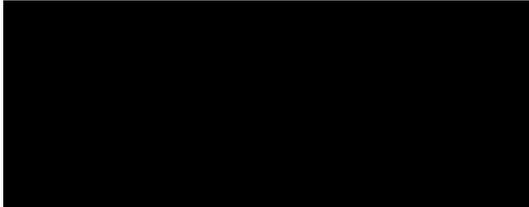




U.S. Citizenship
and Immigration
Services

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FILE: SRC 02 218 52605 Office: TEXAS SERVICE CENTER Date: APR 23 2014

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:

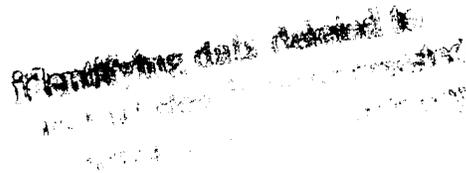


INSTRUCTIONS:

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.

Mari Johnson

for Robert P. Wiemann, Director
Administrative Appeals Office



DISCUSSION: The director of the service center 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 sells ATM machines. 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 the proffered position is not a specialty occupation. On appeal, counsel states that the proffered position qualifies as a specialty occupation and submits additional evidence.

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 director's request for additional evidence; (3) the petitioner's response to the director's request; (4) the

director's denial letter; and (5) 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. Evidence of the beneficiary's duties includes the Form I-129; the attachments accompanying the Form I-129; and the petitioner's response to the director's request for evidence. According to this evidence, the beneficiary would perform duties that entail identifying the market for ATMs; spearheading advertising and promotions of products and services; developing internal systems for marketing, sales order processing, and technical development; providing turnkey solutions and services; analyzing statistical data to forecast marketing trends; providing project estimations such as researching implementation costs; coordinating business development between the company and national and international business houses; establishing research methodology and designing a format for data gathering; gathering data on competitors and customers; analyzing market opportunities in leasing, training, education, ATM maintenance, and franchising; developing new accounts; and preparing reports and graphic illustrations of findings. In the January 2, 2003 letter, the petitioner stated that its job requirement for the position was "at minimum, a [b]achelor[s] [d]egree." The letter continued:

An individual without college specialization in business administration would be unable to explore the market and find potential business opportunities. An individual without business administration education and sales experience cannot perform these duties.

The director found that the proffered position was not a specialty occupation because the petitioner failed to establish any of the criteria found at 8 C.F.R. § 214.2(h)(4)(iii)(A). Citing the Department of Labor's *Occupational Outlook Handbook* (the *Handbook*), the director stated that many employers prefer those with experience in related occupations plus a broad liberal arts background for marketing manager positions, and explained that the liberal arts are not considered a focused, job-related field. The director stated that the petitioner failed to mention that a candidate's bachelor's degree must be in a focused area of study. According to the director, the petitioner merely expressed that it required "college specialization in business administration"; however, it never specified a "specialization." The director stated that the Internet job postings did not indicate a requirement for a baccalaureate degree in a specific specialty, and that the petitioner did not demonstrate that a baccalaureate or higher degree is either its normal requirement or an industry-wide requirement for a marketing manager position. Finally, the director stated that the beneficiary would not manage professionals and that the proffered position would not require the services of someone with a bachelor's degree in a focused, job-related field.

On appeal, counsel states that the denial of the petition was based on the position's job title rather than its duties. Counsel claims that the duties of the proffered position exceed those mentioned in the *Handbook*. Counsel provides a dictionary definition of the term "specialized" and stated that based on the definition, a liberal arts degree is a specialized area directed to a specific end. Counsel contends that the law does not require a bachelor's degree in a narrowly focused field of study. Counsel furthermore contends that specialized knowledge exists in the liberal arts such as in sociology, psychology, literature, journalism, and philosophy. Counsel explains that the petitioner requires a focused area of study: it requires a professional with a business administration background.

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 first considers the criteria at 8 C.F.R. §§ 214.2(h)(4)(iii)(A)(1) and (2): a baccalaureate or higher degree or its equivalent in a specific specialty is the normal minimum requirement for entry into the particular position; a specific 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 in a specific specialty. Factors often considered by CIS when determining these criteria include: whether the DOL's *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)).

