



U.S. Citizenship
and Immigration
Services



FILE: WAC 03 094 50085 Office: CALIFORNIA SERVICE CENTER Date: 8/10/04

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 Johnson
for 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 is a publisher of Japanese tourist magazines in the States of California, Nevada and Hawaii. 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 and that the beneficiary is not qualified to perform the duties of the position. On appeal, counsel asserts that the position is a specialty occupation and that the beneficiary is qualified to perform the duties of the position. Counsel submits no 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; (3) the director's notice of intent to deny the petition, dated February 11, 2003; (4) the petitioner's letter that respond to the director's notice of intent to deny the petition, dated March 3,

2003; (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 is seeking the beneficiary's services as a marketing manager for a Japanese tourist magazine. Evidence of the beneficiary's duties includes: the I-129 petition; the petitioner's letter of support; the director's notice of intent to deny the petition; and counsel's letter in response to the director's notice of intent to deny the petition. According to the job description submitted by the petitioner, the beneficiary will be responsible for creating, developing, launching, and managing marketing programs to meet the petitioner's growth, revenue, and retention goals. The petitioner indicated that a candidate for the position would possess a baccalaureate degree in business administration with courses in marketing, economics, accounting, finance, or other related courses.

The director found that the proffered position was not a specialty occupation and referred to the classification of advertising, marketing, promotions, public relations and sales managers, in the Department of Labor's (DOL) *Occupational Outlook Handbook (Handbook)*. Based on the *Handbook* information, the director determined that a range of educational backgrounds were suitable for entry in the proffered 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). In addition, the director determined that the petitioner had not established that the beneficiary's baccalaureate degrees or university studies had an emphasis in marketing. Based on the lack of documentation on any coursework in marketing, the director determined that the beneficiary was not qualified to perform the duties of the position.

On appeal, counsel states that the position of marketing manager is a specialty occupation and that the petitioner had established two criteria outlined in 8 C.F.R. § 214.2(h)(4)(iii)(A). Counsel states that the position normally requires a bachelor's degree in business administration with course in marketing, economics, accounting, finance, or other related courses and that the position is so specialized and complex that the knowledge required to perform the duties is usually associated with attainment of a four-year degree. Counsel states that the beneficiary is qualified for the position based on her university studies, and further mentions that the beneficiary has twelve years of progressively responsible professional experience as marketing coordinator and technical writer. Counsel asserts that this work experience is directly related to the proffered position.

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, as correctly noted by the director, the *Handbook* classification of advertising and marketing managers states that a range of academic disciplines may be suitable for entry into the position. As previously stated, 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. Without more persuasive evidence, the petitioner has not established that a baccalaureate degree in a specific specialty is required for entry into the proffered position. Thus the petitioner has not established the first criterion of 8 C.F.R. § 214.2(h)(4)(iii)(A).

With regard to parallel positions in similar publishing companies with similar products directed at foreign tourists, the petitioner submitted no further documentation. As previously stated by the director, the petitioner did submit job vacancy announcements for marketing managers. However, many of the job vacancy announcements submitted by the petitioner were those of much larger companies with different business focuses. In addition, many of the announcements submitted by the petitioner did not identify a required degree in a specific field. In its response to the director's notice of intent to deny the petition, the petitioner submitted biographies of persons working as marketing managers. These materials were not seen as relevant to the present proceedings. Some biographies were for individuals who worked in marketing areas quite distinct from the petitioner's business focus. For example, ██████████ a marketing manager for a Motorola subsidiary, possessed a master's degree in engineering. This degree is completely distinct from the *Handbook's* range of academic disciplines that appear suitable for entry into the proffered position. In addition, biographies for other individuals who worked in the international tourism marketing field, a field that appears similar to the business focus of the petitioner, listed baccalaureate degrees that were completely distinct from the *Handbook* range of academic disciplines. For example, ██████████ who is identified as a marketing manager for the ██████████ which is identified as involved in international tourism marketing, has a baccalaureate degree in sociology and criminology. In addition, 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 submitted no further documentation on any previous or present marketing managers and their academic credentials. Therefore the petitioner has not met 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 routine to many advertising and marketing positions. The petitioner provided no further detail as to any specialized or complex duties involved with the production and distribution of magazines or other media products directed at Japanese tourists. Without more persuasive evidence, the petitioner has not established the fourth criterion of 8 C.F.R. § 214.2(h)(4)(iii)(A).

