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U.S. Department of Homeland Security

Bureau of Citizenship and Immigration Services

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ADMINISTRATIVE APPEALS OFFICE  
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Washington, D.C. 20536



SEP 10 2003

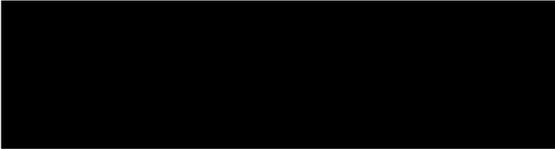
File: EAC-02-188-53029 Office: VERMONT SERVICE CENTER Date:

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:



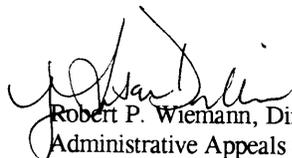
**INSTRUCTIONS:**

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 the Bureau of Citizenship and Immigration Services (Bureau) 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 and is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed.

The petitioner provides marketing consulting for technology-based companies. It has four employees and a gross annual income of \$250,000. It seeks to employ the beneficiary as a part-time corporate communications manager for a period of three years. The director determined the petitioner had not established that the proffered position is a specialty occupation, or that the beneficiary is qualified to perform the duties of a specialty occupation.

On appeal, counsel submits a brief.

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 nonimmigrant classification to qualified aliens who are coming temporarily to the United States to perform services in a specialty occupation. Section 214(i)(1) of the Act, 8 U.S.C. § 1184(i)(1), defines a "specialty occupation" as an occupation that requires theoretical and practical application of a body of highly specialized knowledge, and 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.

Pursuant to section 214(i)(2) of the Act, 8 U.S.C. § 1184(i)(2), to qualify as an alien coming to perform services in a specialty occupation the beneficiary must hold full state licensure to practice in the occupation, if such licensure is required to practice in the occupation. In addition, the beneficiary must have completed the degree required for the occupation, or have experience in the specialty equivalent to the completion of such degree and recognition of expertise in the specialty through progressively responsible positions relating to the specialty.

The director denied the petition because the petitioner had not demonstrated that a baccalaureate degree is required for the proffered position. The director also stated that, even if the job could be considered a specialty occupation, the beneficiary's degree in English would not qualify her for the position. On appeal, counsel states, in part, that the proposed duties, which include writing and editing promotional materials for media, for seminars, and for marketing, are professional in nature and, thus, require a baccalaureate degree in English and highly specialized knowledge. Counsel submits various job advertisements in support of his assertion.

Counsel's statement on appeal is not persuasive. The Bureau does not use a title, by itself, 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 the Bureau considers. In the initial I-129 petition, the petitioner described the duties of the offered position as follows:

**Copywriting and Editorial:**

- Write all customer and ThinkOne content, including printed materials, web, proposals, sales letters, newsletters, public relations pieces, e-marketing campaigns, and white papers.
- Serve as final editorial review on all ThinkOne produced materials.

**Public Relations:**

- Raise awareness of ThinkOne methods, successes, and strategies through a planned schedule of press releases, speaking engagements, and publications of professional articles.
- Create lead generations tools such as downloadable case studies and white papers.
- Serve as primary public relations contact for ThinkOne.
- Act as corporate communications manager on behalf of customers[,] which may include media training, creation of press lists, developing press contacts, and pitching ideas and articles.

**e-marketing Expert:**

- Manage e-mail marketing efforts (such as newsletter, seminar promotion and registration).
- Create templates for e-marketing campaigns and provide occasional customer training on tools and applications.
- Make recommendations on available e-marketing tools including surveys, e-mail creation, tracking and lead lists.

**Webmaster:**

- Create customer web sites based on provided graphical "mock ups".

- Perform web updates.
- Maintain ThinkOne website.
- Maintain statistics on hit rates in conjunction with e-marketing campaigns.

**Seminar Management:**

- Provide copy for all promotional materials.
- Create seminar content.
- Manage promotional campaigns.

**Sales and Lead Generation:**

- Conduct market surveys.
- Provide work estimates to be used in ThinkOne proposals.

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 petitioner has not met any of the above requirements to classify the offered position as a specialty occupation.

First, the Bureau does not agree with counsel's assertion that the proffered position would normally require a bachelor's degree in English or a related field. The proffered position primarily combines the duties of marketing, public relations, and sales

managers with those of a webmaster. Counsel asserts that the proffered position is a specialty occupation because it has been assigned a specific SVP rating in the Department of Labor's (DOL) *Dictionary of Occupational Titles (DOT)* (4th Ed., Rev. 1991). However, the AAO does not consider the *DOT* a persuasive source of information regarding whether a particular job 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.

The DOL 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 DOL's *Occupational Outlook Handbook (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, the Bureau is not persuaded by a claim that the proffered position is a specialty occupation simply because the DOL has assigned it a specific SVP rating in the *DOT*.

A review of the DOL's *Handbook*, 2002-2003 edition, at page 28 finds no requirement of a baccalaureate or higher degree in a specific specialty for employment in marketing, public relations, and sales managerial jobs. A wide range of educational backgrounds is suitable, but many employers prefer individuals with experience in related occupations plus a broad liberal arts background. In addition, most marketing, public relations, and sales management positions are filled by promoting experienced staff or related professional or technical personnel.

A review of the DOL's *Handbook* at page 269, also finds no requirement of a baccalaureate or higher degree in a specific specialty for employment as a webmaster. For some network systems and data communication analysts, such as webmasters, an associate degree or certificate is generally sufficient. Thus, the petitioner has not shown that a bachelor's degree or its equivalent is required for the position being offered to the beneficiary.

Second, the petitioner has not demonstrated that it has, in the past, required the services of individuals with baccalaureate or higher degrees in a specific specialty such as English, for the offered position. Third, although the record contains various job

advertisements, none of the advertisements is persuasive evidence of a degree requirement being common to the industry in parallel positions among similar organizations. The petitioner has not demonstrated that the proposed duties described for the proffered position are as complex as those described for the advertised positions. For example, one of the positions is for a copywriter for Bank One, one of the largest banks in the United States, and another position is for a copywriter for Bose Corporation, one of the largest and most technologically advanced audio companies in the world. Finally, the petitioner did not demonstrate that the nature of the beneficiary's proposed duties is so specialized and complex that the knowledge required to perform the duties is usually associated with the attainment of a baccalaureate or higher degree.

The petitioner has failed to establish that any of the four factors 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.

As the petitioner has not sufficiently established that the proffered position is a specialty occupation, the beneficiary's qualifications need not be examined further in this proceeding.

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.