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

ADMINISTRATIVE APPEALS OFFICE
CIS, AA, 300 Mass. 3/E
2501 Street, N.W.
Washington, DC 20536

NOV 18 2003

FILE: WAC-02-220-51729 OFFICE: CALIFORNIA SERVICE CENTER

DATE:

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:

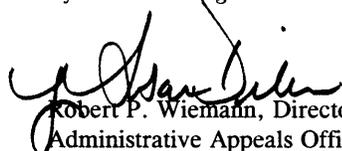
This is the decision in your case. All documents have been returned to the office that originally decided your case. Any further inquiry must be made to that office.

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 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 petition will be denied.

The petitioner is a wholesaler and distributor of shoes that employs five persons and has an undisclosed gross annual income. It seeks to employ the beneficiary as an operations/marketing analyst. 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, in part, that the offered position qualifies as a specialty occupation and that the beneficiary qualifies to perform the duties of 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. The second is whether the beneficiary is qualified to perform 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.

The original petition described the duties of the operations/marketing analyst as follows:

- (1) Analyze and coordinate the logistical functions of the company;
- (2) Formulate and apply optimizing methods using computers to develop and interpret information that assists management with decision making, policy formulation, [and] administrative and market functions;
- (3) Conduct quantitative analyses of information on sales performance, inventory control, credit building, [and] A/R collection; [and]
- (4) Coordinate and maintain [the] database for [the] office, warehouse, accounting[,] and administration systems.

On July 2, 2002, the director requested additional evidence that would show the petitioner satisfied at least one criterion under 8 C.F.R. § 214.2(h)(4)(iii)(A). The director also requested a detailed job description of the work to be done, including specific duties; the percentage of time to be spent on each duty; the position's level of responsibility; its hours per week of work; the types of employees to be supervised; the minimum education, training, and experience necessary to do the job; and an explanation of why candidates must hold a bachelor's degree or its equivalent in the occupational field. Finally, the director requested copies of the petitioner's past and present job announcements and classified advertisements for the offered position that would show the requirement of a bachelor's degree or its equivalent in the occupational field.

In response, counsel submitted a letter, dated July 3, 2002. The letter stated that the petitioner did not have past job postings for the offered position. The letter further stated that the petitioner's degree requirement was common in the industry in parallel positions among similar businesses. Counsel submitted two pages from the Online Wage Library and four Internet job postings to support this statement.

Counsel's letter described the percentage of time spent on the duties of the offered position. According to counsel, analyzing and coordinating the company's logistical functions would require the beneficiary to design and formulate the proper operating systems, using computers, electronic equipment and software. Counsel stated that, initially most of the beneficiary's time would be spent doing these duties, but the time spent would decrease after the beneficiary completed the initial work. Counsel reported that about 40-50 percent of the beneficiary's time would involve using computers to formulate and apply optimization methods to develop and interpret information. Next, counsel claimed that about 50 percent of the beneficiary's time would involve on-going duties: conducting quantitative analyses about sales performance, inventory control, credit building, A/R collection; assisting in customer service and pricing; and coordinating and maintaining the database for the office, warehouse, and accounting and administrative systems.

On July 15, 2002, the director denied the petition, finding that the petitioner failed to establish that the offered position qualified as a specialty occupation, and failed to prove that the beneficiary was qualified to perform the duties of a specialty occupation.

The director determined that under the Department of Labor's *Occupational Outlook Handbook* (the *Handbook*), 2002-2003 edition, the duties of the offered position resembled those performed by a marketing manager. The director further stated that, according to the *Handbook*, although many firms may prefer or desire a baccalaureate degree for entry into the position of marketing manager, the *Handbook* states that a baccalaureate level of training is not a normal industry-wide requirement.

