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U.S. Department of Homeland Security  
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Washington, DC 20529



U.S. Citizenship  
and Immigration  
Services

[Redacted]

FILE: EAC 03 126 53271 Office: VERMONT SERVICE CENTER Date: **AUG 04 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:

[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.

*Mari Jensen*

Robert P. Wiemann, Director  
Administrative Appeals Office

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prevent clearly unwarranted  
invasion of personal privacy**

**DISCUSSION:** The service center director denied the nonimmigrant visa petition and the matter is before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed. The petition will be denied.

The petitioner is a company that transports handicapped clients, and senior citizens with and without disabilities. It seeks to employ the beneficiary as a marketing manager. The petitioner, therefore, 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 he determined that the proffered position is not a specialty occupation. On appeal, counsel asserts that the position is a specialty occupation and submits further documentation.

Section 214(i)(1) of 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 (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 proceeding before the AAO contains: (1) Form I-129 and supporting documentation; (2) the petitioner's letter of support, dated November 20, 2002; (3) the director's request for additional evidence, dated March 31, 2003; (4) the petitioner's letter that respond to the director's request; (5) the director's denial

letter; and (6) Form I-290B and supporting documentation. The AAO reviewed the record in its entirety before issuing its decision.

The petitioner initially sought the beneficiary's services as a marketing manager. Evidence of the beneficiary's duties includes: the I-129 petition; the petitioner's letter of support; the director's request for further evidence; and counsel's letter in response to the director's request for further evidence. According to the job description submitted by the petitioner, the beneficiary's duties would involve developing and instituting a marketing plan for the petitioner after examining the petitioner's business competition on a local, regional, and national basis. In addition, the beneficiary would conduct marketing research on the transportation industry and prepare a statistical presentation to present to the company to determine growth and increased profit margin areas. In its response to the director's request for further evidence, counsel asked that the position title be changed to market research analyst. The petitioner stated that the candidate should have a baccalaureate degree or its equivalent.

The director found that the proffered position was not a specialty occupation and referred to the Department of Labor's (DOL) *Occupational Outlook Handbook (Handbook)* classification as market survey researcher. The director then identified duties outlined in the *Handbook* for market research analysts and noted that the *Handbook* duties for a market research analyst did not appear to be duties required for the proffered position. Based on the *Handbook* information, the director determined that a baccalaureate degree in a specific specialty was not required for entry into the position. 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 in his decision had erroneously identified the position as a market survey researcher and notes that the duties of three jobs are placed together in the *Handbook* classification cited by the director. Counsel also states that the *Handbook* indicates that market research analysts require at least a bachelor's degree in economics, business administration, marketing, statistics or some closely related discipline. Counsel submits documentation from the DOL *Dictionary of Occupational Titles (DOT)* with regard to the specific vocational preparation (SVP) level for a market research analyst, and also submits six job vacancy announcements for market research analysts.

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. With regard to the proffered position, the petitioner identified the position as a marketing manager and then in its response to the director's request for further evidence, identified the position as a market research analyst. CIS regulations affirmatively require a petitioner to establish eligibility for the benefit it is seeking at the time the petition is filed. See 8 C.F.R. § 103.2(b)(12). Any facts that come into being subsequent to the filing of a petition cannot be considered when determining whether the proffered position is a specialty occupation. See *Matter of Michelin Tire Corp.*, 17 I&N Dec. 248, 249 (Reg. Comm. 1978).

A review of the record reveals that the director requested additional evidence because there was insufficient evidence that the proffered position of marketing manager was a specialty occupation. In response, the petitioner requested that the job title be changed to marketing research analyst, and submitted three unpublished AAO decisions with regard to marketing research analysts.

The purpose of the request for evidence is to elicit further information that clarifies whether eligibility for the benefit sought has been established. 8 C.F.R. § 103.2(b)(8). When responding to a request for evidence, a petitioner cannot offer a new position to the beneficiary, or materially change a position's title, its level of authority within the organizational hierarchy, or its associated job responsibilities. The petitioner must establish that the position that was offered to the beneficiary at the time the petition was filed merits classification as a specialty occupation. *Matter of Michelin Tire, Corp., id.* If significant changes are made to the initial request for approval, the petitioner must file a new petition rather than seek approval of a petition that is not supported by the facts in the record. Therefore, the analysis of this criterion will be based on the initial classification of marketing manager along with the original description of the job duties.

The most analogous *Handbook* classification to the proffered position based on the initial title and job duties appears to be that of marketing manager. On page 23 of the 2004-1005 edition of the *Handbook*, the *Handbook* states: "marketing managers develop the firm's detailed marketing strategy. With the help of subordinates, including product development managers and market research managers, they determine the demand of products and services offered by the firm and its competitors. In addition, they identify potential markets." With regard to the proffered position, the petitioner stated that the position is new and that there are no other employees involved with marketing. The petitioner also stated that because of the great turnover rate of clientele in the petitioner's business due to deaths or other serious disabilities, there was a constant need to research and determine the best possible marketing strategy to gain new clientele. Thus, the actual position appears to be an individual with no subordinates who both manages the creation of a marketing strategy and conducts marketing research for the petitioner.

