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**U.S. Citizenship  
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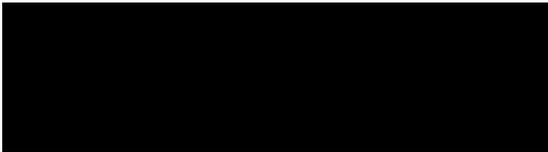
FILE: WAC 04 055 51058 Office: CALIFORNIA SERVICE CENTER Date: DEC 05 2005

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 materials have been returned to the office that originally decided your case. Any further inquiry must be made to that office.

A handwritten signature in cursive script, appearing to read "Robert P. Wiemann".

Robert P. Wiemann, Director  
Administrative Appeals Office

**DISCUSSION:** The service center director denied the nonimmigrant visa petition. The matter is now on appeal before the Administrative Appeals Office (AAO). The appeal will be dismissed. The petition will be denied.

The petitioner is an advertising agency. It seeks to employ the beneficiary as a market planner and to continue her classification 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 on the ground that the record failed to establish that the proffered position qualifies as 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.

As provided in 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 evidence (RFE); (3) the petitioner's response thereto; (4) the notice of decision; and (5) Form I-290B and an appeal brief. The AAO reviewed the record in its entirety before issuing its decision.

The petitioner describes itself as an advertising agency, specializing in the Asian-American market, whose clients hire the company to design, implement, and revise marketing and advertising campaigns targeting the Asian-American consumer market in the United States. The petitioner states that its business was established in 1991, has 27 employees and gross annual income of \$10 million, and seeks to hire the beneficiary as a market planner to perform the following duties:

Design, develop, implement, and evaluate a comprehensive marketing plan targeting the ethnic Asian market (i.e. Filipinos, Chinese, etc.). Identify target market and develop a marketing mix involving product, price, promotion, and place specific to that market and its particular needs. Investigate advertising, direct mail, public relations, and sales promotion strategies designed to reach and retain target customers and increase market share.

. . . [T]he Market Planner will be responsible for designing and implementing marketing and sales strategies targeted to the company's customers. Moreover, she will be conducting analysis of customer's demands and specifications to suggest the most appropriate package, as well as recommend modifications to products to increase marketability. Sophisticated research methods are to be utilized to gather data on customer preference, set competitive pricing, and to implement marketing methods.

The beneficiary is qualified for the proffered position, according to the petitioner, by virtue of a baccalaureate degree in accounting from Polytechnic University of the Philippines.

In his decision the director referred to information in the Department of Labor (DOL)'s *Occupational Outlook Handbook (Handbook)* on marketing managers, which indicates that a baccalaureate level of study in a specific specialty is not the normal minimum requirement for entry into the occupation. The director noted that two job listings in the record from other companies advertising for marketing managers did not establish that the requirement of a specialty degree is common to the petitioner's industry in parallel positions among similar organizations. The duties of the position, as described by the petitioner, did not indicate that the proffered position is so complex or unique that it could only be performed by an individual with a specialty degree, the director determined, or that the job was so specialized and complex that it could not be performed by an experienced individual with less than baccalaureate level knowledge in a specific specialty. Lastly, though the petitioner claimed to have hired only individuals with specialty degrees for the position in the past, the director declared that the position itself does not require a specialty degree. The director concluded that the proffered position did not qualify as a specialty occupation under any of the criteria enumerated at 8 C.F.R. § 214.2(h)(4)(iii)(A).

On appeal counsel asserts that the director failed to note the petitioner's advertisements for the proffered position in the Los Angeles Daily News which prove that it normally requires a degree or its equivalent for the position. Counsel also asserts that the director overlooked four resumes in the record of other employees with education and/or experience in the field of marketing which show that the petitioner normally requires a specialty degree for the proffered position. According to counsel, the director ignored clear language in the *Handbook* that marketing managers require a "bachelor's or master's degree," as well as years of AAO and court precedent that a marketing manager is a specialty occupation.

In determining whether a position meets the statutory and regulatory criteria of a specialty occupation, CIS routinely consults the DOL *Handbook* as an authoritative source of information about the duties and educational requirements of particular occupations. Factors typically considered are whether the *Handbook* indicates a degree is required by the industry; 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*, 764 F.Supp. 1095, 1102 (S.D.N.Y. 1989)). CIS also analyzes the specific duties and complexity of the position at issue, with the *Handbook's* occupational descriptions as a reference, as well as the petitioner's past hiring practices for the position. See *Shanti, Inc. v. Reno, id.*, at 1165-66.

