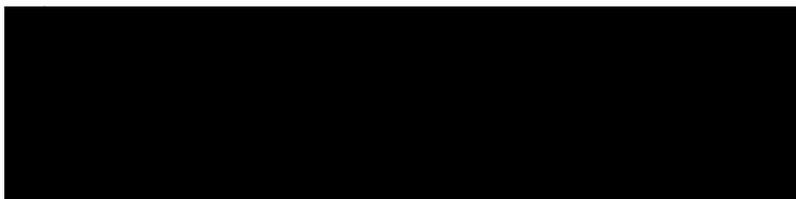


Identifying data deleted to
prevent clearly unwarranted
invasion of personal privacy



U.S. Citizenship
and Immigration
Services

PUBLIC COPY

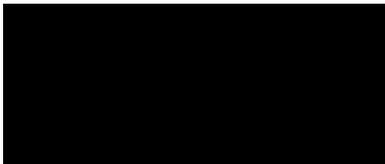


FILE:  Office: CALIFORNIA SERVICE CENTER Date: APR 06 2005

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 California 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 media company, with “the world’s largest online network for women” as its chief property. It seeks to hire the beneficiary as an account manager/market analyst to “direct and develop marketing efforts” for the petitioner’s partner companies on one of its websites. The director denied the petition based on his determination that the petitioner had failed to establish that its proffered position was a specialty occupation.

The record of proceeding before the AAO contains: (1) Form I-129 and supporting documentation; (2) the director’s request for evidence; (3) counsel’s response to the director’s request for evidence; (3) the director’s denial letter; and (4) Form I-290B, with additional documentation. The AAO reviewed the record in its entirety before reaching its decision.

The issue before the AAO is whether the petitioner’s proffered position qualifies as a specialty occupation. To meet its burden of proof in this regard, a petitioner must establish that the job it is offering to the beneficiary meets the following statutory and regulatory requirements.

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 one 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:

An occupation which requires theoretical and practical application of a body of highly specialized knowledge in fields 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 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 above criteria to mean not just any baccalaureate or higher degree, but one in a specific specialty that is directly related to the proffered position.

To determine whether a particular job qualifies as a specialty occupation, CIS does not simply rely on a position's title. The specific duties of the proffered position, combined with the nature of the petitioning entity's business operations, are factors to be considered. CIS must examine the ultimate employment of the alien, and determine whether the position qualifies as a specialty occupation. *Cf. Defensor v. Meissner*, 201 F. 3d 384 (5th Cir. 2000). The critical element is not the title of the position nor an employer's self-imposed standards, but whether the position actually requires the theoretical and practical application of a body of highly specialized knowledge, and the attainment of a baccalaureate or higher degree in the specific specialty as the minimum for entry into the occupation, as required by the Act.

The petitioner states that it is seeking the beneficiary's services as an account manager/market analyst. Evidence of the beneficiary's duties includes: the Form I-129; a December 1, 2003 letter of support from the petitioner; and counsel's December 23, 2003 response to the director's request for evidence.

At the time of filing, the petitioner stated the following as the duties to be performed by the beneficiary:

- Act as liaison between corporate partners and the website;
- Analyze partner organizations with the view of furthering the website's marketing efforts on the partners' behalf;
- Develop marketing strategies for corporate partners to best utilize the website;
- Implement marketing programs;
- Analyze statistical data concerning the effect of current marketing programs and draft technical reports for presentation to iVillage and partner executives;
- Monitor, analyze and optimize partner performance; and
- Proactively identify marketing opportunities to increase revenue from each partner.

To make its determination whether the employment just described qualifies as a specialty occupation, the AAO turns 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; and 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 considered by the AAO when determining these criteria include: whether the Department of Labor's *Occupational Outlook Handbook (Handbook)*, on which the AAO routinely relies for the educational requirements of particular occupations, reports 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 his denial, the director found the duties of the proffered position to be aligned to those of advertising, marketing, promotions, public relations, and sales managers, as discussed in the 2002-2003 edition of the Department of Labor’s (DOL) *Occupational Outlook Handbook (Handbook)* on which CIS routinely relies for information regarding occupations. On appeal, counsel asserts that the director has abused his discretion by reaching this conclusion and that the proffered position is that of a market research analyst.

