in public relations, marketing, and advertising managerial jobs. A wide range of educational

backgrounds is suitable, but many employers prefer individuals with experience in related occupations plus a broad liberal arts background. In addition, certain personal qualities and participation in in-house training programs are often considered as important as a specific formal academic background. In this instance, the record contains a credentials evaluation indicating that the beneficiary holds the equivalent of a Bachelor of Science degree in philosophy and economics from an accredited institution of higher education in the United States. In view of the foregoing, it is concluded that the petitioner has demonstrated that the beneficiary is qualified to perform the duties of the proffered position.

The director has not determined whether the proffered position is a specialty occupation. Accordingly, the matter will be remanded to the director to make such a determination and to review all relevant issues. The director may request any additional evidence he deems necessary. The petitioner may also provide additional documentation within a reasonable period to be determined by the director. Upon receipt of all evidence and representations, the director will enter a new decision.

ORDER: The decision of the director is withdrawn. The matter is remanded to him for further action and consideration consistent with the above discussion and entry of a new decision, which, if adverse to the petitioner, is to be certified to the AAO for review.