As previously mentioned, 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. In the January 2, 2003 letter, the petitioner stated that its job requirement for the position was "at minimum, a [b]achelor[']s [d]egree." The letter continued:

An individual without college specialization in business administration would be unable to explore the market and find potential business opportunities. An individual without business administration education and sales experience cannot perform these duties.

Neither of the quoted statements indicates that the petitioner requires a bachelor's degree in a specific specialty for entry into the proffered position. Counsel claims that the petitioner's need for a professional with a background in business administration establishes that the candidate must possess a bachelor's degree in a focused area of study. This claim is not persuasive. The court in case of *Matter of Michael Hertz Ass.*, 19 I&N Dec. 558, 560 (Comm. 1988) stated:

A petitioner must establish that the position realistically requires knowledge, both theoretical and applied, which is almost exclusively obtained through studies at an institution of higher learning. The depth of knowledge and length of studies required are best typified by a degree granted by such institution at the baccalaureate level. It must be demonstrated that the position requires a precise and specific course of study which relates directly and closely to the position in question. Since there must be a close corollary between the required specialized studies and the position, the requirement of a degree of generalized title, such as business administration or liberal arts, without further specification, does not establish eligibility.

Thus, *Matter of Michael Hertz Ass.* mentions that a petitioner's mere requirement of a degree of generalized title, such as business administration, without further specification, does not establish that a position has a

specialized area of study. Here, the petitioner merely stated that it requires a bachelor's degree in business administration, a degree of generalized title, without indicating a specialization in the field. Thus, it fails to establish the first criterion at 8 C.F.R. § 214.2(h)(4)(iii)(A).

Counsel contends that specialized knowledge exists in the disciplines of sociology, psychology, literature, journalism, and philosophy, fields in the liberal arts. As explained in *Matter of Michael Hertz Ass.*, a position which required a bachelor's degree in the liberal arts, without further specification, would not qualify the position as a specialty occupation because liberal arts is a broad field, encompassing diverse disciplines such as journalism, literature, and philosophy. Similarly, the Act explicitly states that an occupation must require a "theoretical and practical application of a body of highly specialized knowledge" and the "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." Likewise, CIS's interpretation of the term "degree" in the criteria at 8 C.F.R. § 214.2(h)(4)(iii)(A) means not just any baccalaureate or higher degree, but one in a specific specialty that is directly related to the proffered position. Here, the petitioner's mere requirement of a bachelor's degree in business administration, a degree of generalized title, without indicating a specialization in the field, fails to establish the first criterion at 8 C.F.R. § 214.2(h)(4)(iii)(A).

The second criterion at 8 C.F.R. § 214.2(h)(4)(iii)(A) requires that the petitioner show that its degree requirement is common to the industry in parallel positions among similar organizations or, in the alternative, that the position is so complex or unique that it can be performed only by an individual with a degree in a specific specialty. As previously discussed, the record reveals that the petitioner does not require a bachelor's degree in a specific specialty. Accordingly, the petitioner will not be able to establish that it has a degree requirement that's common to the industry or that its position is so complex or unique that it can be performed only by an individual with a degree in a specific specialty. With the submitted Internet job postings, only two of the eight postings require a bachelor's degree in a specific specialty. Thus, this evidence fails to establish an industry-wide requirement of a specific baccalaureate degree for a marketing manager position.

The third criterion requires that the employer establish that it normally requires a degree or its equivalent for the position. As discussed, because the record discloses that the petitioner does not require a bachelor's degree in a specific specialty, it fails to establish the third criterion at 8 C.F.R. § 214.2(h)(4)(iii)(A).

The fourth criterion requires that the petitioner show that the nature of the specific 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 in a specific specialty. The record evinces that the petitioner has not established this criterion because the knowledge required to perform the duties of the position is not associated with the attainment of a baccalaureate or higher degree in a specific specialty. Again, the petitioner does not require that a candidate possess a bachelor's degree in a specific specialty to perform the duties of the offered position.

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.

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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.