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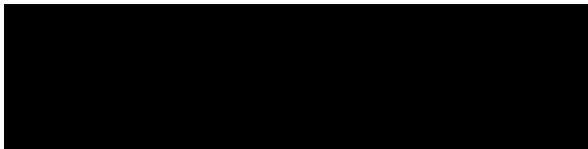
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U.S. Department of Homeland Security

Citizenship and Immigration Services

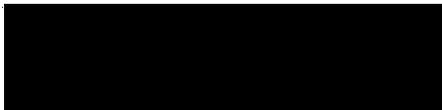
ADMINISTRATIVE APPEALS OFFICE
CIS, AAO, 20 Mass, 3/F
425 I Street, N.W.
Washington, DC 20536



FILE: WAC-02-029-57362 OFFICE: CALIFORNIA SERVICE CENTER

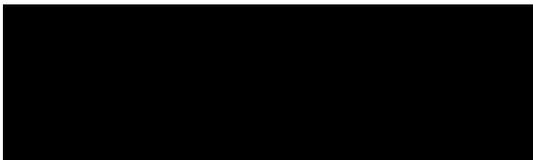
DATE: DEC 18 2003

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)

IN BEHALF OF PETITIONER:



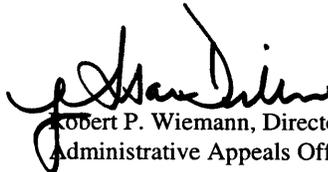
INSTRUCTIONS:

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 the 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 the matter is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed.

The petitioner provides publication and promotional services, employs 13 persons, and has a gross annual income of \$2.4 million. It seeks to employ the beneficiary as a sales promotion manager. The director denied the petition because the petitioner failed to establish that the offered position qualified as a specialty occupation.

On appeal, counsel submits a brief and previously submitted evidence. Counsel states that the position qualifies as a specialty occupation.

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 for the classification of qualified nonimmigrant aliens who are coming temporarily to the United States to perform services in a specialty occupation.

The issue to be discussed in this proceeding is whether the position offered to the beneficiary qualifies as a specialty occupation.

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 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.

Furthermore, 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.

In the letter accompanying the initial I-129 petition, the beneficiary's duties were described as follows:

[The beneficiary will:] [(1) plan and execute advertising policies and sales promotion campaign[s] on behalf of Takuyo Corporation and its clients; [(2) confer with officials of *Lighthouse* to allocate advertising space and discuss [the] nature of promotional articles; [(3) direct workers engaged in producing advertisements and product samples; [(4) review and approve advertising copy; [(5) direct research activities pertinent to planning and execution of sales promotional campaigns; [(6) manage [the] sales activities of Takuyo Corporation, including sales of *Lighthouse* magazine; and [(7) direct staffing, training[,] and performance evaluation[s] to develop and improve the company's current sales program.

The letter stated that the beneficiary would report directly to the president, and further stated that candidates must possess a bachelor's degree in marketing or business administration with a marketing emphasis, and have work experience in sales or marketing.

The letter asserted that the Department of Labor's *Dictionary of Occupational Titles* (the *DOT*) reports that the beneficiary's duties resemble those performed by advertising manager positions. The letter also stated that the Department of Labor's *Occupational Outlook Handbook* (the *Handbook*) reveals employers prefer hiring candidates possessing a bachelor's degree in business administration with an emphasis in marketing. Furthermore, the petitioner claimed that the beneficiary would supervise other

staff who possess bachelor's degrees.

On November 23, 2001, the director sought additional evidence: (1) a detailed job description, stating the time the beneficiary will spend performing each duty; (2) an explanation of why the position requires a person holding a college degree or its equivalent in the occupational field; and (3) evidence of degree equivalency.

In response, counsel submitted a letter stating that the beneficiary's position is a specialty occupation. In the first place, the letter stated that the beneficiary will supervise persons, such as copywriters, graphic designers and marketing researchers, who hold positions that qualify as specialty occupations in that the *Handbook* reports that employers require a bachelor's degree or higher to enter their fields. The letter mentioned that the director's letter stated that management positions are considered specialty occupations if they supervise persons holding specialty occupations; thus, based on this reasoning, counsel's letter claimed that the offered position qualifies as a specialty occupation because the beneficiary would manage sales personnel who hold bachelor's degrees and the petitioner requires candidates for the offered position to possess, at minimum, a bachelor's degree in marketing or equivalent work experience. Counsel's letter asserted that the petitioner submitted letters from two experts attesting that the offered position qualifies as a specialty occupation, requiring a bachelor's degree in marketing.

