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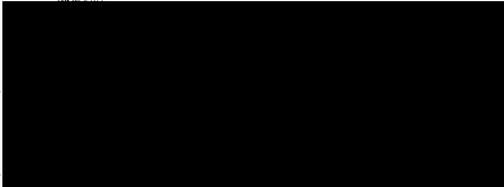
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U.S. Citizenship  
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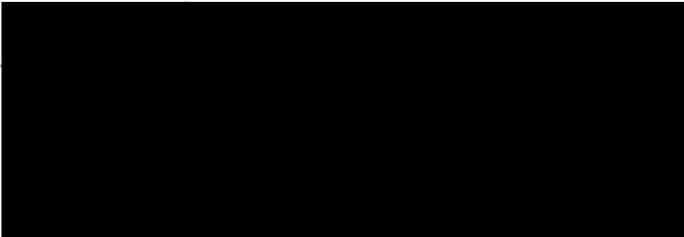
FILE: WAC 02 250 54185 Office: CALIFORNIA SERVICE CENTER Date:

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, 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 general merchandise wholesaler that seeks to employ the beneficiary as an account manager. 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: (1) the proffered position is not a specialty occupation; and (2) the beneficiary is not qualified to perform the duties of 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 an account manager. 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 coordinating market research and strategy, sales, advertising, promotion, pricing, product development, and public relations; identifying potential markets and developing them; communicating with clients; conducting organizational assessments to establish goals, objectives, and specifications of clients and advising them about products and services; evaluating client requirements and participating in the planning and development of strategies to achieve them; participating in the implementation of strategic plans; monitoring and evaluating the performance of products and services assigned to client accounts and resolving problem areas; developing a work plan to conduct planning assignments; evaluating existing markets and performing industry competitive analysis; identifying prospective markets and developing strategies to maximize penetration; and developing strategic partnerships. The petitioner stated that a candidate for the proffered position must possess "a bachelor's degree or its equivalent," and that the beneficiary's bachelor's degree in mass communication qualifies her for the position.

Referring to the Department of Labor's (DOL) *Occupational Outlook Handbook* (the *Handbook*), the director stated that it shows that the proffered position nearly mirrors a marketing manager, an occupation that does not require a baccalaureate degree in a specific specialty. The director found 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, and that the evidence of record did not show that the job offered could not be performed by an experienced person whose educational training falls short of a baccalaureate degree. The director stated that the beneficiary is not qualified to perform services in a specialty occupation.

On appeal, counsel states that although the job title, account manager, is not listed in the *Handbook* or the *Occupational Information Network (O\*Net)*, the duties of a marketing manager and a market research analyst, as described in these publications, are similar to those of the proposed position, and that the publications reveal that these occupations require a specific baccalaureate degree. According to counsel, the director misinterpreted the *Handbook's* information about marketing managers. The *Handbook* and submitted job postings, counsel states, show that the proposed position is a specialty occupation because a marketing manager requires a degree. Counsel states that the SVP rating of 7-8 in the *O\*Net* shows that a marketing manager and market analyst require over four years and up to ten years of vocational preparation, and that based on this, the proposed position, which is similar to these occupations, qualifies as a specialty occupation. Counsel states that a baccalaureate degree is an industry-wide requirement, and that the submitted job postings of various types of companies show this. According to counsel, it is difficult to find small companies advertising jobs in newspapers or on the Internet. Counsel references the case, *Matter of General Atomic Company*, 17 I&N Dec. 532 (Comm. 1980), to state that satisfying the requirement that the degree be common in the industry relates to establishing that the degree is a "minimum realistic prerequisite for entry

into a profession"; it does not relate to showing that the size of a business or an industry requires a particular degree. Counsel states that the beneficiary is qualified for the proposed position.

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.Minn. 1999)(quoting *Hird/Blaker Corp. v. Sava*, 712 F. Supp. 1095, 1102 (S.D.N.Y. 1989)).

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 AAO routinely consults the *Handbook* for its information about the duties and educational requirements of particular occupations.

The AAO agrees with counsel's statement that the proffered position is similar to a marketing manager, but does not agree with the analogy to a market research analyst. The *Handbook* reveals that the primary responsibility of a marketing research analyst is to devise methods and procedures for obtaining data such as designing telephone, mail, or Internet surveys, to assess consumer preferences, and directing the trained interviewers engaged in the process. Nowhere in the record does it show that the beneficiary will perform such duties. Consequently, the proposed position does not resemble a marketing research analyst.

