



U.S. Citizenship  
and Immigration  
Services

DD



FILE: EAC 02 274 51622 Office: VERMONT SERVICE CENTER Date: OCT 08 2002

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:

SELF-REPRESENTED

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

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prevent clearly unwarranted  
invasion of personal privacy**

**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 is an importer and wholesaler of goods from China that seeks to employ the beneficiary as an international marketing director. 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 because the proffered position is not a specialty occupation and the beneficiary is not qualified to perform a specialty occupation. On appeal, the petitioner submits a brief.

The AAO will first address the director's conclusion that the position is not 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.

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 an international marketing director. Evidence of the beneficiary's duties includes: the I-129 petition; the petitioner's August 2, 2002 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: restructuring and expanding the petitioner's marketing program; directing sales; developing a strategic plans for the petitioner's financial stability and growth; supervising employees; coordinating various employee teams as well as outside contractors; preparing proposals and price lists; performing market research; and building a company web site. The petitioner did not indicate that a bachelor's degree in a specific specialty was a minimum entry requirement for the proffered position.

The director found that the proffered position was not a specialty occupation. On appeal, the petitioner fails to address this issue directly. Upon review of the record, the AAO finds that 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. The description of the job duties on the record is vague and provides no detailed information regarding the beneficiary's primary responsibilities, daily activities, or specific projects. In addition, the record does not clarify the beneficiary's role within the petitioner's organization. Thus, it is difficult to categorize the instant position. When compared to various job descriptions found in the *Handbook*, the proffered position appears to fall under several different job titles. For example, marketing manager, sales manager, and general manager are all job titles that might apply to different duties within this job. According to the *Handbook*, a variety of educational backgrounds provide a suitable basis for entry into these fields, and a bachelor's degree in a specific specialty is not a minimum entry requirement.

The petitioner submitted no evidence regarding parallel positions in the petitioner's industry, nor does the record include any evidence from professional associations regarding an industry standard. Finally, there is no 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 petitioner stated that the proffered position is a new one; therefore, it cannot establish the criterion at 8 C.F.R. § 214.2(h)(4)(iii)(A)(3), that it normally requires a degree or its equivalent for the position. Regarding the criterion at 8 C.F.R. § 214.2(h)(4)(iii)(A)(4), 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. The ambiguous description of the beneficiary's duties and role within the company prevents the AAO from accurately assessing the nature of this position. For example, the petitioner mentioned that the beneficiary would supervise and coordinate the work of various teams, but it did not describe the composition of the teams, the level of education held by the team members, or the types of assignments to be performed by the teams. 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 director also found that the beneficiary would not be qualified to perform the duties of the proffered position if the job had been determined to be a specialty occupation, since the beneficiary did not hold a degree in the specialty of international marketing. However, the beneficiary holds a master of business administration degree from New York Institute of Technology, and he undertook coursework in market research and marketing management. Hence, it appears he would be qualified to perform the duties of this position had it been determined to be a specialty occupation.

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.