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FILE: WAC 02 282 54955 Office: CALIFORNIA SERVICE CENTER Date: APR 14 2004

IN RE: Petitioner: [Redacted]
Beneficiary: [Redacted]

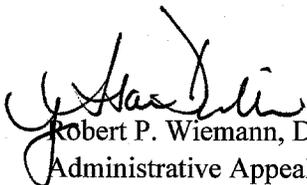
PETITION: Petition for a Nonimmigrant Worker Pursuant to Section 101(a)(15)(H)(i)(b) of the
Immigration and Nationality Act, 8 U.S.C. § 1101(a)(15)(H)(i)(b)

ON BEHALF OF PETITIONER:



INSTRUCTIONS:

This is the decision of the Administrative Appeals Office 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.


Robert P. Wiemann, Director
Administrative Appeals Office

DISCUSSION: The service center director denied the nonimmigrant visa petition 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 designs, arranges, directs, and markets international group tours. It seeks to employ the beneficiary as a marketing manager/national accounts, and to classify her as a nonimmigrant worker in a specialty occupation pursuant to 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).

The director denied the petition because the proffered position is not a specialty occupation. On appeal, counsel submits a brief and additional information.

The issue to be discussed in this proceeding is whether the position offered to the beneficiary qualifies as 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, in part, for the classification of qualified nonimmigrant aliens who are coming temporarily to the United States to perform services in 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:

[A]n 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.

Citizenship and Immigration Services (CIS) interprets the term "degree" in the criteria at 8 C.F.R. § 214.2(h)(4)(iii)(A) to mean not just any baccalaureate or higher degree, but one in a specific specialty that is directly related to the proffered position.

The record of proceedings before the AAO contains: (1) Form I-129 and supporting documentation; (2) the director's request for additional evidence; (3) the petitioner's response to the director's request; (4) the director's denial letter; and (5) the Form I-290B with supporting documentation. The AAO reviewed the record in its entirety before issuing its decision.

The petitioner is seeking the beneficiary's services as a marketing manager/national accounts. Evidence of the beneficiary's duties was included with the I-129 petition, and in response to the director's request for evidence. According to this evidence the beneficiary would: locate promising online marketing partners, plan business models, work out details of mutually beneficial promotions/advertising arrangements, and draft/negotiate contracts – 50 per cent of beneficiary's time; oversee online marketing project implementation, including design and placement of conventional ads through magazines, newspapers, and mail – and design/negotiate special offers, contests, sweepstakes, and other product placements – 20 per cent of the beneficiary's time; and direct the collection of data about online sales regarding the effectiveness of overall online marketing strategies, performance of specific products, and efficacy of marketing through particular sites – evaluate contracts and implement changes in marketing strategies – 30 per cent of beneficiary's time. The foregoing represents a summary of the duties to be performed. Those duties, all of which have been reviewed, were explained in great detail in the record of proceeding. The employer requires a bachelor's degree, or its equivalent, in business administration or marketing for the offered position.

The director found that the offered position did not qualify as a specialty occupation and failed to meet any of the criteria of 8 C.F.R. § 214.2(h)(4)(iii)(A). On appeal, counsel indicates that the offered position is a specialty occupation and satisfies the requirements of 8 C.F.R. § 214.2(h)(4)(iii)(A).

Upon review of the record, the petitioner has failed to establish that a baccalaureate or higher degree or its equivalent is normally the minimum requirement for entry into the offered position, or that a degree requirement is common to the industry in parallel positions among similar organizations. Factors often considered by CIS when determining these criteria include: whether the Department of Labor's *Occupational Outlook Handbook*, reports that the industry requires a degree; whether an industry 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." See *Shanti, Inc. v. Reno*, 36 F. Supp. 2d 1151, 1165 (D. Min. 1999) (quoting *Hird/Baker Corp. v. Slattery*, 764 F. Supp. 872, 1102 (S.D.N.Y. 1991)).

