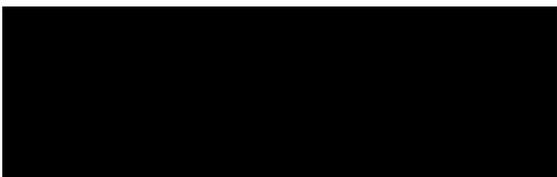


Confidentiality and Security
Prevent Security Information
Disclosure of Personal Information

U.S. Department of Homeland Security
20 Mass. Rm. A3042, 425 1 Street, N.W.
Washington, DC 20529



U.S. Citizenship
and Immigration
Services



FILE: WAC 03 039 54653 Office: CALIFORNIA SERVICE CENTER Date: 01/07/07

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:
[Redacted]

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 matter is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed. The petition will be denied.

The petitioner provides design, engineering, and manufacturing services to the electronic industry. It seeks to employ the beneficiary as a marketing and public relations analyst, and to classify him 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 classified the offered position as that of a market research analyst. The director's determination denying the I-129 petition was based solely on the beneficiary's qualifications to perform the duties associated with that occupation. On appeal, counsel states, in part, that the director misclassified the proffered position as that of a market research analyst, and that the duties of the offered position are truly those of advertising, marketing, promotions, public relations, and sales managers as noted in the Department of Labor's *Occupational Outlook Handbook (Handbook)*.

The issue to be considered in this proceeding is whether the proffered position qualifies as a specialty occupation.

Section 101(a)(15)(H)(i)(b) of the Act, 8 U.S.C. § 1101(a)(15)(H)(i)(b), provides, in part, for the classification of qualified nonimmigrant aliens who are coming temporarily to the United States to perform services in a specialty occupation.

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.

The term "specialty occupation" is further defined at 8 C.F.R. § 214.2(h)(4)(ii) as:

[A]n occupation which requires theoretical and practical application of a body of highly specialized knowledge in field of human endeavor including, but not limited to, architecture, engineering, mathematics, physical sciences, social sciences, medicine and health, education, business specialties, accounting, law, theology, and the arts, and which requires the attainment of a bachelor's degree or higher in a 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 are 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 proceedings 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 with 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 and public relations analyst. Evidence of the beneficiary's duties was included with the I-129 petition and in response to the director's request for evidence. According to this evidence the beneficiary would: review and evaluate sales records and current market information to determine past sales volume history or sales potential of products in order to develop a detailed marketing strategy; confer and collaborate with supervisors, managers, and subordinates to determine the demands for products and services while monitoring competitors products and marketing strategies; develop pricing and special product offer schemes to maximize market share and ensure reasonable profit margins without sacrificing customer satisfaction; identify potential markets for products; monitor trends by contact with field personnel and customers to address requirements and concerns which may indicate a need for product improvement or new products/services; prepare cost benefit and return-on-investment analysis reports to assist management in deciding whether proposed marketing strategies are feasible or practicable; coordinate and direct promotional programs with the primary objective being the enhancement of company image; monitor use of company resources to ensure profitability while gaining a competitive edge; supervise, direct, and monitor activities of sales executives, market researchers, contract managers, and other personnel engaged in marketing activities, sales, territorial market mapping; and review and evaluate marketing and public relations programs to ensure that all business goals and contract specifications are met, the quality of products maintained, and customer satisfaction ensured. The petitioner requires a minimum of a bachelor's degree for entry into the proffered position. The petitioner does not require that the degree be in any specific discipline.

As previously noted, the director classified the proffered position as a market research analyst and imposed the educational requirements for that position when holding that the beneficiary did not qualify to perform the duties of a specialty occupation. The petitioner states that the duties of the proffered position are not those of

a market research analyst, but essentially those performed by advertising, marketing, promotions, public relations, and sales managers. The AAO agrees with the petitioner's assertion in this regard. The duties of the proffered position are, in fact, those normally performed by advertising, marketing, promotions, public relations, and sales managers, not those of a market research analyst as found by the director. It will, therefore, be determined whether the correct position classification qualifies as a specialty occupation.

Upon review of the record, the petitioner has failed to establish that a baccalaureate or higher degree or its equivalent is normally the minimum requirement for entry into the offered position, or that a degree requirement is common to the industry in parallel positions among similar organizations, as asserted by counsel. Factors often considered by CIS when determining these criteria include: whether the Department of Labor's *Occupational Outlook Handbook (Handbook)* reports that the industry requires a degree; whether an industry 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/Baker Corp. v. Slattery*, 764 F. Supp. 872, 1102 (S.D.N.Y. 1991)).

The AAO routinely consults the *Handbook* for information about the duties and educational requirements of particular occupations. The *Handbook* notes that a wide range of educational backgrounds is suitable for entry into the aforementioned positions, but that many employers prefer related experience plus a broad liberal arts background. Bachelor's degrees in sociology, psychology, literature, journalism, philosophy, or other subjects are suitable. Requirements will vary, however, depending on the duties of a particular position. For example, marketing, sales, and promotion management positions may require a bachelor's or master's degree in business administration with an emphasis in marketing. In highly technical industries such as computer and electronics manufacturing a degree in engineering or science combined with a business degree may be preferred. In public relations management positions some employers prefer a bachelor's or master's degree in public relations or journalism. The *Handbook* further notes that most advertising, marketing, promotions, public relations, and sales management positions are filled by promoting experienced staff or related professional or technical personnel. Many managers are former sales representatives, purchasing agents, or promotions specialists. A baccalaureate or higher degree in a specific specialty, or its equivalent, is not, therefore, the minimum requirement for entry into the position. A degree in a wide range of disciplines will suffice. The petitioner has, accordingly, failed to establish the first criterion of 8 C.F.R. § 214.2(h)(4)(iii)(A).

The petitioner has also failed to establish that a degree requirement, in a specific specialty, is common to the industry in parallel positions among similar organizations, or that the petitioner normally requires a degree or its equivalent for the offered position. 8 C.F.R. § 214.2(h)(4)(iii)(A)(2) and (3). The petitioner offers no evidence in this regard. It should further be noted that the duties of the proffered position are routine in the industry for marketing managers. They are not so complex or unique that they can be performed only by an individual with a degree in a specific specialty.

Finally, the duties to be performed by the beneficiary are not so specialized or complex that knowledge required to perform them is usually associated with the attainment of a baccalaureate or higher degree in a

specific specialty. Again, the duties detailed are routine for the position in the industry. The petitioner has failed to establish the criterion at 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 and the appeal shall accordingly be dismissed.

ORDER: The appeal is dismissed. The petition is denied.