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U.S. Citizenship
and Immigration
Services



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FILE: WAC 02 206 53348 Office: CALIFORNIA SERVICE CENTER Date: DEC 27 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 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 is a distributor of ice cream, cheese, and butter. It seeks to employ the beneficiary as a marketing administrator. 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 submits a brief and 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 administrator. Evidence of the beneficiary's duties includes: the Form I-129; the attachments accompanying the Form I-129; the company support letter; and the petitioner's response to the director's request for evidence. According to this evidence, the beneficiary would perform duties that entail organizing and maintaining graphics materials and mailing lists; developing and maintaining a database; maintaining relationships with clients; monitoring the effectiveness of marketing strategies and recommending enhancements to marketing policies and strategies; and coordinating business development and public relations activities. The petitioner's letters stated that it required a bachelor's degree or its equivalent in business administration for the proffered position.

The director determined that the proffered position was not a specialty occupation. Referring to the Department of Labor's *Occupational Outlook Handbook* (the *Handbook*), the director stated that the DOL reports that the proffered position's duties are performed by a marketing manager, an occupation that does not require a bachelor's degree in a specific specialty. The director stated that the beneficiary will perform routine marketing duties, and that none of the duties exceed those normally required of a marketing person. The director explained that the proposed duties and stated level of responsibility did not indicate complexity or authority that is beyond what is normally encountered in the occupational field. The director found the jobs in the postings more complex than the proffered position.

On appeal, counsel states that the proffered position is a specialty occupation. Counsel found the director's denial illogical, an abuse of discretion, and not based on the evidentiary record. Counsel states that the director never defined the term "routine," and mischaracterized management-level marketing duties as merely "routine." Counsel contends that the director misinterpreted the *Handbook*, and relied on generalized information without considering the proffered position's duties and responsibilities. Counsel found the director's dismissal of the 12 job postings an abuse of discretion because the beneficiary's position was as complex as the jobs in the postings. According to counsel, the request for evidence did not indicate any deficiency in the petition, and counsel states that the petitioner's evidence submitted in response to the request for evidence showed how the beneficiary's marketing activities would expand the petitioner's business.

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 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)).

In determining whether a position qualifies as a specialty occupation, CIS looks beyond the title of the position and determines, from a review of the duties of the position and any supporting evidence, whether the position actually requires the theoretical and practical application of a body of highly specialized knowledge, and the attainment of a baccalaureate degree in a specific specialty as the minimum for entry into the occupation as required by the Act.

The petitioner's March 19, 2003 letter stated that a candidate must possess a "[b]achelor of [s]cience degree in [b]usiness [a]dministration, or its equivalent." Its June 7, 2002 letter stated that it required a [b]achelor[']s degree in [b]usiness administration or its equivalent." 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. As stated by the court in *Matter of Michael Hertz Assocs.*, 19 I&N Dec. 558, 560 (Comm. 1988), for a position to qualify as a specialty occupation:

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.

Because the petitioner simply required a baccalaureate degree with the generalized title of "business administration," without indicating a specific field of concentration, it cannot establish that a baccalaureate or higher degree or its equivalent in a specific specialty is the normal minimum requirement for entry into the particular position. 8 C.F.R. § 214.2(h)(4)(iii)(A)(1).

Since the petitioner required only a bachelor's degree in business administration without indicating a specific field of concentration, it cannot establish eligibility under the regulation at 8 C.F.R. § 214.2(h)(4)(iii)(A)(2) which requires that it show that its specific 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.

Again, given that the petitioner required only a bachelor's degree in business administration without indicating a specific field of specialty, it cannot satisfy the regulation at 8 C.F.R. § 214.2(h)(4)(iii)(A)(3) which requires that it establish that it normally requires a degree or its equivalent in a specific specialty for the proffered position.

Finally, we reach the regulation at 8 C.F.R. § 214.2(h)(4)(iii)(A)(4) which 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. Although the petitioner required that a candidate possess a bachelor's degree in business administration, it failed to indicate a specific area of concentration in the field of business administration. Accordingly, it cannot establish the fourth criterion under 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.

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.