The director maintained that the two pages from the Online Wage Library were insufficient to establish the industry required a bachelor's degree for the offered position. In addition, the director found that the four Internet job postings represented companies that were different in nature and size compared to the petitioner; thus, the director stated that the postings failed to indicate that the petitioner normally required a bachelor's degree or higher for the offered position. Finally, the director determined that the proposed duties and stated level of responsibility did not indicate complexity or authority beyond that normally required in the occupational field. The director

explained that, in examining whether a titled position is a specialty occupation, the actual duties to be performed are determinative, not the title. The petitioner's evidence, the director stated, was not persuasive in showing that an experienced person whose education and training falls short of a bachelor's degree could not perform the offered position.

With respect to the beneficiary's qualifications, the director found the record showed that the beneficiary held a bachelor's degree in business administration; however, the record failed to support counsel's claim that the beneficiary had specialized training in computers to enable her to design and formulate an operating system.

On appeal, counsel declares that the offered position qualifies as a specialty occupation under 8 C.F.R. § 214.2(h)(4)(iii)(A), and that the beneficiary qualifies to perform the duties of a specialty occupation.

Counsel states that the field of business administration includes many positions that qualify as specialty occupations. Counsel cites two cases, *Hong Kong T.V. Video v. Ilchert*, 685 F. Supp. 712 (N.D. Cal. 1988), and *Matter of Sun*, 12 I&N Dec. 535 (Reg. Comm. 1967) to support this statement. Counsel maintains that analytical positions focusing on a specific aspect of business, such as marketing or finance, usually fulfill the specialty occupation requirement. Counsel maintains that there is a distinction between general managerial positions and specialized analytical positions, and declares that AAO holdings confirm that analytical positions qualify as specialty occupations, including financial analyst, marketing analyst, and investment analyst.

Counsel insists that the offered position is not a general managerial position because the offered position requires skills far more specialized than those of a general manager. Counsel claims that the offered position is similar to the marketing research analyst position as described in the Department of Labor's *Occupational Outlook Handbook*, (the *Handbook*) because the offered position involves the same kind of quantitative rigor that is associated with the duties of marketing research analysts. Counsel states that some of the duties of the offered position reflect those duties performed by systems analysts.

Counsel states that the AAO has consistently held that the position of market research analyst is a specialty occupation requiring a bachelor's degree as the minimum entry requirement.

Counsel insists that the beneficiary's degree in business administration qualifies her to perform the duties of the offered position. Counsel claims that the beneficiary's degree must be directly related to the qualifications of the position. Counsel cites *All Aboard Worldwide Couriers, Inc. v. Attorney General*,

8 F. Supp. 2d 379 (S.D.N.Y. 1998), to support the claim. According to counsel, the beneficiary's degree in business administration provides her with a "strong fit" for the duties in the offered position: it has provided the beneficiary with a background in economics, statistics, and information systems.

Counsel's assertions on appeal are not persuasive, the petitioner fails to establish that the offered position qualifies as a specialty occupation under 8 C.F.R. § 214.2(h)(4)(iii)(A), and it fails to establish that the beneficiary is qualified to perform the duties of a specialty occupation.

The first criterion under 8 C.F.R. § 214.2(h)(4)(iii)(A) requires that the petitioner establish that a baccalaureate or higher degree or its equivalent is normally the minimum requirement for entry into the particular position. 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 Citizenship and Immigration Services (CIS) considers. CIS refers to the *Handbook* to determine whether a baccalaureate or higher degree, or its equivalent, is the minimum requirement for entry into the occupation.

Under the *Handbook*, the duties of the offered position fall within the scope of those performed by marketing and sales managers and systems administrators: marketing and sales managers perform quantitative analysis and systems administrators ensure a company's computers, network, and software fit together and work properly. For example, the record shows the beneficiary will "formulate and apply optimizing methods using computers to develop and interpret information that assists management in decision making, policy formulation, and administrative and market functions." In the *Handbook*, on page 26, marketing managers perform similar duties as they would "develop pricing strategy" and "monitor trends that indicate the need for new products" and would "identify potential markets." The record shows that another duty of the offered position is to "conduct quantitative analyses of information on sales performance [and] inventory control." Similarly, the *Handbook* describes the sales manager as one who would "analyze sales statistics gathered by [its] staffs to determine sales potential and inventory requirements and monitor the preferences of customers." Thus, the duties of the offered position reflect those as performed by marketing and sales managers.

