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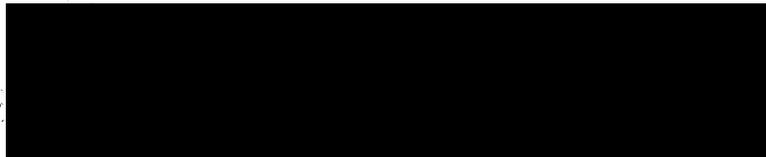
U.S. Department of Homeland Security

Citizenship and Immigration Services

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



FILE: SRC 02 188 51361

OFFICE: TEXAS SERVICE CENTER

DATE:

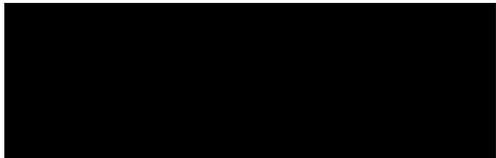
DEC 22 2003

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:



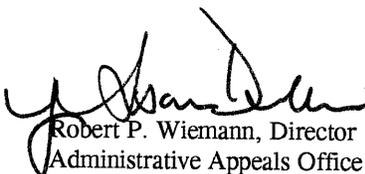
**INSTRUCTIONS:**

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 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 Director of the Texas Service Center denied the nonimmigrant visa petition and the matter is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed. The petition will be denied.

The petitioner is in the business of importing and marketing wool rugs and shawls. It employs two persons in the United States, 5000 persons in Nepal, and has a gross annual income of \$300,000. It seeks to employ the beneficiary as a marketing executive. The director denied the petition because it was determined that the position was not a specialty occupation, and the beneficiary was not qualified to perform the duties of a specialty occupation.

On appeal, counsel submits a brief and additional evidence. Counsel states, in part, that the proffered position is a specialty occupation in which the beneficiary is qualified to work.

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 first issue to be discussed in this proceeding is whether the proffered position 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.

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 original petition, received at the service center on May 31, 2002, the petitioner stated that the proffered position would involve the planning, directing, and coordination of the marketing of the petitioner's products. The beneficiary would research market factors, plan advertising activities, develop pricing strategies, and evaluate market reactions. The petitioner specified that the position requires an individual with a bachelor's degree in business and two years of related work experience. The petitioner submitted copies of the beneficiary's academic qualifications and his resume.

On June 11, 2002, the director requested further evidence that the proffered position qualified as a specialty occupation and that the beneficiary was qualified to perform a specialty occupation. In response to the director's concerns about the proffered position, counsel submitted a more detailed letter written by the beneficiary and excerpts from The Department of Labor's (DOL) *Dictionary of Occupational Titles (DOT)* (4th Ed., Rev. 1991) and the DOL's *Occupational Outlook Handbook (Handbook)*.

Regarding the beneficiary's qualifications, counsel submitted two letters from the beneficiary's former employers and an academic evaluation from Morningside Evaluations and Consulting. The evaluation states that, given the beneficiary's Nepalese bachelor's degree in the field of commerce (which was found to be the equivalent of three years of coursework towards a U.S. bachelor's degree) and his master's degree in public administration from the University of Southern California, it can be concluded that the beneficiary holds the equivalent of a master's degree in business administration from a U.S. university.

The director found the record insufficient to conclude that the proffered position was a specialty occupation or that the beneficiary was qualified to perform the duties of a specialty occupation, and he denied the petition on July 9, 2002.

On appeal, counsel submits a brief and a letter from Dr. [REDACTED] associate professor of marketing at Rice University. Dr. [REDACTED] states in his letter that the proffered position can only be performed by an individual with a bachelor's degree in business administration or a related field, due to the complex duties of the position.

Counsel asserts that the proffered position is a specialty occupation because it has been assigned a specific SVP rating in the *DOT*. However, the *DOT* is not a persuasive source of information regarding whether a particular job requires the attainment of a baccalaureate or higher degree in a specific specialty, or its equivalent, as a minimum for entry into the occupation.

