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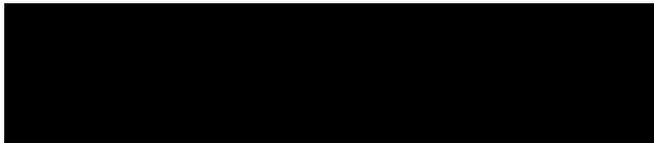


FILE: WAC 03 055 55701 Office: CALIFORNIA SERVICE CENTER Date: DEC 14 2004

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. 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 provides marketing, for a variety of office solutions, including copier products, publishing, and digital systems, among others. 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 position is not a specialty occupation. On appeal, counsel states that the proffered 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; (3) the director's request for additional evidence; (4) the petitioner's response 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 is seeking the beneficiary's services as a marketing manager. The petitioner described itself as a marketing and sales arm of Xerox, a nation-wide company that provides office solutions to businesses. The petitioner stated that it was established in 1995 and has eight employees. Evidence of the beneficiary's duties includes: the I-129 petition; the petitioner's letter of support; and the petitioner's letter in response to the director's request for further evidence. According to the letter of support submitted by the petitioner, the beneficiary would direct and control the overall marketing policy of the company. In its response to the director's request for further evidence, the petitioner stated that 40 per cent of the beneficiary's time would be spent in planning and overseeing the company's marketing program; 20 per cent of her time would be spent reviewing and evaluating marketing actions, and making recommendations on existing marketing policies; 20 per cent of her time would be spent supervising the work involved in the preparation of research studies; 10 percent of her time would be spent supervising all personnel involved in the sales of the company's products and services; 5 per cent of her time conferring and meeting with the president and the board of directors; and 5 per cent of her time would be spent reviewing and approving relevant literature, advertising and promotional packages and planning press releases and attendance at trade shows. The petitioner stated that it required a candidate for the position to possess a master's degree in business administration, marketing or their equivalent.

The director denied the petition and referred to the Department of Labor's (DOL) *Occupational Outlook Handbook (Handbook)* classification of advertising, marketing, promotions, public relations, and sales managers. According to the director, the *Handbook* indicated that employers did not require a baccalaureate degree in a specific specialty to enter the position, but rather the educational backgrounds of marketing and sales manager varied widely. The director also determined 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 position is a specialty occupation and also states that the minimum qualification for the proffered position is a bachelor's degree in accounting. Counsel also asserts that, although the *Handbook* indicates that most advertising, marketing and management positions are filled by promoting experienced staff or related professional personnel, the vacancy announcements that he is submitting to the record serve as proof that many employers seek candidates who hold at least a bachelor's degree, if not a master's degree. Counsel also submits an advisory opinion written by Michelle A. Birch, President, [REDACTED]. In this document, Ms. Birch states that, based on the job duties described by the petitioner, the proffered position would require an applicant to hold, at a minimum, a U.S. bachelor's degree in business administration with a major in marketing or a related area. Counsel also submits an updated organizational chart to illustrate the personnel that the beneficiary would supervise and their academic credentials.

Upon review of the record, the petitioner has established none of the 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, which has both marketing and sales management, is analogous to the *Handbook* classification. The 2004-2005 edition of the *Handbook*, in its examination of marketing managers, states that a wide range of educational backgrounds is suitable for entry in advertising, marketing, promotions, public relations, and sales managerial jobs, but many employers prefer those with experience-related occupations plus a broad liberal arts background. A bachelor's degree in sociology, psychology, literature, journalism or philosophy, among other subjects, is acceptable. More specifically with regard to marketing managers, the *Handbook* states that some employers prefer a bachelor's or master's degree in business administration with an emphasis on marketing. Nevertheless, the *Handbook* does not establish that the proffered position requires a baccalaureate degree in a specific specialty for entry into the position. (Emphasis added.) 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.

With regard to parallel positions in similar businesses, on appeal, counsel provides nine vacancy announcements for marketing managers. The jobs described in these vacancy announcements are not parallel positions to the proffered position, nor are the companies listed similar to the petitioner. Several job advertisements are for large accounting, management, or financial services firms, such as KPMG LLP, American International Group (AIG), PricewaterhouseCoopers, and Franklin Templeton Investments. In addition, several of these positions do not require a baccalaureate degree in a specific specialty. Some also identify other suitable baccalaureate degrees outside of marketing and business, such as journalism. The petitioner did not provide documentation from professional marketing associations or individuals in the industry as to whether a baccalaureate degree in a specific specialty is required for entry into the profession. The advisory opinion from Michelle Burch does not establish the industry standard for the required academic credentials of marketing managers. The petitioner also did not provide sufficient 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 in its petition that it needed a part-time marketing manager. The petitioner did not establish that it had ever previously employed a marketing manager. Therefore the petitioner cannot meet this criterion.

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 majority of duties of the position appear routine to the operations of any marketing and sales company. The petitioner provided no information on the complexity of its present marketing programs for sales and services, on the number of vendors or clients with which it does business, or current business systems that would establish that the duties of the position are specialized or complex. Without more persuasive evidence, the petitioner has not established the fourth criterion of 8 C.F.R. § 214.2(h)(4)(iii)(A).

The director stated in his decision that because the beneficiary would not be supervising individuals in a specialty occupation, the proffered position did not require a degree in a specific specialty. The petitioner indicated that the beneficiary would be supervising a researcher with a degree in the specialty and that both the researcher's and the beneficiary's positions should thus be considered a specialty occupation. The AAO notes that the organizational chart submitted on appeal indicates that the beneficiary, who has been determined to have the equivalent of a master's in business administration, would be managing a staff including three degreed individuals, in economics, telecommunications, and the arts, respectively. The level of education of the proposed staff does not indicate that a greater level of complexity, uniqueness, or specialization would be required in the proffered 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.

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.