With regard to the issue raised by the director with regard to the beneficiary's qualifications, as correctly noted by the director, the beneficiary's school records do not indicate that she has any university-level

coursework in marketing. When CIS determines an alien's qualifications pursuant to 8 C.F.R. § 214.2(h)(4)(iii)(D)(5), three years of specialized training and/or work experience must be demonstrated for each year of college-level training the alien lacks. It must be clearly demonstrated that the alien's training and/or work experience included the theoretical and practical application of specialized knowledge required by the specialty occupation; that the alien's experience was gained while working with peers, supervisors, or subordinates who have a degree or its equivalent in the specialty occupation; and that the alien has recognition of expertise in the specialty evidenced by at least one type of documentation such as:

- (i) Recognition of expertise in the specialty occupation by at least two recognized authorities in the same specialty occupation¹;
- (ii) Membership in a recognized foreign or United States association or society in the specialty occupation;
- (iii) Published material by or about the alien in professional publications, trade journals, books, or major newspapers;
- (iv) Licensure or registration to practice the specialty occupation in a foreign country; or
- (v) Achievements which a recognized authority has determined to be significant contributions to the field of the specialty occupation.

The record as presently constituted does not contain sufficient evidence to establish the criteria outlined in 8 C.F.R. § 214.2(h)(4)(iii)(D)(5). For example, the record is unclear as to how many years the beneficiary worked as a marketing coordinator. On appeal, counsel states that the beneficiary has twelve years of work experience as a marketing coordinator and technical writer. With regard to the beneficiary's work experience in marketing coordination, the petitioner placed two letters in the record from the beneficiary's former employers in Japan. [REDACTED], president of Building Up Communication, stated that the beneficiary worked with his company from December 1990 to May 1994 as a marketing coordinator. [REDACTED], president of Remix, Inc, stated that the beneficiary began work as a marketing coordinator for his company in March 1998, and that following her move to the United States for further studies in October 1999, she continued to perform the duties of marketing coordinator through June 2001. Thus, the largest period of time in which the beneficiary performed full time marketing coordinator duties appears to be five years. In addition, the record is devoid of any information as to whether the beneficiary's experience was gained while working with peers, supervisors, or subordinates who have a degree or its equivalent in the specialty occupation; or that she has any recognition of her expertise.

¹ *Recognized authority* means a person or organization with expertise in a particular field, special skills or knowledge in that field, and the expertise to render the type of opinion requested. A recognized authority's opinion must state: (1) the writer's qualifications as an expert; (2) the writer's experience giving such opinions, citing specific instances where past opinions have been accepted as authoritative and by whom; (3) how the conclusions were reached; and (4) the basis for the conclusions supported by copies or citations of any research material used. 8 C.F.R. § 214.2(h)(4)(ii).

It should also be noted that the job duties and academic credentials for marketing coordinators are reviewed in another *Handbook* classification, namely, public relations specialists. For this classification, the *Handbook*, on page 270, states that while there are no defined standards for entry, many entry-level public relations specialists have a college major in public relations, journalism, advertising, or communication. Thus, the documentation with regard to the beneficiary's work experience does not establish the theoretical and practical application of specialized knowledge required by the specialty occupation, which has previously been identified as marketing.

As related in the discussion above, the petitioner has failed to establish that the proffered position is a specialty occupation, or that the beneficiary is qualified to perform the duties of the position. 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.