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20 Mass. Ave., N.W., Rm. A3042
Washington, DC 20529



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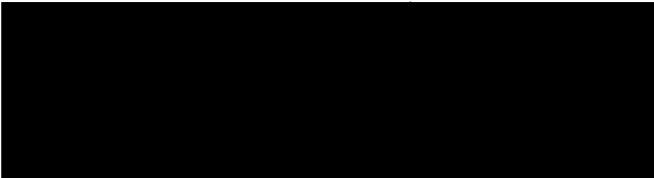
FILE: WAC 04 005 50284 Office: CALIFORNIA SERVICE CENTER Date:

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 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 provider of travel and cargo services to the Filipino community and seeks to employ the beneficiary as a marketing analyst (cargo). 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 beneficiary did not qualify to perform the duties of a specialty occupation. On appeal, the petitioner submits a brief stating that the beneficiary qualifies to perform the duties of a specialty occupation.

The record of proceeding before the AAO contains: (1) the 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) the 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 analyst (cargo). Evidence of the beneficiary's duties includes the Form I-129 petition and supporting documentation. According to this evidence the beneficiary would: develop and implement marketing strategies and plans designed to achieve the facility's census and mix goals; review marketing strategies quarterly and make appropriate changes to meet current market conditions; maintain regular, ongoing contact with referral sources through personal visits, telephone calls, brochures, and any other means which significantly attract potential customers; develop and implement events and functions to attract prospective customers and/or referral sources; provide appropriate trend and activity reports; monitor marketing trends and competition to ensure marketing strategies and plans meet marketing conditions; develop and prepare press releases, advertisements, brochures, flyers and other collateral materials which are appropriate for sales efforts; and train and coordinate staff members to serve as backup in responding to customer inquiries to ensure all inquiries are handled timely and appropriately. The petitioner requires a bachelor's degree in business, marketing, commerce or a related field for entry into the offered position.

The director implicitly found that the proffered position, a marketing analyst, was a specialty occupation. The AAO disagrees. The duties of the proffered position are those essentially performed by advertising, marketing, promotions, public relations, and sales managers as detailed in the U.S. Department of Labor's *Occupational Outlook Handbook (Handbook)*. The *Handbook* notes that a wide range of educational backgrounds is suitable for entry into these positions, 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. Requirements vary, however, depending on 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. In highly technical industries, such as computer and electronics manufacturing, a bachelor's degree in engineering or science, combined with a master's degree in business administration, is preferred. 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. The petitioner has, accordingly, failed to establish that a baccalaureate or higher degree in a specific specialty is normally the minimum requirement for entry into the proffered position. 8 C.F.R. § 214.2(h)(4)(iii)(A)(I).

The petitioner has also failed to establish that a degree requirement is common to the industry in parallel positions among similar organizations or that it normally requires a degree in a specific specialty for the proffered position, and offers no evidence in this regard. The petitioner has, therefore, failed to establish the referenced regulatory criteria at 8 C.F.R. § 214.2(h)(4)(iii)(A)(2) or (3).

The nature of the specific duties is 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, nor are the duties so complex or unique that they can be performed only by individuals with a degree in a specific specialty. The duties to be performed are routine in the industry for advertising, marketing, promotions, public relations, and sales managers and similar employees. The petitioner has failed to establish either of the referenced criteria at 8 C.F.R. § 214.2(h)(4)(iii)(A)(2) or (4).

Finally, the most that can be said about the beneficiary's qualifications is that the petitioner deems him qualified to perform the duties of the proffered position. That is the petitioner's prerogative. As previously noted, however, the position offered is not a specialty occupation. There is no regulatory requirement that the beneficiary possess a baccalaureate level education or its equivalent to perform the duties of such positions as the position is not subject to H-1B classification.

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 failed to sustain that burden and the appeal shall accordingly be dismissed.

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