

PUBLIC COPY

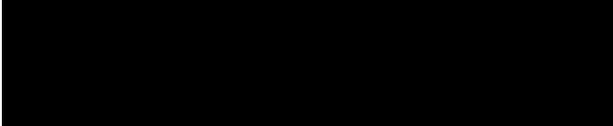
D2

U.S. Department of Homeland Security

Citizenship and Immigration Services

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

ADMINISTRATIVE APPEALS OFFICE
CIS, AAO, 20 Mass, 3/F
425 I Street, N.W.
Washington, DC 20536



FILE: WAC 02 201 50728 OFFICE: CALIFORNIA SERVICE CENTER

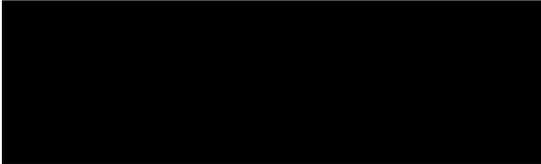
DATE: DEC 17 2003

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:



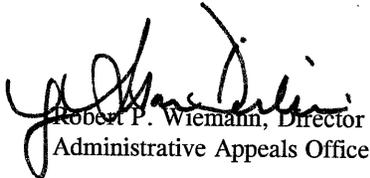
INSTRUCTIONS:

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 Citizenship and Immigration Services (CIS) 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, California Service Center, and is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed.

The petitioner is an internet promotion and publication service that currently employs 15 persons and has a gross annual income of \$1,200,000. It seeks to employ the beneficiary as a web marketing manager for a period of three years. The director denied the petition for failing to establish that the proffered position was a specialty occupation.

On appeal, counsel submits a brief.

Section 214(i)(1) of the Immigration and Nationality 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 further 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 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.

On the Form I-129, the petitioner listed the proffered position as "Manager, Web Marketing," and described the proposed duties as follows:

Manage Web Marketing Department: coordinate inter-department activities with software development teams, develop relations with clients, maintain company reputation, author instructional manuals for internal and external database/administrative system access, develop/maintain web-based newsletter, analyze market research data for Internet travel for strategic development through SWOT analysis, propose/define e-marketing tools for web implementation, enhance

quality of web content. Data mining of member profiles for customer development programs: develop targeted marketing communication to increase and retain web customer base. Report directly to CEO.

Accompanying the Form I-129 were a letter of support from the petitioner's president and documents pertaining to the beneficiary's education and work experience. According to the letter, the petitioner is in an expansion phase and is planning on developing a new "Web Marketing Department, to stimulate sales in different marketing segments, through a comprehensive communication strategy." The letter states that the beneficiary would be "responsible for building and managing" the new department. Reporting directly to the CEO, she will be "coordinating interdepartmental activities with the software development teams and maintaining relations with the contractors and companies to whom [the petitioner] outsource[s] web developing and publishing." The president's letter stated that other responsibilities would include:

- Write copy for all external client and investor communication in order to further develop relationships and maintain a reputation of high esteem for the company. Fulfillment of this responsibility requires a keen understanding of the product, and a good command over the language to ensure that all information is conveyed in a lucid manner, while projecting the company and its activities favorably.
- Author coherent and methodical instructional manuals for internal and external use for accessing the backend database and administrative system.
- Develop and maintain a web-based newsletter for internal and external distribution. This newsletter should be compiled with various industry related articles and market analysis to develop the reputation of the company as an organization dedicated to servicing and revolutionizing the travel industry.
- Generate creative web copy for iVacation.com and sub sites, to enhance the quality of the content.
- Analysis of market research data for the Internet travel vertical for strategic development through creating SWOT analyses for [the petitioner].

- Proposal and defining of e-marketing tools for web implementation.
- Providing system design analysis, risk evaluation, and project requirement specifications for contemporary web modules.
- Define enterprise level CRM processes through web-customization and personalization modules.
- Data mining of member profiles for customer development programs. This would involve developing targeted marketing communication to significantly increase and retain web customer base.

The letter also stated that the position required "an individual who holds at least a Bachelor's degree in English or Mass Communications."

The director issued a request for additional evidence, which, in part, solicited specified types of additional evidence that would be relevant to the qualifying criteria of 8 C.F.R. § 214.2(h)(4)(iii)(A).

In response, counsel submitted a letter which introduced an eleven-page letter from the petitioner's president, which, in turn, enclosed these documents:

- (1) Exhibit A: a diploma certificate, course syllabus, and letter of recommendation from the head professor of the Edit Institute, where the beneficiary successfully completed a program of studies in Web Multimedia.
- (2) Exhibit B: "Indicative pages" from the book *Marketing.com*, including a chapter index and a note about the authors. According to the petitioner's president, Chapter 8 contains a case study on a website for which the beneficiary had been the communication strategist.
- (3) Exhibit C: a set of documents comprised of (1) letters of recommendation; (2) letters regarding one of the beneficiary's former positions, dealing with her appointment, pay raises, and voluntary release; and (3) an Internet printout on Intiqua, a company formed by the merger of another company with one of the beneficiary's former employers, Netacross OLS (On-line Solutions).