The Department of Labor has replaced the *DOT* with the *Occupational Information Network (O\*Net)*. Both the *DOT* and *O\*Net* provide only general information regarding the tasks and work activities associated with a particular occupation, as well as the education, training and experience required to perform the duties of that occupation. The *Handbook* provides a more comprehensive description of the nature of a particular occupation and the education, training and experience normally required to enter into an occupation and advance within that occupation. For this reason, Citizenship and Immigration Services (CIS) is not persuaded by a claim that the proffered position is a specialty occupation simply because the Department of Labor has assigned it a specific SVP rating in the *DOT*.

In order to qualify as a specialty occupation, pursuant to

8 C.F.R. § 214.2(h)(4)(ii), the position must require a bachelor's degree, or its equivalent, in a specific specialty. Regarding the educational and other training requirements of the proffered position, the 2002-2003 edition of the *Handbook* on page 28 discusses the training and other qualifications requirements for marketing managers. The *Handbook* states the following:

A wide variety 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.

The *Handbook* mentions that some employers of marketing and sales managers prefer individuals with a bachelor's or master's degree in business administration with an emphasis on marketing. A preference on the part of some employers, however, does not mean that a degree in business is a minimum entry requirement for the field of marketing.

The letter from Dr. [REDACTED] of Rice University states that the proffered position requires an individual who holds a bachelor's degree in business administration. The record, however, does not contain detailed information or any other evidence to support this opinion. CIS is not required to accept or may give less weight to an advisory opinion where an opinion is not in accord with other information or is in any way questionable. *Matter of Caron International*, 19 I&N Dec. 791 (Comm. 1988). Dr. [REDACTED] letter does not establish that the proffered position requires an incumbent with a minimum of a bachelor's degree, or its equivalent, in a specific specialty.

The evidence on record and the *Handbook* do not indicate that a bachelor's degree in a specific specialty or its equivalent is normally the minimum requirement for entry into the particular position. Thus, the offered position of marketing executive does not meet the definition set forth at 8 C.F.R. § 214.2(h)(4)(ii) and cannot be considered a specialty occupation.

As the director raised the matter of whether the beneficiary was qualified to perform a specialty occupation, the AAO will examine this issue.

Section 214(i)(2) of the Act, 8 U.S.C. § 1184(i)(2), states that an alien applying for classification as an H-1B nonimmigrant worker must possess:

- (A) full state licensure to practice in the occupation, if such licensure is required to practice in the occupation,
- (B) completion of the degree described in paragraph (1)(B) for the occupation, or
- (C) (i) experience in the specialty equivalent to the completion of such degree, and  
(ii) recognition of expertise in the specialty through progressively responsible positions relating to the specialty.

Pursuant to 8 C.F.R. § 214.2(h)(4)(iii)(C), to qualify to perform services in a specialty occupation, the alien must meet one of the following criteria:

- (1) Hold a United States baccalaureate or higher degree required by the specialty occupation from an accredited college or university;
- (2) Hold a foreign degree determined to be equivalent to a United States baccalaureate or higher degree required by the specialty occupation from an accredited college or university;
- (3) Hold an unrestricted state license, registration or certification which authorizes him or her to fully practice the specialty occupation and be immediately engaged in that specialty in the state of intended employment; or
- (4) Have education, specialized training, and/or progressively responsible experience that is equivalent to completion of a United States baccalaureate or higher degree in the specialty occupation, and have recognition of expertise in the specialty through progressively responsible positions directly related to the specialty.

Pursuant to 8 C.F.R. § 214.2(h)(4)(iii)(D), for purposes of paragraph (h)(4)(iii)(C)(4) of this section, equivalence to

completion of a United States baccalaureate or higher degree shall mean achievement of a level of knowledge, competence, and practice in the specialty occupation that has been determined to be equal to that of an individual who has a baccalaureate or higher degree in the specialty and shall be determined by one or more of the following:

