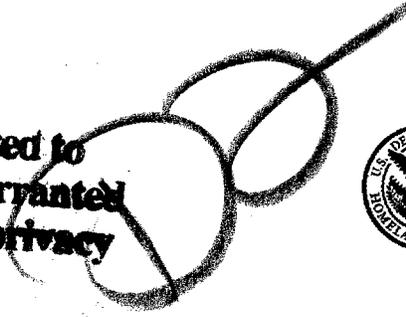


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U.S. Department of Homeland Security
20 Mass, Rm. A3042, 425 I Street, N.W.
Washington, DC 20536



**U.S. Citizenship
and Immigration
Services**



FILE: SRC 01 018 50250 Office: TEXAS SERVICE CENTER Date: **FEB 25 2004**

IN RE: Petitioner:
Beneficiary:



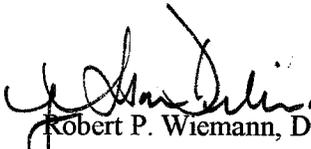
PETITION: Petition for a Nonimmigrant Worker Pursuant to Section 101(a)(15)(H)(i)(b) of the Immigration and Nationality Act, 8 U.S.C. § 1101(a)(15)(H)(i)(b)

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 and the Administrative Appeals Office (AAO) dismissed a subsequent appeal. The matter is again before the AAO on motion to reopen or reconsider. The motion will be accepted, and the petition is reopened. The petition, however, will be denied.

The petitioner is an international freight forwarding company that seeks to employ the beneficiary as an international sales manager. The petitioner 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 on the basis that the proffered position did not meet the definition of a specialty occupation. The AAO affirmed the director's findings.

On motion, counsel states that the director reviewed the petition and determined that the proffered position was a general managerial position, which did not require a baccalaureate or its equivalent. The AAO's decision equated the proffered position with a marketing manager, but again determined that the position did not require a baccalaureate degree in a specific specialty. Counsel states that since the AAO made its determination on a different basis than that of the director, the petitioner never had an opportunity to address the issues raised in the AAO's decision. Counsel submits a statement from a professor of marketing, stating that the duties of the proffered position are sufficiently complex so as to require that the individual filling the position possess a bachelor's degree in marketing, international management or business administration.

A motion to reopen must state the new facts to be proved in the reopened proceeding and be supported by affidavits or other documentary evidence. 8 C.F.R. § 103.5(a)(2). Counsel's submission of additional evidence regarding the new issues raised in the AAO's decision satisfies the requirements of a motion to reopen. The petitioner has met its burden, and the motion is accepted.

The AAO now turns to the merits of the reopened petition. Counsel states that the position of marketing manager is a specialty occupation, and he submits a statement from a professor of marketing to support that assertion.

Section 214(i)(1) of the Immigration and Nationality Act (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; (5) Form I-290B and supporting documentation; (6) the AAO's decision; and (6) the petitioner's motion to reopen and supporting documents. The AAO reviewed the record in its entirety before issuing its decision.

The petitioner is seeking the beneficiary's services as an international sales manager. The AAO determined that the position was most like a marketing manager. Evidence of the beneficiary's duties includes: the I-129 petition; the petitioner's October 11, 2000 letter in support of the petition; and the petitioner's response to the director's request for evidence. According to this evidence, the beneficiary would perform duties that entail, in part: developing international transit for American cargo export and import to Latin America; organizing freight forwarder agent-to-agent cooperation for consolidating cargo; and sales and marketing for Canada, the United States, Latin America and Europe. The petitioner indicated that a qualified candidate for the job would possess a bachelor's degree in business administration with a concentration in international management.

The director found that the proffered position was not a specialty occupation. Citing the Department of Labor's *Occupational Outlook Handbook (Handbook)*, 1998-1999 edition, the director noted that the minimum requirement for entry into the position was not a baccalaureate degree or its equivalent in a specific specialty. 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 response to the petitioner's appeal, the AAO determined that the position is similar to a marketing manager, rather than being a general managerial or executive position. The marketing manager position, however, also does not require a degree in a specific specialty.

In the motion to reopen, counsel states that the proffered position is most similar to a "manager, export" as defined in the Department of Labor's *Dictionary of Occupational Titles*, an assertion he states was ignored in the initial adjudication. Counsel concedes, however, that the proffered position may be considered a marketing manager for the purposes of this adjudication.

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. No evidence in the *Handbook* indicates that a baccalaureate or higher degree in a specific specialty, or its equivalent, is required for a marketing manager job. The *Handbook* states clearly that a wide range of educational backgrounds is acceptable, and many employers prefer experience in the occupation in addition to a broad liberal arts background. The *Handbook* does state that some employers prefer a bachelor's or master's degree in business administration with an emphasis on marketing, but further states that most marketing managerial positions are filled by promoting experienced staff.

Counsel submits one letter from a marketing professor with significant practical experience in international marketing, which states that the duties of the proffered position are so complex that they can only be successfully performed by an individual with a bachelor's degree in marketing, international management, or business administration with an emphasis on international marketing. There is no other evidence submitted regarding parallel positions in the petitioner's industry, and no evidence to corroborate the professor's statement.

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 record does not contain any evidence of the petitioner's past hiring practices and therefore, the petitioner has not met its burden of proof in this regard. *See Matter of Treasure Craft of California*, 14 I&N Dec. 190 (Reg. Comm. 1972).

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 do not appear so specialized and complex as to require the highly specialized knowledge associated with a baccalaureate or higher degree, or its equivalent, in a specific specialty. Therefore, the evidence does not establish that the proffered position is a specialty occupation under 8 C.F.R. § 214.2(h)(4)(iii)(A)(4).

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 previous decision of the AAO, dated August 5, 2002, is affirmed. The petition is denied.