In light of counsel’s assertions that the petitioner’s position is that of a market research analyst, the AAO has reviewed the discussion of this occupation in the 2004-2005 edition of the DOL *Handbook*. The *Handbook*, at page 173, describes the employment of marketing research analysts as follows:

Market, or marketing, research analysts are concerned with the potential sales of a product or service. They analyze statistical data on past sales to predict future sales. They gather data on competitors and analyze prices, sales, and methods of marketing and distribution. Market research analysts devise methods and procedures for obtaining the data they need

After compiling the data, market research analysts evaluate them and make recommendations to their client or employer based upon their findings. They provide a company’s management with information needed to make decisions on the promotion, distribution, design, and pricing of products or services. The information may also be used to determine the advisability of adding new lines of merchandise, opening new branches, or otherwise diversifying the company’s operations

Because of the applicability of market research to many industries, market research analysts are employed in most industries

In response to the director’s request for evidence, counsel asserted that the petitioner’s description of its proffered position parallels that provided above. On appeal, he singles out the beneficiary’s responsibility for analyzing statistical data as proof that the position is that of a marketing analyst who analyzes statistical data on past sales to predict future sales. However, the beneficiary’s responsibility for analyzing marketing program statistics does not, regardless of counsel’s assertions, make the proffered position that of a marketing analyst. The position, as described by the petitioner, does not involve the range or the complexity of the analytical responsibilities routinely performed by market analysts. The petitioner’s description indicates only that the beneficiary will analyze existing marketing data, not that she will gather and compile that data or devise the methods for doing so, duties that define the occupation of market analyst. Instead, the proffered position appears to fall within the field of marketing, a conclusion that is supported by the petitioner’s general description of its position as responsible for the direction and development of marketing efforts for one of its websites.

Like the director, the AAO finds the petitioner’s description of its position to be more closely aligned to that of a marketing manager, employment discussed by the *Handbook* at pages 23-24:

The object of any firm is to market and sell its products or services profitably Advertising, marketing, promotions, public relations, and sales managers coordinate the

market research, marketing strategy, sales, advertising, promotion, pricing, product development, and public relations activities

Marketing managers develop the firm's detailed marketing strategy. With the help of subordinates, including product development managers and market research managers, they determine the demand for products and services offered by the firm and its competitors. In addition, they identify potential markets Marketing managers develop pricing strategy with an eye towards maximizing the firm's share of the market and its profits while ensuring that the firm's customers are satisfied. In collaboration with sales, product development, and other managers, they monitor trends that indicate the need for new products and services and oversee product development. Marketing managers work with advertising and promotion managers to promote the firm's products and services and to attract potential users.

Having found the duties of the proffered position to be those of a marketing manager, the AAO now turns to the *Handbook* for its discussion of the educational requirements imposed on individuals who seek employment within this profession:

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.

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. Courses in business law, economics, accounting, finance, mathematics, and statistics are advantageous

Most advertising, marketing, promotions, public relations, and sales management positions are filled by promoting experienced staff or related professional personnel. For example, many managers are former sales representatives, purchasing agents, buyers, or product, advertising, promotions, or public relations specialists

As the *Handbook* indicates no degree requirement for employment as a marketing manager, the AAO concludes that the performance of the proffered position's duties does not require the beneficiary to hold a baccalaureate or higher degree in a related field. Accordingly, the AAO finds that the petitioner is unable to establish its proffered position as a specialty occupation under the requirements of the first criterion at 8 C.F.R. § 214.2(h)(4)(iii)(A).

The AAO now turns to a consideration of whether the petitioner, although unable to establish its proffered position as a specialty occupation under the first criterion, may qualify it under one of the three criteria remaining: a degree requirement is the norm within the petitioner's industry or the position is so complex or unique that it may be performed only by an individual with a degree; the petitioner normally requires a degree or its equivalent for the position; or the duties of the position are so specialized and complex that the

knowledge required to perform them is usually associated with a baccalaureate or higher degree. However, a review of the record finds the petitioner has not attempted to establish its position as a specialty occupation under any of the remaining criteria at 8 C.F.R. § 214.2(h)(4)(iii)(A).

The AAO has, nevertheless, considered whether the proffered position, based on its complexity or specialization, may qualify as a specialty occupation under the fourth criterion. The petitioner in its December 1, 2003 letter of support stated that the research and development of the marketing programs needed to promote its commercial partners' use of its website required the beneficiary to hold the minimum of a baccalaureate degree in marketing, economics, finance or communications. However, the petitioner did not expand on this statement, leaving its listing of the duties of the proffered position as the only description of its employment. These duties describe the occupation of marketing manager. They do not support a finding that the position's responsibilities reflect a higher degree of knowledge and skill than would normally be required of a marketing manager or represent an amalgam of jobs that would require the beneficiary to possess skills and qualifications beyond those of a marketing manager. The AAO, therefore, concludes that the proffered position cannot be established as a specialty occupation under the requirements at 8 C.F.R. § 214.2(h)(4)(iii)(A)(4).

For the reasons related in the preceding discussion, the petitioner has failed to establish that the proffered position is a specialty occupation. Accordingly, the AAO shall not disturb his 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 appeal is dismissed. The petition is denied.