- (1) An evaluation from an official who has authority to grant college-level credit for training and/or experience in the specialty at an accredited college or university which has a program for granting such credit based on an individual's training and/or work experience;
- (2) The results of recognized college-level equivalency examinations or special credit programs, such as the College Level Examination Program (CLEP), or Program on Noncollegiate Sponsored Instruction (PONSI);
- (3) An evaluation of education by a reliable credentials evaluation service which specializes in evaluating foreign educational credentials;
- (4) Evidence of certification or registration from a nationally-recognized professional association or society for the specialty that is known to grant certification or registration to persons in the occupational specialty who have achieved a certain level of competence in the specialty;
- (5) A determination by the Service that the equivalent of the degree required by the specialty occupation has been acquired through a combination of education, specialized training, and/or work experience in areas related to the specialty and that the alien has achieved recognition of expertise in the specialty occupation as a result of such training and experience.

In accordance with 8 C.F.R. § 214.2(h)(4)(iii)(D)(5):

For purposes of determining equivalency to a baccalaureate degree in the specialty, three years of specialized training and/or work experience must be demonstrated for each year of college-level training the alien lacks. . . . It must be clearly demonstrated that the alien's training and/or work experience included the theoretical and practical application of specialized knowledge required by

the specialty occupation; that the alien's experience was gained while working with peers, supervisors, or subordinates who have a degree or its equivalent in the specialty occupation; and that the alien has recognition of expertise in the specialty evidenced by at least one type of documentation such as:

- (i) Recognition of expertise in the specialty occupation by at least two recognized authorities in the same specialty occupation;
- (ii) Membership in a recognized foreign or United States association or society in the specialty occupation;
- (iii) Published material by or about the alien in professional publications, trade journals, books, or major newspapers;
- (iv) Licensure or registration to practice the specialty occupation in a foreign country; or
- (v) Achievements which a recognized authority has determined to be significant contributions to the field of the specialty occupation.

The beneficiary does not hold a U.S. degree in business administration, and his Nepalese degree has not been determined to be the equivalent of a U.S. degree in business administration. Therefore, pursuant to 8 C.F.R. § 214.2(h)(4)(iii)(C)(4), in order for the beneficiary to qualify, the record must demonstrate that he has education, specialized training, and/or progressively responsible experience that is equivalent to a U.S. baccalaureate or higher degree in business administration, as well as recognition of his expertise in marketing through progressively responsible positions directly related to this specialty.

Dr. Sukumar's letter mentions that the beneficiary's education and experience give him a suitable background to perform the proposed job duties. This letter, though, does not meet the standard described in 8 C.F.R. § 214.2(h)(4)(iii)(D)(1). There is no evidence that Dr. Sukumar, although a faculty member, has authority to grant college-level credit for training and/or experience in the specialty.

The AAO examines the Morningside evaluation in light of 8 C.F.R. § 214.2(h)(4)(iii)(D)(3). This academic evaluation indicates

that, in Nepal, the beneficiary completed the equivalent of three years of coursework towards a U.S. bachelor's degree. The Nepalese degree was awarded in commerce, business administration, and public administration. The beneficiary received a master's degree in public administration from the University of Southern California. The academic evaluation indicates that the combination of his Nepalese and U.S. education is the equivalent of a U.S. bachelor's degree in business administration. The record contains no transcripts or other evidence, however, upon which this evaluation was based. Without such evidence, this evaluation is given little weight.

Pursuant to 8 C.F.R. § 214.2(h)(4)(iii)(D)(5), CIS may determine that the beneficiary has the equivalent of a degree in business administration if he has a combination of education, specialized training, and/or work experience in areas related to this specialty. The evaluations on record are not supported by specific evidence. It cannot be determined how many years, if any, of studies the beneficiary lacks in order to reach the equivalent of a U.S. bachelor's degree in business administration.

In addition, the two letters from the beneficiary's former employers do not contain enough detail to determine how many years of experience the beneficiary has in marketing, and whether this experience was gained while working with peers, supervisors, and subordinates who have a degree or its equivalent in marketing. Finally, the record lacks the required showing of the beneficiary's expertise in the field of marketing. The evidence does not establish that the beneficiary is qualified to perform a specialty occupation.

The evidence on record does not demonstrate that the proffered position is a specialty occupation or that the beneficiary is qualified to perform the duties of 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.