

PUBLIC COPY

U.S. Department of Homeland Security

Citizenship and Immigration Services

identifying data deleted to
prevent clearly unwarranted
invasion of personal privacy

DA

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

OCT 28 2003

File: WAC 01 296 51125 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:

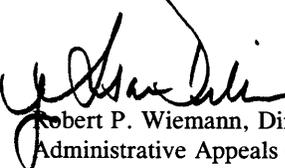
INSTRUCTIONS:

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 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 Baldwin Park, California developer and marketer of environmental technology with seven employees and a gross annual income of \$1,000,000. It seeks to employ the beneficiary as its South Asian regional sales and marketing manager for a period of three years. The director determined that the petitioner had not established that the proffered position was a specialty occupation or that the beneficiary was qualified for employment in a specialty occupation. On appeal, counsel asserts that the proffered position is a specialty occupation and that the beneficiary is qualified to perform such.

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 California Service Center on September 26, 2001, the petitioner stated that the beneficiary would be responsible for dealing with national and city governments, would travel throughout Vietnam and South Asia, and would coordinate all sales leads from the Baldwin Park office.

On November 26, 2001, the director requested a detailed statement on the beneficiary's proposed duties and responsibilities. The director also requested evidence regarding the beneficiary's qualifications. In response, the petitioner submitted the requested documentation, including a more detailed job description. The duties were outlined as follows:

[The beneficiary] will be hired at a management level, supervising projects and personnel within the United States and in Asia. She will act as the point person for all customer contact and support as well as coordinating projects to technicians in the South Asia region. . . . [The beneficiary] will also be developing new clients and increasing sales within the region. . . . Given the complexity of the duties required of the South Asian Regional Sales Manager, it is imperative that the prospective employee have either a bachelor's degree in marketing or the equivalent.

In its response to the request for evidence the petitioner submitted an evaluation of the beneficiary's qualifications executed by Morningside Evaluations and Consulting. The evaluation states that the beneficiary holds the equivalent of a U.S. bachelor of arts degree in marketing.

On May 8, 2002, the director denied the petition. The director determined that the evidence on record did not support the evaluation's findings regarding the beneficiary's qualifications in the field of marketing. The director also found that the proposed job duties compare to those of a service sales representative, as discussed in the Department of Labor's *Occupational Outlook Handbook (Handbook)*, a position which does not require a bachelor's degree.

On appeal, counsel asserts that the proffered position is akin to the *Handbook's* categories of sales representatives at pages 368-371 and sales managers at pages 26-29. Counsel notes that in both types of position, many employers, especially those producing technical products, prefer the incumbent to hold a bachelor's

degree. Counsel states that a bachelor's degree is a common requirement in the industry in parallel positions, as evidenced by the submitted job announcements. Counsel also contends that the position is so complex that only a person with a degree is qualified to carry out its duties. Lastly, counsel points out that the beneficiary is qualified to perform a specialty occupation.

Upon review of the record, the petitioner has not articulated a sufficient basis for classifying the proffered position as a specialty occupation. 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 - 8 C.F.R. § 214.2 (h) (4) (iii) (A) (1)

Citizenship and Immigration Services (CIS) often looks to the Department of Labor's (DOL) *Occupational Outlook Handbook (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 appears to be closest in nature to a sales representative. The basic duties of a sales representative as outlined in the 2002-2003 edition of the *Handbook* on pages 368-369 are as follows:

Regardless of the type of product they sell, their primary duties are to interest wholesale and retail buyers and purchasing agents in their merchandise, and to address any of the client's questions or concerns. . . .Sales representatives spend much of their time traveling to and visiting with prospective buyers and current clients. . . .They also analyze sales statistics; prepare reports; and handle administrative duties, such as filing their expense account reports, scheduling appointments, and making travel plans.

In the 2002-2003 edition of the *Handbook* at pp. 369-370, the *Handbook* states the following about the training and educational requirements for sales representative positions:

Most firms require a strong educational background and increasingly prefer or require a bachelor's degree as the job requirements have become more technical and analytical. Nevertheless, many employers still hire individuals with previous sales experience who do not have a college degree.

To the extent that the *Handbook* does not indicate that employers of sales representatives require a bachelor's degree in a specific specialty for entry into the proffered position, it does not appear that a bachelor's degree is the minimum requirement in this field. Accordingly, the evidence does not support a finding that a baccalaureate or higher degree or its equivalent in a specific specialty is normally the minimum requirement for entry into 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 - 8 C.F.R. § 214.1(h) (4) (iii) (A) (2)

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 sales representative position were discussed in the previous section, and shall not be repeated here. In the instant petition, to establish the industry standard, the petitioner submitted a number of job announcements for sales/marketing managers. It is difficult to ascertain whether the employers who published these announcements are similar to the petitioner's organization. More importantly, while they all require a bachelor's degree, the majority of the announcements do not specify a required educational background. Many of the announcements that specify a required field of study do not limit that field to business-related studies, but allow for a wide variety of backgrounds to include liberal arts, health care, engineering, and so on.

In addition, the petitioner submitted no documentation that any professional association has made a bachelor's degree a requirement for entry into the field, nor has it submitted letters or affidavits from firms or individuals in the industry which attest that such firms "routinely employ and recruit only degreed individuals." Accordingly the petitioner has not established that the degree requirement is common to the industry in parallel positions among similar organizations.

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, the petitioner has submitted no documentation that the proffered position would involve duties seen as either unique or complex that only an individual with a degree in a specific specialty could perform them.

III. The employer normally requires a degree or its equivalent for the position - 8 C.F.R. § 214.2(h) (4) (iii) (A) (3)

The petitioner did not submit any documentation with regard to other employees hired in similar positions. Without more persuasive evidence, the petitioner has not established this criterion.

IV. 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 - 8 C.F.R. § 214.2(h)(4)(iii)(A)(4)

To date the petitioner has placed no information on the record with regard to the specialized and complex nature of the proffered position. The job description in the original petition contains work duties that are similar to any sales representative position. Without more persuasive evidence as to the specialized or complex nature of the offered job, the petitioner has not met the fourth criterion of 8 C.F.R. § 214.2(h)(4)(iii)(A).

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

While it is not necessary to discuss the beneficiary's qualifications, given that the position is not found to be a specialty occupation, it is noted that counsel's submission on appeal of a new and different qualifications evaluation does not overcome the director's reservations regarding the beneficiary's qualifications.

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.