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U.S. Citizenship
and Immigration
Services

[Redacted]

FILE: SRC 03 028 50904

Office: TEXAS SERVICE CENTER

Date: APR 16 2004

IN RE: Petitioner:
Beneficiary:

[Redacted]

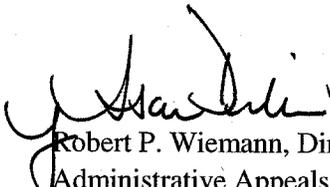
PETITION: Petition for a Nonimmigrant Worker Pursuant to Section 101(a)(15)(H)(i)(b) of the Immigration and Nationality Act, 8 U.S.C. § 1101(a)(15)(H)(i)(b)

ON BEHALF OF PETITIONER:

[Redacted]

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 affirmed her decision in a subsequent motion to reopen or reconsider. 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 company that sells, installs, services and maintains residential and commercial satellite television systems. It seeks to employ of the beneficiary as a director of sales and marketing. The petitioner endeavors to classify the beneficiary 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 position is not a specialty occupation. On appeal, counsel submits a statement.

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.

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 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 proceeding 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; (5) the Service's motion to reopen; (6) the director's decision affirming the denial of the petition; and (7) Form I-290B and supporting documentation. The AAO reviewed the record in its entirety before issuing its decision.

The petitioner is seeking the beneficiary's services as a sales and marketing manager. Evidence of the beneficiary's duties includes: the I-129 petition; the petitioner's letter in support; and the petitioner's response to the director's request for evidence. According to the October 28, 2002 letter of support, the beneficiary would perform duties that entail, in part: directing and managing the sales and marketing activities of the company; directing staffing, training and performance evaluations to develop and control sales and marketing programs; coordinating sales and marketing by establishing sales territories, quotas, and goals; promoting the products and services of the petitioner by developing the business model and market model to be presented to potential customers; creating sales plans that will prioritize the time and resource allocated to each account; establishing each sales region's goals, strategies, schedules and action plans; overseeing industry market research efforts to determine strategic markets; analyzing sales and marketing statistics to formulate policies and promote sales; reviewing market analysis to determine customer needs, volume potential, price schedules and discount rates; utilizing research findings to develop market strategy and product positioning; developing sales and marketing campaigns to accommodate the goals of the company; and monitoring the competitive environment to identify and maximize key opportunities. The petitioner indicated that a qualified candidate for the job would possess a bachelor's degree in marketing.

The director found that the proffered position was not a specialty occupation because the job has elements of an administrative service manager, a marketing manager, and a sales manager. Citing to the Department of Labor's *Occupational Outlook Handbook (Handbook)*, the director noted that the minimum requirement for entry into any of these positions was not a baccalaureate degree or its equivalent in a specific specialty. The director found further that the petitioner failed to establish any of the criteria found at 8 C.F.R. § 214.2(h)(4)(iii)(A).

On appeal, counsel states that the director ignored the evidence submitted with the petition and in response to the director's request for evidence, all of which establishes that the proffered position is a specialty occupation.

Upon review of the record, the petitioner has established none of the four criteria outlined in 8 C.F.R. § 214.2(h)(4)(iii)(A). Therefore, the proffered position is not a specialty occupation.

The AAO turns first to the criteria at 8 C.F.R. § 214.2 (h)(4)(iii)(A)(1) and (2): a baccalaureate or higher degree or its equivalent is the normal minimum requirement for entry into the particular position; a degree requirement is common to the industry in parallel positions among similar organizations; or a particular position is so complex or unique that it can be performed only by an individual with a degree.

Factors often considered by CIS when determining these criteria 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." See *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 AAO routinely consults the *Handbook* for its information about the duties and educational requirements of particular occupations.

The proffered position is a director of sales and marketing. The AAO finds that the position is most similar to a marketing manager and a sales manager position, rather than an administrative service manager. The 2002-2003 edition of the *Handbook* describes educational requirements for entry into the sales and marketing manager field:

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.

The *Handbook* clearly states that there is no requirement for a degree in a specific specialty for entry into this field.

Regarding parallel positions in the petitioner's industry, the petitioner submitted three letters from other satellite companies in the petitioner's region, all of which state that they require a bachelor's degree in marketing for its sales and marketing managers. No evidence was submitted, however, to establish that these three companies are similar to the petitioner or that the duties of these positions are similar to the proffered position. Finally, none of the companies provided evidence regarding their hiring practices, or stated how they were in a position to state that the industry standard for the position is a baccalaureate degree in business administration or marketing.

The record also does not include any evidence from professional associations regarding an industry standard, or documentation to support the complexity or uniqueness of the proffered position. The petitioner has, thus, not established the criteria set forth at 8 C.F.R. § 214.2(h)(4)(iii)(A)(1) or (2).

The AAO now turns to the criterion at 8 C.F.R. § 214.2(h)(4)(iii)(A)(3) – the employer normally requires a degree or its equivalent for the position. Counsel states that the duties of the proffered position were previously performed by the petitioner's president, whose combination of education and work experience is equivalent to a bachelor's degree in business administration/marketing. The assertions of counsel do not constitute evidence. *Matter of Obaigbena*, 19 I&N Dec. 533, 534 (BIA 1988); *Matter of Ramirez-Sanchez*, 17 I&N Dec. 503, 506 (BIA 1980). In addition, simply going on record without supporting documentary evidence is not sufficient for the purpose of meeting the burden of proof in these proceedings. *Matter of Treasure Craft of California*, 14 I&N Dec. 190 (Reg. Comm. 1972).

Finally, the AAO turns to the criterion at 8 C.F.R. § 214.2(h)(4)(iii)(A)(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.

To the extent that they are depicted in the record, the duties do not appear so specialized and complex as to require the highly specialized knowledge associated with a baccalaureate or higher degree, or its equivalent, in a specific specialty. Therefore, the evidence does not establish that the proffered position is a specialty occupation under 8 C.F.R. § 214.2(h)(4)(iii)(A)(4).

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.

ORDER: The appeal is dismissed. The petition is denied.