With regard to requisite training for such a position, the *Handbook* states: "a wide range of educational backgrounds is suitable for entry into advertising, marketing, promotions, public relations and sales managerial jobs, but many employer 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." The *Handbook* goes on to state: "For marketing, sales and promotions management positions, some employers prefer a bachelor's or master's degree in business administration with

an emphasis on marketing.” Thus, the *Handbook* does not establish that a baccalaureate degree in a specific specialty is the minimum required for entry into the proffered position.

With regard to parallel positions in similar transportation services companies, counsel submitted six job vacancy announcements. These job vacancy announcements are not viewed as persuasive evidence. First, as previously stated, these proceedings will only consider the original job title and duties outlined by the petitioner. To the extent that the positions are clearly market research analysts, they are not relevant to the present proceedings. Second, it should also be noted that the first two vacancy announcements do not identify a baccalaureate degree in a specific specialty that is required for entry to the advertised positions. 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. The petitioner stated that the position was new. Therefore, the petitioner cannot meet this criterion.

Finally, the AAO turns to the criterion at 8 C.F.R. § 214.2(h)(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 of the position appear generic. The petitioner provided no further detail as to any specialized or complex duties that the beneficiary would perform as a marketing manager. For example, the petitioner provided no further information as to the methods to be utilized in doing any market research, the size of the competition to be researched, or any other details related to the creation of a marketing strategy. Without more persuasive evidence, the petitioner has not established the fourth criterion of 8 C.F.R. § 214.2(h)(4)(iii)(A).

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.

Beyond the decision of the director, the petitioner did not establish that the beneficiary is qualified to perform the duties of the position, if the position had been found to be a specialty occupation. The beneficiary has no university studies. The Multinational Education and Information Services, Inc., in Atlanta, Georgia determined that the beneficiary’s 17 years of work experience in areas such as staff training activities, management of inventories, projection of seasonal sales, and development of marketing strategies and similar areas, was the equivalent of a bachelor’s degree in marketing from an accredited U.S. university. However, a credentials evaluation service may not evaluate an alien’s work experience or training; it can only evaluate educational credentials. See 8 C.F.R. § 214.2(h)(4)(iii)(D)(3). In addition, there is no evidence presently in the record that the evaluator from Multinational Education and Information Services, Inc has the authority to grant college-level credit for training and/or experience in the specialty at an accredited college or university which has a program for granting such credit based on an individual’s training and/or work experience, as required by 8 C.F.R. § 214.2(h)(4)(iii)(D)(1). Thus, the evaluation carries no weight in these proceedings. *Matter of Sea, Inc.*, 19 I&N Dec. 817 (Comm. 1988).

Pursuant to 8 C.F.R. § 214.2(h)(4)(iii)(D)(5), CIS can evaluate whether the beneficiary has acquired the equivalent of a baccalaureate degree through a combination of education, specialized training, and/or work experience in areas related to the specialty and whether the alien has achieved recognition of expertise in the specialty occupation as a result of such training and experience. Since the beneficiary does not appear to have any university studies, he would need to possess twelve years of work experience to meet the equivalency ratio outlined in this regulation. In addition, the petitioner would have to establish that the beneficiary's work experience also fulfills the criteria outlined in the regulations as to progressively responsible work.

The letters from the National Iranian Gas Company establish that the beneficiary worked for 17 years at this company. According to the beneficiary's resume, he was the manager in charge of purchasing all items for the company. However, a letter from the National Iranian Gas Company stated that the beneficiary was employed as the head of the purchasing and marketing department for 17 years. This letter also names three other positions that the beneficiary held, but provides no information as to when these positions were held or for how long. The beneficiary's resume and his employer's second letter appear inconsistent with one another with regard to his primary job with the National Iranian Gas Company. Doubt cast on any aspect of the petitioner's proof may, of course, lead to a reevaluation of the reliability and sufficiency of the remaining evidence offered in support of the visa petition. It is incumbent upon the petitioner to resolve any inconsistencies in the record by independent objective evidence, and attempts to explain or reconcile such inconsistencies, absent competent objective evidence pointing to where the truth, in fact, lies, will not suffice. *Matter of Ho*, 19 I&N Dec. 582, 591-92 (BIA 1988). Without more consistent evidence, the beneficiary's work experience does not appear sufficient to adequately meet the regulatory criteria outlined in 8 C.F.R. § 214.2(h)(4)(iii)(D)(5). For this additional reason, the petition may not be approved.

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.