

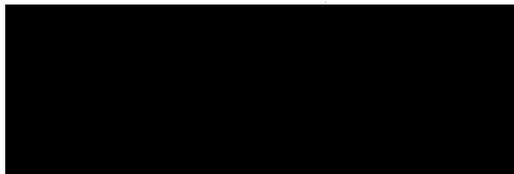
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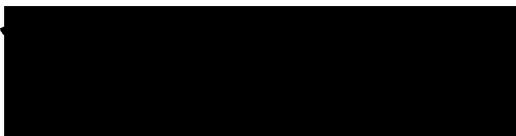
FILE: WAC 03 251 51320 Office: CALIFORNIA SERVICE CENTER Date:

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

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 jewelry company that buys and sells designer jewelry to U.S. retail companies. It seeks to employ the beneficiary as an administrative assistant. 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 beneficiary is not qualified to perform the duties of the position. Counsel states that the position is a specialty occupation and that the director misclassified the position. Counsel also stated that the position does not require education beyond a baccalaureate degree and the beneficiary is qualified to perform the duties of the position. Counsel 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, dated September 13, 2003; (4) the petitioner's letter that responds to the director's request, dated September 13, 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 an administrative assistant. In its response to the director's request for further evidence, counsel also refers to the position as a market manager. Evidence of the beneficiary's duties includes: the I-129 petition; the petitioner's letter of support; and counsel's letter in response to the director's request for further evidence. According to the initial job description submitted by the petitioner, the beneficiary would primarily engage in establishing methods to improve work performance and analyzing the petitioner's unit operating practices to create new systems or revise existing procedures. The beneficiary would perform these duties 30 per cent of her work hours. The beneficiary would prepare reports addressing solutions for various administrative problems such as communication with contractors, vendors, customers, retail merchants, advertising agencies, and government regulators. These job duties would take up 40 per cent of the beneficiary's time. Finally the beneficiary would utilize her knowledge of marketing, advertising, and media management to solve organizational, operational, distribution problems, and to conduct market research to determine how to increase the company's sales, as well as conduct inventory management and order products. According to the petitioner, 30 per cent of the beneficiary's time would be spent on these duties. In its response to the director's request for further evidence, counsel provided more specifics with regard to the three major duties identified above. Counsel described the petitioner as a one-man operation, and stated that the owner wished to free up his time with regard to marketing management duties to concentrate on inspecting products overseas. The petitioner indicated that a candidate for the position would be required to possess a baccalaureate degree in marketing, communications, or their equivalent.

The director denied the petition and referred to the Department of Labor's (DOL) *Occupational Outlook Handbook (Handbook)* classifications of market research analyst and management analyst. The director stated that the classifications required education beyond a baccalaureate degree to enter into either job category. The director noted that employers of management analysts in private industry generally sought individuals with a master's degree in business administration or a related discipline. Since the beneficiary did not have a baccalaureate degree in the specific specialty, the director did not find the beneficiary qualified to perform the duties of the position.

On appeal, counsel states that the director misclassified the position and that the correct *Handbook* classification is marketing manager. Counsel sees no similarity between the job description provided by the petitioner and the duties of a marketing research analyst and management analyst. Counsel states that the level of education should logically depend on the size and needs of the particular employer, and, that in the case of the petitioner, it is a small business and does not need an employee with a master's degree. Counsel submits four job vacancy announcements for marketing managers and notes that all four only require a baccalaureate degree for entry into the advertised positions.

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. It is not clear why the director chose to classify the proffered position as a combined marketing research analyst and management analyst. While the job description mentions some research duties, these are not established in the record as taking up large portions of the beneficiary's work time. In addition, with regard to the academic preparation of management analysts, the *Handbook* clearly states on page 86 that educational requirements for entry level jobs vary widely between private industry and government, and many fields of study provide a suitable educational background for the occupation because of the wide range of areas addressed by management analysts. Nevertheless, the *Handbook* identifies the fields of study as including most academic programs in business and management, as well as computer and information sciences and engineering. The petitioner has not indicated any interest in such academic studies as a minimum requirement for the proffered position. Counsel's description of the position as a marketing manager appears more appropriate. It should be noted that there exists a substantial difference between the initial title of administrative assistant and marketing manager; however, counsel, in his more detailed description of the job, did primarily stay within the job duties parameters outlined in the initial petition.

Nevertheless, 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. Thus, the *Handbook* does not establish that the proffered position requires a baccalaureate degree in a specific specialty for entry into the position.

With regard to parallel positions in similar businesses, counsel provided four job vacancy announcements in its response to the director's request for further evidence. None of the positions, which include a marketing position with KPMG, a business management consulting firm, and a marketing position with Washington Mutual, an insurance company, are parallel positions to the proffered position. In addition, none of the firms appear similar to the petitioner. The duties included in these job vacancies are much more senior to the duties outlined in the petitioner's job description. In addition, three of the four job vacancy announcements require a baccalaureate degree in marketing, a degree that the petitioner does not require. The petitioner did not provide

documentation from professional associations or individuals in the industry as to whether a baccalaureate degree in a specific specialty is required for entry into the profession. 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 the position is a new one, and that it had no other employees, besides the owner. If the beneficiary's job duties in the field of marketing would be similar to those already held by the owner, the petitioner would have to submit documentary evidence with regard to the owner's academic credentials. No such documentation is found in the record. 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 marketing operation of a small retail and wholesale sales business. The petitioner provided no information on the complexity of its present marketing programs for jewelry sales, on the number of vendors 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).

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.

In his decision, the director stated that the beneficiary was not qualified to perform the duties of the position because she did not possess a master's degree in a specific specialty. Since the proffered position is not found to be either a management analyst or marketing research analyst, the need for any education beyond a baccalaureate degree in a specific specialty is irrelevant in this proceeding. What is relevant is that the fact that beneficiary's transcript of courses indicates that she has coursework equivalent to a baccalaureate degree in communications. The beneficiary's transcript indicates that her undergraduate studies did not focus on marketing, but rather communications. The petitioner also submitted an educational evaluation report indicating that the beneficiary's education is equivalent to the U.S. degree of bachelor of science in communication. Thus, the beneficiary does not possess a baccalaureate degree in a field related to the proffered position, namely, marketing. In addition, the petitioner did not submit a copy of the beneficiary's diploma, which carries more probative weight than her transcript of courses in establishing her actual academic credentials.

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.