The AAO routinely consults the *Handbook* for information about the duties and educational requirements of particular occupations. The duties of the proffered position are essentially those noted for advertising, marketing, promotions, public relations, and sales managers. The *Handbook* notes that a wide range of educational backgrounds are suitable for entry into those positions, but that many employers prefer related experience plus a broad liberal arts background. Bachelor's degrees in sociology, psychology, literature,

journalism, philosophy, or other subjects are suitable. Requirements will vary, however, depending on the duties of a particular position. For example, marketing, sales, and promotion management positions may require a bachelor's or master's degree in business administration with an emphasis in marketing. In highly technical industries such as computer and electronics manufacturing a degree in engineering or science combined with a business degree may be preferred. In public relations management positions some employers prefer a bachelor's or master's degree in public relations or journalism. The *Handbook* further notes 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 in a specific specialty, or its equivalent, is not, therefore, the minimum requirement for entry into the position. A degree in a wide range of disciplines will suffice. 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 that a degree requirement, in a specific specialty, is common to the industry in parallel positions among similar organizations, or that the duties of the offered position are so complex or unique that they can be performed only by an individual with a degree in a specific specialty. 8 C.F.R. § 214.2(h)(4)(iii)(A)(2). In support of this proposition, the petitioner offers the opinion of ██████████ President of the United States Tour Operators Association. Mr. ██████████ states that performance of the duties of the offered position require skills normally gained through university-level preparation in business, marketing, or one of the social sciences. Specifically, he opines that relevant fields of professional study would be limited to travel and tourism, business administration, marketing, or perhaps a sub-area of the social sciences. Mr. ██████████ opinion is commensurate with the findings of the *Handbook*. Neither the *Handbook* nor Mr. ██████████ states that a degree requirement, in a specific specialty, is common to the industry as a whole in parallel positions among similar organizations. Education in a wide variety of disciplines will suffice. Thus, the petitioner has failed to establish that the proffered position qualifies as a specialty occupation under this criterion. It should further be noted that the position's duties are not so unique or complex that they can be performed only by an individual with a degree in a specific specialty. Once again, education, training, or experience in any number of areas will qualify an individual for the position.

The petitioner asserts that the position qualifies as a specialty occupation because it normally requires a degree or its equivalent for the position. In support of this assertion, the petitioner notes that it has six marketing managers, and that five of those six have bachelor's degrees. One has an associate's degree with substantial marketing experience. The petitioner does not submit copies of personnel degrees or diplomas. Assuming that all marketing managers do hold bachelor's degrees, or the equivalent thereof, the petitioner has still failed to establish that the offered position qualifies as a specialty occupation. First, the petitioner does not indicate that the degrees and equivalent experience are in a specific specialty that relates to the occupation. Second, the performance of the duties of the position must still involve the theoretical and practical application of a body of highly specialized knowledge. *Defensor v. Meissner*, 201 F.3d 388 (5th Cir. 2000). This position does not. The duties of the position are routinely performed in the industry by individuals with educational backgrounds in a wide range of educational disciplines. There is no requirement that the education come from any particular specialty.

Finally, the petitioner has failed to establish that the duties of the proffered position are so specialized or complex that knowledge required to perform them is usually associated with the attainment of a baccalaureate or higher degree in a specific specialty. Again, the duties of the position are routinely performed by

individuals with educational backgrounds in a wide range of educational disciplines. There is no requirement that the education come from any particular specialty.

Counsel also makes reference to the SVP rating for marketing managers found in the *Dictionary of Occupational Titles*. Counsel's assertions are unpersuasive in this regard. An SVP rating is meant to indicate only the total number of years of vocational preparation required for a particular position. The SVP classification does not describe how those years are to be divided among training, formal education, and experience, nor does it specify the particular type of degree, if any, that a position would require.

As related in the discussion above, the petitioner has failed to establish that the proffered position is a specialty occupation. Accordingly, the AAO shall not disturb the director's denial of the petition.

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. The petition is denied.