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ADMINISTRATIVE APPEALS OFFICE
CIS, AAO, 20 Mass, 3/F
425 Eye Street, NW
Washington, D.C. 20536



FILE: EAC 02 083 52544 Office: VERMONT SERVICE CENTER

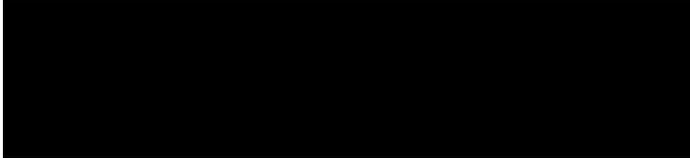
Date: **NOV 22 2003**

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)

ON BEHALF OF PETITIONER:



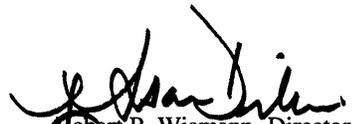
INSTRUCTIONS:

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, Vermont Service Center, and the matter is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed.

The petitioner is a retail jewelry business. It employs 7 people and has a gross annual income of more than \$917,000. It seeks to temporarily employ the beneficiary as a marketing manager for a period of three years. The director determined that the petitioner had not established that the position is a specialty occupation, or that the firm has sufficient work and resources to ensure that the beneficiary would be performing services in a specialty occupation.

On appeal, counsel asserts that the director erred in determining that the position is not a specialty occupation and that the firm does not have the work and resources to support such a position.

Section 214(i)(1) of the Immigration and Nationality Act (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 field 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 first issue in this proceeding is whether the petitioner has established that the proffered position is a specialty occupation. In the original petition received by the Vermont Service Center on January 11, 2002, the petitioner described the duties of the proffered position:

Determine the demand for products and services offered by a firm and its competitors and identify potential customers. Develop pricing strategies with the goal of maximizing the firm's profits or share of the market while ensuring the firm's customers are satisfied. Oversee product development or monitor trends that indicate the need for new products and services.

This description is taken almost verbatim from the Department of Labor's (DOL) *Occupational Outlook Handbook (Handbook)* in its description of marketing managers on page 27. In response to the director's request for evidence, counsel provided a somewhat more extensive description of the duties of the proffered position, stating:

Petitioner's marketing manager must accurately determine the demand for the products sold by Petitioner and make recommendations respecting deleting or adding products. This must be done in a very professional manner with consideration of the firm's present revenues, cost of potential new financing, products and prices of competitors and new market trends for jewelry and

watches that would be relevant to Petitioner's current client base and targeted client base.

. . . .

As Petitioner has recently opened a store in a second location and plans further expansion, the marketing manager must also identify potential new markets for Petitioner's products and the price range at which these products may be sold.

In evaluating whether the proffered position is a specialty occupation, each of the four criteria listed at 8 C.F.R. § 214.2(h)(4)(iii)(A) will be considered separately below.

I. A baccalaureate or higher degree or its equivalent is normally the minimum requirement for entry into the particular position.

Citizenship and Immigration Services (CIS) often looks to the *Handbook* when determining whether a baccalaureate or higher degree or its equivalent is normally the minimum requirement for entry into a particular position.

The proffered position is a marketing manager. The 2002-2003 edition of the *Handbook* describes the basic duties of a marketing manager on page 27:

With the help of subordinates, including product development managers and market research managers, they determine the demand for products and services offered by the firm and its competitors. In addition, they identify potential markets—for example, business firms, wholesalers, retailers, government, or the general public. Marketing managers develop pricing strategy with an eye towards maximizing the firm's share of the market and its profits while ensuring the firm's customers are satisfied. In collaboration with sales, product development, and other managers, they monitor trends that indicate the need for new products and services and oversee product development.

Regarding the educational requirements for entry into this field, the *Handbook* states:

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.

For marketing, sales, and promotion management positions, some employers prefer a bachelor's or master's degree in business administration with an emphasis on marketing.

Given this information, it does appear that a bachelor's degree would be the preferred background for entry into the proffered position, but it is not stated that it is required, despite counsel's assertions on appeal. In addition, it is clearly stated that a degree would not need to be in any specific concentration. Rather, a broad range of majors would be appropriate courses of study, so it cannot be said that a degree in a specific specialty is required, as mandated by § 214(i)(1)(B) of the Act, 8 U.S.C. § 1184 (i)(1)(B). Therefore, this criterion is not met by the proffered position.

II. 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.

A. Degree Requirement is Common to the Industry

Factors often considered by 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's* conclusions about a degree requirement for a marketing manager were discussed in the previous section, and shall not be repeated here.

Counsel submitted no affidavits from firms or individuals in the industry, which attest that such firms "routinely employ and recruit only degreed individuals," and that it is the industry standard to hire individuals with degrees equivalent to a bachelor's degree in marketing.

B. Complexity and Uniqueness of the Proffered Position

In the alternative, the petitioner may show that the proffered position is so complex or unique that it can be performed only by an individual with a degree. In the instant petition, counsel states on appeal:

The duties detailed above are both complex and unique. They are complex in that they plainly require an understanding of organizational management. Additionally, coordination of business strategy among the various store locations requires an understanding of the demographics and preferences of each area where and [sic] office is located and an ability to calculate the varying costs associated with each location.

Counsel continues, making statements about the need for a basic understanding of economics, supply and demand, statistics, budgeting and finance. Nowhere does counsel explain why the proffered position is different from a standard marketing manager position, or what makes it more complex than such a position.

III. The employer normally requires a degree or its equivalent for the position.

The petitioner has never employed someone in the proffered position previously, so it is not able to meet this criterion.

IV. The nature of the specific duties are so specialized and complex that knowledge required to perform the duties is usually associated with the attainment of a baccalaureate or higher degree.

Counsel states on appeal, "[T]he specific duties of the position are clearly directly associated with the attainment of a university degree in business and/or marketing." Counsel submits no documentation beyond his assertions that the position of a marketing manager would involve duties seen as either so unique or complex that only an individual with a degree in a specific specialty could perform them. On appeal, he lists the specific courses that the beneficiary studied, and how they apply to various portions of the position description. However, the courses listed could have been taken by someone in a wide variety of specializations, such as business administration, management, marketing, accounting, or economics. Again, there is no evidence that one would need a baccalaureate degree in a specific specialty in order to gain this knowledge.

The job description in both the original petition and the response to the request for evidence contains work duties that are similar to any marketing manager position. Although counsel describes the duties as being specialized and complex, no further documentation regarding this issue has been placed on the record. Without more persuasive evidence as to the specialized or complex nature of the marketing manager position, the petitioner has not met the fourth criterion of 8 C.F.R. § 214.2(h)(4)(iii)(A).

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. Accordingly, the appeal will be dismissed.

ORDER: The appeal is dismissed.