



U.S. Citizenship
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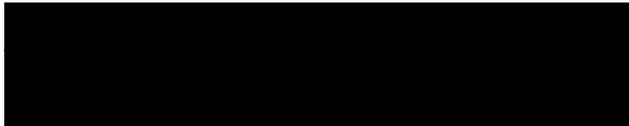


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FILE: WAC 04 091 50876 Office: CALIFORNIA SERVICE CENTER Date: AUG 03 2005

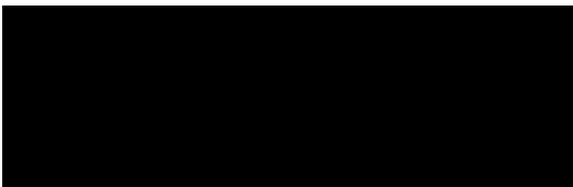
IN RE:

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 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 engaged in the business of landscaping and maintenance services for properties and seeks to employ the beneficiary as a marketing administrator. 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 the proffered position is not a specialty occupation. On appeal, counsel submits 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) counsel'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 a marketing administrator. Evidence of the beneficiary's duties includes: the Form I-129; the attachments accompanying the Form I-129; the company support letter; and counsel's response to the director's request for evidence. According to this evidence, the beneficiary would perform duties that entail advising the company on local, national, and international factors affecting the buying and selling of services; conducting economic and commercial surveys to identify potential markets for products and services; consulting with buying personnel to gain advice regarding the types of products or services expected to be in demand; coordinating and participating in promotional activities and trade shows, working with developers, advertisers, and production managers, to market products and services; developing pricing strategies, balancing firm objectives and customer satisfaction; formulating and coordinating marketing activities and policies to promote products and services working with advertising and promotional managers; identifying, developing and evaluation marketing strategy, based on knowledge of establishment objectives, market characteristics, and cost and markup factors; initiating market research studies and analyzing their findings; negotiating contracts with vendors and distributors to manage product distribution, establishing distribution networks and developing distribution strategies; using sales forecasting and strategic planning to ensure the sale and profitability of products, lines, or services, analyzing business developments and monitoring market trends; analyzing marketing and delivery systems to determine present and future material availability; conducting inventory and directing buyers in purchases of products, materials and supplies; determining merchandise costs and formulating and coordinating merchandising policies and activities to ensure profit; preparing reports regarding market conditions and merchandise costs; preparing, reviewing, and processing requisitions and purchase orders for supplies and equipment; representing company in formulating policies and negotiating contracts with suppliers. The petitioners indicated that the proffered position requires a bachelor's degree in marketing or business administration with an emphasis on marketing, or a related field.

The director requested additional information about the proffered position. Counsel for the petitioner responded and indicated that the duties of the proffered position requires comprehensive knowledge of market research methods, statistics, database management, demographic measurement and analysis, and promotional campaign activities.

The director determined that the proffered position was not a specialty occupation. The director found that the duties of the position as described by the petitioner, are primarily those of a marketing manager. The director noted that the Department of Labor's *Occupational Outlook Handbook (Handbook)* indicated that the positions of advertising, marketing, promotions, public relations, and sales managers are occupations that do not require a baccalaureate level of education in a specific specialty as a normal, industry wide minimum for entry into the occupation. The director stated that the evidence submitted is insufficient to establish that the position being offered requires the attainment of a baccalaureate or higher degree or its equivalent and is normally the minimum requirement for entry into the particular position; the degree requirement is common to the industry in parallel positions among similar organizations; or that the position is so complex or unique that it can be performed only by an individual with a degree; or that the employer normally requires a degree or its equivalent for the position; or that 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.

On appeal, counsel states that the director ignored evidence from a salary survey that he contends establishes that a bachelor's degree in marketing or a business related area is required for the proffered position. Counsel

contends the director did not address the distinction between large employers and small employers as to what would be considered entry-level requirements.

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 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.

Based on the record of proceeding, the AAO has determined that the proffered position is most similar to that of a marketing manager in the *Handbook*. According to the *Handbook*, marketing managers develop the firm's detailed marketing strategy. With the help of subordinates, marketing managers determine the demand for products and services offered by the firm and its competitors. In addition, they identify potential markets. According to the *Handbook*, 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. This is similar to the proffered position in that the duties include developing pricing strategies, balancing firm objectives and customer satisfaction; formulating and coordinating marketing activities and policies to promote products and services working with advertising and promotional managers; identifying, developing and evaluation marketing strategy, based on knowledge of establishment objectives, market characteristics, and cost and markup factors.

With respect to the educational qualifications required of marketing managers, the *Handbook* states:

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. 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.

Consequently, there is insufficient evidence in the record to establish that a baccalaureate or higher degree or its equivalent in a specific specialty is the normal minimum requirement for entry into the marketing manager position.

To establish the second criterion - that a specific degree requirement is common to the industry in parallel positions among similar organizations - counsel submits internet job postings on appeal from a wide variety of companies which include a utility company, a print solutions company, and a management and technology consulting company.

Counsel indicates that the director was at fault for failing to consider the results of a survey indicating that marketing administrators typically have a BS/BA degree in marketing, business or a related area. The AAO notes that the survey results of record do not include any methodology as to how the education results were established. More importantly, the survey appears to be a professional compensation survey and not a tabulation of educational data for marketing administrators. The survey results do not convince the AAO that the *Handbook* should not be followed in this case.

This evidence fails to establish that a specific baccalaureate degree is common to the industry in parallel positions among similar organizations. One deficiency in the postings is that the companies are either obviously dissimilar to the petitioner or their nature is undisclosed. For example, Booz Allen Hamilton provides management and technology consulting services; Vision Power Systems provides utility distribution. Moreover, most of the advertised job descriptions are patently dissimilar to the proffered position. For instance, Vision Power Systems' posting for an executive/marketing administrator will be involved with contracts and billings, power purchase agreements; Booz Allen Hamilton's marketing administrator is in the job field of information security engineering. Consequently, the postings fail to establish that there is a specific baccalaureate degree that is a common industry-wide requirement.

Nor is there 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 specific 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. To the extent they are described in the record, the duties of the position are not so specialized and complex that the knowledge required to perform them is usually associated with the attainment of a baccalaureate or higher degree in a specific specialty. The duties parallel those in the *Handbook* for a marketing manager, an occupation that does not require a specific baccalaureate degree. Contrary to counsel's assertions, the AAO has considered the size of the petitioner in the context of the complexity of the job duties. The petitioner has not established that the duties to be performed for its business are so complex as to require a degree in a specific specialty. The petitioner therefore fails to establish the fourth criterion.

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.