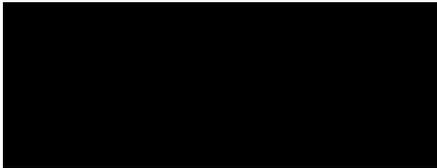


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U.S. Department of Homeland Security
Citizenship and Immigration Services

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

ADMINISTRATIVE APPEALS OFFICE
CIS, AAO, 20 MASS. 3/F
425 Eye Street N.W.
Washington, D.C. 20536



OCT 23 2003

File: WAC 02 159 52228 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)

ON BEHALF OF PETITIONER:



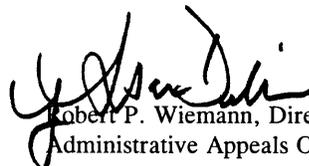
INSTRUCTIONS:

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

The petitioner is a distributor and importer of fabric materials. The office has twenty employees and a gross annual income of \$21,100,000. The petitioner seeks to employ the beneficiary as a marketing manager for a period three years. The director determined that the proffered position did not qualify as a specialty occupation.

On appeal, counsel submits a brief. Counsel states, in part, that the proffered position qualifies as a specialty occupation due to the complexity of the duties associated with the proffered position. Counsel further asserts that a minimum of a bachelor's degree is standard in the industry for marketing managers.

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, in part, 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 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.

When determining whether a particular job qualifies as a specialty occupation, the AAO considers the specific duties of the offered position, combined with the nature of the petitioning entity's business operations. The duties of the proffered position were detailed as follows, with the filing of the I-129 petition:

[O]ur Marketing Manager will be responsible for leading a team of individuals who will examine and analyze statistical data in our industry in order to better forecast future marketing trends. This will include developing pricing strategies taking into account the type of product being offered, the level of demand for the product, competitive analysis, various methods of marketing and distribution, purchasing patterns, customer preferences, etc., to name a few examples of the factors to be analyzed. It should be noted that due to the highly complex statistical and analytical work inherent in these assignments, the individuals being supervised by [the beneficiary] will, themselves, be university degree holders. Moreover, in carrying out the above specified tasks, our Marketing Manager will be responsible for overseeing the submission of comprehensive flow charts, diagrams, statistical and probability amalgams, past sales and pricing analyses, future trend reports, and other related marketing information which will enable us to compute the level of past, present, and future demand for our fabric materials.

As a further aspect to this research, [the beneficiary] and her subordinates will additionally orient their research efforts to expanding the pool of fabric manufacturers who might be oriented to producing our products incorporating new designs and added diversity, at a lower price. As part of this analysis, our Marketing Manager will direct her staff to research such areas as the level of competition within our particular fabric market, the different pricing trends directly and indirectly affecting this industry, and various demographic trends which may, or may not, be a factor in our efforts to expand our line of business.

In the final aspect of this position, our Marketing Manager will attend meetings with our customers, in order to better understand their own unique needs and requirements concerning the purchase of our manufactured women's apparel products. . . .

Subsequent to the filing of the I-129 petition, the director requested additional evidence. Specifically, the petitioner was asked to provide: a more detailed job description and the percentage of time to be spent on specific duties; an organizational chart for the petitioner's business; copies of past and present job announcements indicating that the petitioner requires a minimum of a bachelor's degree for the offered position; and evidence that the proffered position qualifies as a specialty occupation.

In response to the director's request, the petitioner provided the following job description:

[A]pproximately 40% of [the beneficiary's] time will initially be spent carrying out market research related studies concentrating on Asian based fabric manufacturers located in such countries as People[']s Republic of China, Taiwan, Korea, Indonesia, Malaysia, and even Vietnam.

Among the factors to be considered by the Marketing Manager in this particular area will include such aspects as assessing overall worldwide market share currently applying to any given fabric manufacturer, a breakdown of the percentage of worldwide manufacturers by demographic region, worldwide demand levels of polyester/lycra, spandex, denim and stretch fabrics, past levels of demand of these particular fabric items, future projections of these fabrics, political related factors which could impact a manufacturer's production, pricing strategies employed by each studied manufacturer, currency issues which have or will effect

a particular manufacturer, customs and shipping regulations existing within a particular region which could affect ultimate productivity levels, domestic and international tax related structures affecting business activities, factory space being utilized by the particular manufacturer, the potential of acquiring additional factory space, if necessary, as it applies to the fabric manufacturer, and a host of other marketing related factors affecting overseas manufacturing capabilities which could ultimately impact our ability to distribute these products to a wide array of U.S. based clientele.

. . . .