Counsel's letter related that the beneficiary would manage a staff of thirteen; organize and direct the company's sales and promotion activities; and spend the following time performing his duties:

1. Plan and execute advertising policies and sales promotion campaign on behalf of Takuyo Corporation and its clients; 35%
2. Confer with officials of *Lighthouse* to allocate advertising space and discuss [the] nature of promotional articles; 10%
3. Direct workers engaged in producing advertisements and product samples; 15%
4. Review and approve advertising copy; 15%
5. Direct research activities pertinent to planning and execution of sales promotional campaigns; 15%
6. Manage [the] sales activities of Takuyo Corporation, including sales of *Lighthouse* magazine; and 5%
7. Direct staffing, training[,] and performance evaluation[s] to develop and improve the company's current sales program. 5%

With respect to the beneficiary's qualifications, the letter

stated that the beneficiary holds a degree from California State University, Northridge, and that the beneficiary had gained eight years of experience in marketing while working with Recruit Co., Ltd., a large Japanese company engaged in marketing and promotional activities. The petitioner submitted information about Recruit Co., Ltd.; a copy of the beneficiary's final transcript, and his detailed resume; letters from Recruit Co., Ltd., describing the beneficiary's work history; an educational evaluation; and two letters from alleged authorities stating that the beneficiary possesses the equivalent of a U.S. bachelor's degree in marketing. The petitioner also submitted as evidence a list of employees that the beneficiary will supervise, and excerpts from the *Handbook*.

On March 6, 2002, the Immigration and Naturalization Service (the Service) denied the petition, finding that the offered position did not qualify as a specialty occupation. First, the Service stated that the beneficiary's duties did not show a complexity requiring professional skills, but resembled those performed by sales representative positions that present a company's products and develop a sales territory. Second, the Service stated that the 2000-2001 edition of the *Handbook* reports the industry does not require a baccalaureate or higher degree for sales representative positions. Moreover, the Service stated that positions with managerial or executive duties, generally, are not considered specialty occupations unless the duties involve the supervision of persons considered employed in specialty occupations or the duties are of a scope and complexity exceeding those normally encountered in the particular occupation. The Service stated that it takes this position because the *Handbook* reports that, although many persons in managerial positions hold baccalaureate degrees; nevertheless, employers do not require a degree in a specific and specialized area: they welcome degrees in business and liberal arts fields, and some employers find personal qualities and in-house training programs as important as formal academic training. Third, the Service maintained that the petitioner's evidence did not indicate that it normally requires candidates for the position to possess a baccalaureate or higher degree in the field. And, last, the Service declared that the beneficiary's duties and level of responsibility did not indicate a complexity or authority exceeding the norm in the occupational field.

On appeal, counsel states that the petitioner established that the offered position qualifies as a specialty occupation. First, counsel maintains that the beneficiary will supervise persons employed in specialty occupations. Second, counsel asserts that the beneficiary's duties require skills in marketing, management, communication, language, and business. Counsel avers that, because the beneficiary will manage persons possessing bachelor's degrees, the beneficiary must possess, at minimum, a bachelor's degree in marketing or equivalent work experience. Counsel

declares that two recognized authorities in the field of marketing have stated that the offered position is a specialty occupation, requiring a bachelor's degree in marketing. Finally, counsel insists that the Service did not consider the complexity inherent in each of the beneficiary's specific job duties. Essentially, counsel maintains that the company's business is promotions and a professional is required to manage this; further, counsel avers that most of the beneficiary's duties require a level of knowledge and skill that can only be achieved through advanced education.

To qualify as a specialty occupation, the petitioner must establish one of four criteria at 8 C.F.R. § 214.2(h)(4)(iii)(A).

Counsel asserts that a baccalaureate or higher degree or its equivalent is the minimum for entry into the particular position.

Counsel maintains that management positions are specialty occupations if they supervise persons holding specialty occupations. Thus, counsel avers that, because the beneficiary will manage employees such as copywriters, graphic designers, and marketing researchers, who possess bachelor's degrees and hold positions considered specialty occupations, the beneficiary's position, one which the petitioner requires candidates to possess, at minimum, a bachelor's degree in marketing or equivalent work experience, would be a specialty occupation. The petitioner submitted a list of employees that the beneficiary would supervise, indicating their respective positions and degrees; the positions shown are graphic designer, market research analyst/planner, copywriter, writer/editor, market research analyst/consultant, designer, accountant, and copywriter/translator.

To determine whether the position qualifies as a specialty occupation, Citizenship and Immigration Services (CIS) must examine the ultimate employment of the alien. *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 baccalaureate or higher degree in the specific specialty as the minimum for entry into the occupation as required by the Act.¹ To interpret the regulations any other way would lead to absurd results: if CIS were limited to reviewing a petitioner's self-imposed employment

¹ 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 *id.* at 387.