The AAO agrees with the petitioner and the director that the proffered position accords with the *Handbook's* description of a marketing manager, which is a subcategory of the broad occupational category of advertising, marketing, promotions, public relations, and sales managers. As explained in the *Handbook*, 2004-05 edition, at 23-24:

*Marketing managers* develop the firm's detailed marketing strategy. . . . [T]hey 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. . . . [T]hey monitor trends that indicate the need for new products and services and oversee product development. Marketing managers work with advertising managers to promote the firm's products and services and to attract potential users.

With respect to the educational requirements for entry into the occupation, the *Handbook* states the following:

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.

For marketing . . . management positions, some employers prefer a bachelor's or master's degree in business administration with an emphasis on marketing . . . .

*Id.* at 24. Thus, the proffered position does not meet the first alternative criterion of a specialty occupation, at 8 C.F.R. § 214.2(h)(4)(iii)(A)(I), because a baccalaureate degree in a specific specialty is not the normal minimum requirement to enter into a marketing manager position. While the *Handbook* states that some employers may prefer a baccalaureate or higher degree in business administration with an emphasis on marketing, it is not the industry standard as many employers accept degrees in other fields unrelated to marketing.

With regard to the second alternative criterion of a specialty occupation, the record includes internet job announcements from two companies – Michaels Arts and Crafts Stores, Inc. and JRH BioSciences –

seeking marketing managers with baccalaureate degrees in marketing or a related specialty. Neither company is in the same line of business as the petitioner, however, and there is no information in the announcements that either company is similar to the petitioner in its size or scale of operations. The AAO concludes that the internet job announcements are not persuasive evidence that the requirement of a baccalaureate or higher degree in a specific specialty is common to the petitioner's industry in parallel positions among similar organizations. Thus, the proffered position does not qualify as a specialty occupation under the first prong of 8 C.F.R. § 214.2(h)(4)(iii)(A)(2). Nor has the petitioner demonstrated that the proffered position is so complex or unique that a degree in a specific specialty is required to perform the job. Accordingly, the proffered position does not qualify as a specialty occupation under the second prong of 8 C.F.R. § 214.2(h)(4)(iii)(A)(2).

As for the third alternative criterion of a specialty occupation, at 8 C.F.R. § 214.2(h)(4)(iii)(A)(3), counsel refers to four resumes of current employees as evidence that the petitioner normally requires a specialty degree for the proffered position. The resumes indicate that the four employees have baccalaureate or higher degrees in marketing, communications, or advertising. On the petitioner's list of employees, however, each of the four is identified as an account executive. That is not the same title as the proffered position – market planner – and the petitioner has provided no information about the duties of those four individuals. Since the record does not demonstrate that any of the four employees performs the duties of the proffered position, their respective degrees are not persuasive evidence that the petitioner normally requires a degree in marketing or a related specialty for the position. Furthermore, the petitioner's advertisements for the proffered position, submitted with the initial petition, do not specify that a bachelor's degree in a specific specialty, or any bachelor's degree, is required for the position. Thus, the proffered position does not qualify as a specialty occupation under 8 C.F.R. § 214.2(h)(4)(iii)(A)(3).

Finally, the proffered position does not meet the fourth alternative criterion of a specialty occupation at, 8 C.F.R. § 214.2(h)(4)(iii)(A)(4), because the record does not show that 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 in a specific specialty. The duties of the position do not exceed the scope of an ordinary marketing manager, a position which does not require baccalaureate level knowledge in a specific specialty, as indicated in the *Handbook*.

Counsel cites various AAO and court rulings for the proposition that a marketing manager has long been recognized as a specialty occupation. Counsel has provided little information about those rulings, and failed to show that any of the positions at issue in those cases is similar to the proffered position in this case with respect to the duties of the position and the context of the business. Thus, the case citations are not persuasive evidence that the proffered position in the instant petition qualifies as a specialty occupation. Each nonimmigrant petition is a separate proceeding with a separate record. *See* 8 C.F.R. § 103.8(d). In making a determination of statutory eligibility, CIS is limited to the information contained in the petitioner's record of proceeding. *See* 8 C.F.R. § 103.2(b)(16)(ii).

For the reasons discussed above, the record does not establish that the proffered position meets any of the criteria enumerated in 8 C.F.R. § 214.2(h)(4)(iii)(A) to qualify as a specialty occupation. The petitioner has not established that the beneficiary will be coming temporarily to the United States to perform services in a specialty occupation, as required under section 101(a)(15)(H)(i)(b) of the Act, 8 U.S.C. § 1101(a)(15)(H)(i)(b).

The petitioner bears the burden of proof in these proceedings. *See* section 291 of the Act, 8 U.S.C. § 1361. The petitioner has not sustained that burden. Accordingly, the AAO will not disturb the director's decision denying the petition.

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