- (4) Exhibit D: "[C]opies of five job listings that have almost identical job responsibilities/requirements as [the petitioner]."

The president's letter presents a detailed description of each of the nine responsibilities that he had identified in his letter of support of the Form I-129. The letter also assigns a percentage of weekly worktime to each responsibility. It also expanded the general description of some of the responsibilities.

The director denied the petition because he determined that the evidence of record did not meet any of the specialty occupation criteria of 8 C.F.R. § 214.2(h)(4)(iii)(A).

On appeal, counsel contends that the proffered position is a specialty occupation because the petitioner has shown that: (1) the nature of the specific duties are so specialized and complex that they require a member of a specialty occupation to perform them; (2) the position's degree requirement is common to the industry in parallel positions among similar organizations; and (3) a baccalaureate or higher degree is a standard minimum requirement for entry into the position of Web Marketing Manager.

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.

After careful consideration of counsel's brief and the entire record, the AAO has determined that the petitioner has not established that the proffered position is a specialty occupation.

Before proceeding with an evidentiary discussion, it is important

to note the type of baccalaureate or higher degree that a specialty occupation requires, as this is a central factor in understanding and applying each criterion of 8 C.F.R. § 214.2(h)(4)(iii)(A).

Section 214(i)(1) of the Act, 8 U.S.C. § 1184(i)(1), specifies that a "specialty occupation" is one that requires not only (1) the theoretical and practical application of a body of highly specialized knowledge, but also (2) attainment of a bachelor's degree or higher, or the equivalent, in "the specific specialty." Thus, the required degree must be in a specific specialty, that is, in a discipline that contains a body of highly specialized knowledge that is necessary for performance of the proffered position. 8 C.F.R. § 214.2(h)(4)(ii) mirrors the Act by stating that the required degree must be in "a specific specialty." In this context, CIS correctly interprets "degree" in all of the four criteria of 8 C.F.R. § 214.2(h)(4)(iii)(A) as one in a specific specialty. This is a reasonable interpretation that is consistent with section 214(i)(1) of the Act. See *Tapis International v. INS*, 94 F. Supp. 2d 172, 175 (D. Mass. 2000).

Therefore, unless it is in a specific specialty related to the proffered position, a degree or degree-equivalent will not qualify a position as a specialty occupation.

As the following discussion will show, the evidence does not satisfy any of the qualifying criteria of 8 C.F.R. § 214.2(h)(4)(iii)(A).

**I. Baccalaureate or higher degree or its equivalent as the normal minimum requirement for entry into the particular position.
-8 C.F.R. § 214.2 (h) (4) (iii) (A) (1) .**

The AAO agrees with counsel that the director overlooked significant dimensions of the proffered position when he categorized it "as that of simply a marketing manager, without consideration of the need for a candidate who possesses writing skills, is proficient in the use of the English language, and effectively communicates both technical knowledge (specialized in the web travel industry) and supervisory mandates." Management and supervision is a major element of the proposed duties, but the position's primary requirement appears to be a command of the English language that will produce effective, informative, and persuasive writing and Internet marketing communications.

The AAO routinely consults the Department of Labor's *Occupational Outlook Handbook (Handbook)* for its information about particular occupations' duties and educational requirements. Here the AAO consulted the 2002-2003 printed edition.

The proffered position does not neatly fit into one of the occupations addressed in the *Handbook*. It seems to be an amalgam of duties drawn chiefly from two occupations: marketing manager

(*Handbook* pages 26-29); and writer/editor (*Handbook* pages 145-148). The director correctly stated that the marketing manager occupation does not require a degree in a specific specialty. While the *Handbook* indicates that entry-level writer and editor positions normally require a baccalaureate or higher degree, it also indicates that there is no requirement that the degree be in a specific specialty. This excerpt, from page 62, is dispositive:

A college degree generally is required for a position as a writer or editor. Although some employers look for a broad liberal arts background, most prefer to hire people with degrees in communications, journalism, or English. For those who specialize in a particular area, such as fashion, business, or legal issues, additional background in the chosen field is expected. Knowledge of a second language is helpful for some positions.

Neither communications, journalism, nor English confer a body of highly specialized knowledge.

The *Handbook*, therefore, does not support the proffered position as a specialty occupation under 8 C.F.R. § 241.2(h)(4)(iii)(A)(1).

The AAO also carefully reviewed the totality of duties to determine whether they constituted an occupation for which no degree is offered but whose performance nevertheless requires the equivalent of a specific-specialty degree. In such circumstances, the degree equivalency would have to be obtained by a combination of education, training, and work experience that would invest the beneficiary with a body of highly specialized knowledge necessary to perform the job. The record does not present such a situation.