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 baccalaureate or higher degrees. See *id.* at 388. Thus, 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 CIS considers.

The 2002-2003 edition of the *Handbook* is instructive in determining whether a position qualifies as a specialty occupation. On page 26, the *Handbook* shows the beneficiary's duties as encompassing advertising, marketing, promotions, and sales manager duties. For example, the *Handbook* states that advertising managers oversee the in-house account, creative, and media services departments. The in-house account assesses the need for advertising; the creative services department develops the subject matter and presentation of advertising; and the media services department selects the communication media to disseminate the advertising. Marketing managers, the *Handbook* states, develop the marketing strategy, and with the help of subordinates, such as product development managers and market research managers, determine the demand for products and services offered by the firm and its competitors. The *Handbook* states that promotions managers supervise promotion specialists and direct promotion programs combining advertising with purchase incentives to increase sales. Finally, the *Handbook* states that sales managers direct the firm's sales program, assigning sales territories, setting goals, and establishing training programs for the sales representatives.

On page 28, the *Handbook* states the following with regard to training, advancement and other qualifications:

A wide range of educational backgrounds are suitable for entry into advertising, marketing, promotions, public relations, and sales managerial jobs, but many employers 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.

Specifically, for marketing, sales, and promotion manager positions the *Handbook* provides:

[S]ome employers prefer a bachelor's or master's degree in business administration with an emphasis in marketing. Courses in business law, economics, accounting, finance, mathematics, and statistics are

advantageous.

The *Handbook* reveals that employers find a wide range of educational backgrounds suitable for entry into the proffered position. Under the *Handbook*, for example, an employer may find a person with experience in a related occupation and an associate or bachelor's degree in any field of study suitable for a sales manager position. Although some employers prefer a bachelor's or master's degree in business administration, most do not normally require a bachelor's degree in a specialized field. Thus, according to the *Handbook*, the offered position would not qualify as a specialty occupation because employers do not require a bachelor's degree in a specific specialty.

Counsel asserts that the petitioner submitted two letters from alleged authorities in the marketing field who have stated that the offered position qualifies as a specialty occupation, requiring a bachelor's degree in marketing. The letters, along with resumes, are from Professor [REDACTED] and Associate Professor [REDACTED]. The applicable paragraph from Professor [REDACTED] letter stated:

Marketing management jobs are professional positions normally requiring at least a bachelor's degree in marketing. Such specialty occupation jobs require theoretical knowledge and practical application of specialized knowledge about the planning and execution of marketing, advertising, and sales strategies; trade/customer relations; and the supervision of personnel. Normally a job responsible for managing an organization's marketing activities is filled through recruiting a college graduate specializing in marketing with work experience.

Associate Professor Carl Obermiller's letter stated:

The position described as "Sales Promotion Manager" would normally require at least a bachelor's degree. The position has responsibility for both strategic and functional execution of a wide range of marketing activities - advertising, sales promotion, sales, marketing research-as well as the recruiting, selection, and management of marketing personnel who, themselves, are qualified with bachelor's degrees.

Although relevant, both letters fail to provide documentary evidence that would validate the assertion that the offered position would normally require at least a bachelor's degree in marketing. Simply going on record without supporting documentary evidence is not sufficient for the purpose of meeting the burden of proof in these proceedings. *Matter of Treasure Craft of California*, 14 I&N Dec. 190 (Reg. Comm. 1972).

The petitioner also fails to establish the second criterion, namely, that the degree requirement is common to the industry in parallel positions among similar organizations or, in the alternative, that its particular position is so complex or unique that it can be performed only by an individual with a degree. As previously discussed, the *Handbook* reveals that the offered position is parallel to positions that do not require a bachelor's degree in a specific specialty.

Likewise, the petitioner does not submit evidence that would establish that it normally requires a specific academic degree or its equivalent for the position. Thus, it fails to establish the third criterion at 8 C.F.R. § 214.2(h)(4)(iii)(A).

As already discussed, neither is the petitioner successful in showing that the duties of the offered position are so complex or unique that it can be performed only by an individual with a specific degree, or is the petitioner successful in showing 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 degree in a specific specialty. Again, the *Handbook* reports that the offered position parallels positions that do not require a bachelor's degree in a specific specialty.

In summary, the petitioner fails to establish any of the four criteria under 8 C.F.R. § 214.2(h)(4)(iii)(A) to qualify the position as a specialty occupation.

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. The petition is denied.