With respect to the educational requirements of a marketing manager, the *Handbook* explains:

A wide range of educational backgrounds is suitable for entry into advertising, marketing, promotions, public relations, and sales managerial jobs, but many employers prefer those with experience in related occupations plus a broad liberal arts background. A bachelor's degree in sociology, psychology, literature, journalism, or philosophy, among other subjects, is acceptable. However, requirements vary, depending upon the particular job.

The *Handbook* reports that for marketing, sales, and promotions management positions, some employers prefer a bachelor's or master's degree in business administration with an emphasis on marketing.

Counsel states that the director misinterpreted the *Handbook's* information about marketing managers since employers accept various bachelor's degrees, and this is influenced by either the kind of product being marketed or the type of company seeking the candidate. Counsel asserts that the *Handbook* describes the specific majors that employers prefer, which is based on the assumption that a bachelor's degree is the minimum requirement for the position, and that as a preference the employers seek specific courses of study.

Counsel's statements are not convincing. A "specialty occupation" is defined in the Act as an occupation that *requires* theoretical and practical application of a body of highly specialized knowledge, and the 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 *Handbook* relays that some employers *prefer* a bachelor's degree in a specific specialty for a marketing manager. The terms "prefer" and "require" are not synonymous; they do not express a similar meaning. In the *American Heritage Dictionary of the English Language* the term "prefer" means to select in preference to another or others; value more highly; or like better. The term "require" means to have use for as a necessity or need. In light of the distinct definitions of the terms, the proffered position fails to qualify as a specialty occupation as defined in the Act because employers "prefer," but do not "require" a specific baccalaureate degree for a marketing manager. The petitioner therefore fails to satisfy the regulation at 8 C.F.R. § 214.2(h)(4)(iii)(A)(1) - that a baccalaureate or higher degree or its equivalent in a specific specialty is the normal minimum requirement for entry into the particular position.

Counsel asserts that the proffered position is a specialty occupation based on the *Dictionary of Occupational Titles' (DOT's)* SVP rating. The *DOT* is not a persuasive source of information regarding whether a particular job requires the attainment of a baccalaureate or higher degree in a specific specialty, or its equivalent, as a minimum for entry into the occupation. An SVP rating is meant to indicate only the total number of years of vocational preparation required for a particular position. It does not describe how those years are to be divided among training, formal education, and experience, and it does not specify the particular type of degree, if any, that a position would require. For this reason, the *DOT's* information is not persuasive.

The regulation at 8 C.F.R. § 214.2(h)(4)(iii)(A)(2) states that a specific degree requirement must be common to the industry in parallel positions among similar organizations. Counsel refers to the case of *Matter of General Atomic Co.* to state that satisfying the requirement that the degree be common to the industry relates to establishing that the degree is a "minimum realistic prerequisite for entry into a profession"; it does not relate to showing that the size of a business or an industry requires a particular degree.

The AAO disagrees with counsel's statement. The regulation at 8 C.F.R. § 214.2(h)(4)(iii)(A)(2) explicitly states that a degree requirement must be common to the industry in parallel positions among *similar* organizations. This means that the degree requirement must be common to the petitioner's industry and type of business, which in this case is a general merchandise wholesaler with three employees. The job postings are not persuasive because the companies are either dissimilar from the petitioner or no information is given about them. Infiniti Media, Inc. is a manufacturer and distributor of media products; McKesson Medical-Surgical, Roche Diagnostics Corporation, and Concentra are in the healthcare field; USA Today is a newspaper company; Salveson Stetson Group provides uniforms and is a billion dollar company;

MarketSource LLC provides integrated marketing and sales services; MarketStar is a manufacturer. The posting does not describe the company The Stanley Works. This evidence, therefore, fails to establish that a degree requirement is common to the industry in parallel positions among similar organizations.

No evidence in the record establishes that the proffered position is so complex or unique that it can be performed only by an individual with a degree. The *Handbook* reveals that the proffered position is comparable to a marketing manager, an occupation that does not require a specific baccalaureate degree.

Because the proposed position is newly created, there is no evidence in the record to establish the third criterion at 8 C.F.R. § 214.2(h)(4)(iii)(A): that the petitioner normally requires a degree or its equivalent for the position.

The fourth criterion at 8 C.F.R. § 214.2(h)(4)(iii)(A) requires that the petitioner establish 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. As discussed in this decision, the duties of the proposed position resemble those of a marketing manager, which is an occupation that the *Handbook* reveals does not require a bachelor's degree in a specific specialty.

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 concluded that the beneficiary is unqualified to perform the duties of a specialty occupation. Given that the proffered position does not qualify as a specialty occupation requiring a specific baccalaureate degree, the beneficiary is qualified to perform its duties. Because the AAO determined that the proffered position is not a specialty occupation, it is inconsequential that the beneficiary is qualified to perform the proffered position.

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.