The other 45% of the time to be spent by [the beneficiary] as this company's Marketing Manager will be directed to heading a group of marketing professionals in order to enable this company to better determine and forecast future marketing trends regarding, in particular, polyester/lycra, spandex, denim and stretch fabrics. Initially, as we noted previously, our marketing personnel will have to concentrate their analysis on the types of customers (mainly wholesalers/retailers of fabrics as well as apparel manufacturing companies) who will be targeted by this company as future customers. Therefore, similar to what was indicated in the proceeding paragraphs, detailed research, marketing, statistical analysis and economic factors must all be considered through this time, in the context of orienting these similar types of reports to customers and markets that we would like to penetrate. As such, marketing research might concentrate on the level of demand for these particular fabrics within a given demographic, region, purchasing patterns, competitive analysis, and overall analysis of how these materials are marketed and distributed, customs and taxation related issues, an analysis as to the profitability margins within a given area, past sales and pricing analyses, future trend reports, and other marketing/economic information which must be not only reviewed, but ultimately summarized by the Marketing Manager who will glean the marketing/economic data from other marketing professionals so that an overall comprehensive report can be made. At this time, I would like to equally emphasize that not only will this marketing and economic analysis be directed towards the U.S. market, but will also explore the possibilities of our distributing the above cited fabrics to various regions within western Europe where costs are higher, as well as within the Canadian and Australian markets.

In the final aspect to this position encompassing approximately 15% of the job, [the beneficiary], as this company's Marketing Manager will carry out, through her compilations, a series of questions and surveys, and analysis of our own present clientele, their fabric based needs, level of satisfaction as it applies to our distributor based activities, areas where our service related activities could be enhanced or improved, and other similar aspects. . . .

The petitioner also provided a copy of its advertisement for the Marketing Manager position indicating that a minimum of a bachelor's degree was required for the position, along with other job announcements for marketing managers requiring a bachelor's degree. An opinion letter was also submitted from Soledad S. Aguilar, who is the President of Topnotch International Services, Inc., a job placement agency specializing in the placement of professionals, including Marketing Managers. Soledad Aguilar stated that, based on 15 years of experience in placing Marketing Managers, the vast majority of individuals in the field hold bachelor's degrees. The writer further opined that the minimum educational requirement for the position of Marketing Manager is a bachelor's degree in business administration, marketing or management.

The petitioner has failed to qualify the offered position as a specialty occupation. The job responsibilities to be assigned to the beneficiary are similar to those assigned to marketing managers. In the *Occupational Outlook Handbook*, 2002-03, (*Handbook*) at 27, the Department Of Labor describes, in part, the duties of marketing managers as follows:

Marketing Managers develop the firms detailed marketing strategy. . . . [T]hey 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 that the firm's customers are satisfied. . . . [T]hey monitor trends that indicate the need for new products and services and oversee product development. Marketing managers work with advertising and promotion managers to promote the firm's products and services to attract potential users.

The *Handbook* notes that for marketing management positions, some employers prefer a bachelor's or master's degree in business administration with an emphasis on marketing, but that a wide

range of backgrounds is suitable for entry into the field, such as a broad liberal arts background. *Id.* at 28. Any number of educational pursuits will suffice. It is further noted that most advertising, marketing, promotions, public relations, and sales management positions are filled by promoting experienced staff or related professional or technical personnel. Many managers are former sales representatives, purchasing agents, or promotions specialists. A baccalaureate or higher degree, or its equivalent, is not, therefore, the minimum requirement for entry into the position. The petitioner has, accordingly, failed to establish the first criterion of 8 C.F.R. § 214.2(h)(4)(iii)(A).

The petitioner has also failed to establish any of the remaining three criteria of 8 C.F.R. § 214.2(h)(4)(iii)(A). The record does not establish that a degree requirement is common to the industry in parallel positions among similar organizations. The petitioner did submit numerous advertisements for marketing managers requiring a bachelor's degree. Those advertisements are insufficient in scope, however, to establish a degree requirement in the industry as a whole. As noted in the *Handbook*, many marketing management positions are filled by promoting experienced staff. A degree requirement is not, therefore, common to the industry as a whole.

The duties associated with proffered position are not so complex or unique that they can only be performed by an individual with a degree, nor are they so specialized and complex that knowledge required to perform them is usually associated with a baccalaureate or higher degree. The petitioner has elected to impose a degree requirement for the offered position. The position does not, however, require the theoretical and practical application of a body of highly specialized knowledge.

The petitioner has failed to establish that any of the four factors enumerated above are present in this proceeding. It is, therefore, concluded that the petitioner has not demonstrated that the offered position is a specialty occupation within the meaning of the regulations.

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 and the appeal shall accordingly be dismissed.

ORDER: The appeal is dismissed.