With regard to the training, advancement and other qualifications for the marketing and sales manager positions, the *Handbook* is instructive. On page 28, the *Handbook* states the following with regard to training, advancement and other qualifications for management positions:

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 that a person with experience in a related occupation and an associate or bachelor's degree in any field of study is 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.

The record shows that the petitioner states that the offered position requires the beneficiary to "[a]nalyze and coordinate the logistical functions of the company" and to "[c]oordinate and maintain [the] database for [the] office, warehouse, [and] accounting and administration systems. Counsel insists that these duties are performed by systems analysts.

According to the *Handbook*, on pages 171-172, the duties reflect those performed by systems administrators. Systems administrators design, install, and support an organization's LAN, WAN, network segment, Internet, or Intranet system. They maintain network hardware and software, gather data to identify customer needs and then use that information to identify, interpret, and evaluate system and network requirements. They are responsible for the efficient use of networks, and they ensure that the design of an organization's computer site allows all the components, including computers, the network, and software, to fit together and work properly. They monitor and adjust performance of existing networks and continually survey the current computer site to determine future network needs.

On page 173, the *Handbook* explains that there are many ways to become a systems administrator. Many employers seek applicants with bachelor's degrees, though not necessarily in a computer-related

field.

According to the *Handbook*, the offered position would not require a bachelor's degree in a specific specialty. Consequently, the petitioner fails to establish the first criterion under 8 C.F.R. § 214.2(h)(4)(iii)(A).

The second criterion at 8 C.F.R. § 214.2(h)(4)(iii)(A) requires the petitioner to show that the degree requirement is common to the industry in parallel positions among similar organizations or, in the alternative, that the offered position is so complex or unique that it can be performed only by an individual with a degree. Counsel submits two pages from the Online Wage Library and four Internet job postings to show that the degree requirement is common to the industry in parallel positions among similar organizations. Counsel's evidence is without merit. The documents from the Online Wage Library relate to the position of market research analyst. As the *Handbook* establishes, the duties of the offered position relate to marketing and sales managers and systems administrators, not to market research analysts. Therefore, the information from the Online Wage Library is irrelevant.

With respect to the Internet job postings, the record indicates that the businesses are not similar to the petitioner's in size and scope, and the duties and degree requirements of the postings differ markedly from those of the offered position. One posting is from a company in the field of financial services, two postings are from high technology companies, and one is from a retailer. The duties of the postings range from project management of applications development to operational analysis in weapon systems. The degree requirement of the companies ranges from computer science to engineering to a related degree. Consequently, the evidence fails to satisfy the second criterion at 8 C.F.R. § 214.2(h)(4)(iii)(A).

According to counsel, the petitioner does not have a past practice of normally requiring a specific academic degree or its equivalent for the offered position. Thus, the petitioner fails to satisfy the third criterion at 8 C.F.R. § 214.2(h)(4)(iii)(A) - that the employer normally requires a degree or its equivalent for the position.

The fourth criterion at 8 C.F.R. § 214.2(h)(4)(iii)(A) requires the petitioner to show 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. Based on the *Handbook*, the duties of the offered position are performed by marketing and sales managers and systems administrators; thus, the duties of the offered position are not so specialized and complex that knowledge required to perform them is usually associated with the attainment of a baccalaureate or higher degree.

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.

Because the petitioner failed to establish that the offered position qualifies as a specialty occupation, this proceeding will not discuss whether the beneficiary is qualified to perform the duties of the offered position.

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.