Counsel correctly maintains that the proffered position requires a baccalaureate or higher degree as a minimum requirement for entry into the proffered position. However, because this required degree is not in a specific specialty, the petitioner has not met the criterion of 8 C.F.R. § 214.2(h)(4)(iii)(A)(1).

II. Degree requirement that is common to the industry in parallel positions among similar organizations, or, alternatively, a particular position so complex or unique that it can be performed only by an individual with a degree.

-8 C.F.R. § 214.2 (h) (4) (iii) (A) (2).

A. Degree requirement common to the industry.

It bears repeating that, as discussed above, "degree" in this and all of the 8 C.F.R. § 214.2(h)(4)(iii)(A) criteria means one that is in a specific specialty whose highly specialized knowledge is required for performance of the proffered position.

Factors often considered by Citizenship and Immigration Services (CIS) when determining the industry standard include: whether the *Handbook* reports that the industry requires a degree; 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." *Shanti, Inc. v. Reno*, 36 F. Supp. 2d 1151, 1165 (D.Min. 1999) (quoting *Hird/Blaker Corp. v. Slattery*, 764 F. Supp. 872, 1102 (S.D.N.Y. 1991)).

The *Handbook* indicates that the instant criterion cannot be met, because the proffered position does not require a degree in a specific specialty.

The Internet advertisements submitted by counsel are probative. However, consistent with the *Handbook*, they show that a bachelor's degree from a number of non-specialty disciplines would qualify a person for the proffered position. The specified degrees include marketing, English, journalism, communications, and public relations.

B. Degree necessitated by the complexity or uniqueness of the position.

Despite counsel's assertions, the record fails to establish that the proffered position is either so complex or so unique that only an individual with a bachelor's degree in a specific specialty could perform it.

The duties, as enumerated and described in the record, require a spectrum of skills and abilities, including, but not limited to, capacities to: write clearly, effectively, and creatively; develop communication tools to inform and persuade various audience sets; develop proposals and other work products based on a strong understanding of the Internet; develop effective communication and marketing strategies for the petitioner's customer base; write coherent and methodical instructional and technical manuals; employ a working knowledge of vector-based design packages; develop and maintain an Internet-based newsletter; edit; supervise and guide a team of junior copywriters and market research analysts for collection of data for newsletter articles; improve the creative content of the petitioner's Internet site; compile reports and make recommendations on improving the petitioner's services research, partly through supervision and guidance of market research analysts; make recommendations for the purchase of new Internet technology; analyze and make recommendations about the feasibility of acquiring web modules; enhance customer brand-loyalty through web-customization and personalization; and tailor marketing messages to customer usage patterns.

While the duties are multiple and diverse, they do not comprise a position that is especially complex or unique. The petitioner's duty descriptions and its assessment of worktime allocations clearly show that the beneficiary's primary involvements would be in effective writing and in Internet marketing management. These functions do not require a degree in any specific specialty. Likewise, the record indicates that knowledge required for the Internet aspects of the position can be attained by work experience, coursework short of a college degree, or a combination of both.

The director was correct in not granting the petition under 8 C.F.R. § 214.2(h)(4)(iii)(A)(2).

III. Degree or its equivalent as the employer's normal requirement for the position.

-8 C.F.R. § 214.2 (h) (4) (iii) (A) (3).

The petitioner had no evidence to present on this issue, as this is the first offering of the proffered position.

IV. Specific duties of a nature so specialized and complex as to require knowledge usually associated with a baccalaureate or higher degree.

-8 C.F.R. § 214.2 (h) (4) (iii) (A) (4).

The AAO has reviewed and assessed the full range of duties depicted in the record. Despite counsel's assertions, the duties do not appear so specialized and complex as to require the highly specialized knowledge usually associated with a bachelor's degree or higher in a specific specialty. The assertions of counsel do not constitute evidence. *Matter of Obaigbena*, 19 I&N Dec. 533, 534 (BIA 1988); *Matter of Ramirez-Sanchez*, 17 I&N Dec. 503, 506 (BIA 1980).

In fact, the duties suggest that they could be performed by a person with a mix of very effective writing and communication skills, marketing knowledge, supervisory ability, and a working knowledge of Internet tools.

Because of the brief's remarks on the proffered position's supervisory duties, the AAO notes that, as enumerated and described in the record, these do not establish the requirement for a bachelor's degree or higher in any specific specialty, even when considered in combination with the other duties.

Despite counsel's assertions, the evidence does not establish that the proffered position is a specialty occupation under 8 C.F.R. § 214.2(h)(4)(iii)(A)(4).

As related in the discussions above, the petitioner has failed to establish any one of the four specialty occupation criteria of

8 C.F.R. § 214.2 (h)(4)(iii)(A), and counsel's assertions are without merit. Accordingly, the AAO shall not disturb the director's denial of the petition.

Again, the burden of proof in these proceedings rests solely with the petitioner. Section 291 of the Act, 8 U.S.C. § 1361, *supra*. The petitioner has not sustained that burden.

ORDER: The appeal is dismissed. The petition is denied.