

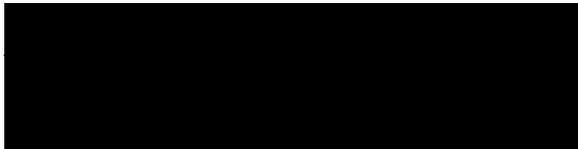
U.S. Department of Homeland Security
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Washington, DC 20529



U.S. Citizenship
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Services

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FILE: LIN 04 022 50682 Office: NEBRASKA SERVICE CENTER Date: DEC 09 2005

IN RE: Petitioner: [Redacted]
Beneficiary: [Redacted]

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:

SELF-REPRESENTED

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 service center director denied the nonimmigrant visa petition and the matter is now before the Administrative Appeals Office (AAO) on appeal. The director's decision will be withdrawn and the matter remanded to the director to determine whether the proposed position is a specialty occupation.

The petitioner is a firm specializing in advertising and marketing that seeks to employ the beneficiary as a part-time marketing manager and Slavic languages translator and to classify her 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 basis that the beneficiary is not qualified to perform the duties of the proposed position. On appeal, the petitioner submits additional evidence relating to the beneficiary's qualifications for the position. The AAO determines that the beneficiary qualifies for the position, but it does not appear that the position is a specialty occupation. Those two issues are addressed below.

The AAO will first address the issue of the beneficiary's qualifications. Section 214(i)(2) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1184(i)(2), states that an alien applying for classification as an H-1B nonimmigrant worker must possess full state licensure to practice in the occupation, if such licensure is required to practice in the occupation, and completion of the degree in the specialty that the occupation requires. If the alien does not possess the required degree, the petitioner must demonstrate that the alien has experience in the specialty equivalent to the completion of such degree, and recognition of expertise in the specialty through progressively responsible positions relating to the specialty.

Pursuant to 8 C.F.R. § 214.2(h)(4)(iii)(C), to qualify to perform services in a specialty occupation, an alien must meet one of the following criteria:

- (1) Hold a United States baccalaureate or higher degree required by the specialty occupation from an accredited college or university;
- (2) Hold a foreign degree determined to be equivalent to a United States baccalaureate or higher degree required by the specialty occupation from an accredited college or university;
- (3) Hold an unrestricted state license, registration or certification which authorizes him or her to fully practice the specialty occupation and be immediately engaged in that specialty in the state of intended employment; or
- (4) Have education, specialized training, and/or progressively responsible experience that is equivalent to completion of a United States baccalaureate or higher degree in the specialty occupation, and have recognition of expertise in the specialty through progressively responsible positions directly related to the specialty.

The record of proceeding before the AAO contains, in part: (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 lists the proposed position as a market research analyst/project manager. Based on the petitioner's description and a thorough review of the Department of Labor's *Occupational Outlook Handbook*

(*Handbook*), the AAO finds that the proposed position can more aptly be categorized as a dual position: marketing manager/Slavic languages translator. Evidence of the beneficiary's duties includes Form I-129 with attachments and additional evidence submitted on appeal. According to this evidence, the beneficiary's duties would include preparing an integrated market campaign for the petitioner's client, River of Life Companies; supporting the petitioner's integrated marketing campaigns by exploring, identifying, translating, and analyzing relevant information about the socio-cultural context of targeted markets; assisting the petitioner's project manager with media aspects and other aspects of its marketing campaign; exploring East and South-East European marketing and advertising trends; being familiar with the East and South-East European region; speaking East and South-East European languages; investigating and establishing media, advertising, and business contacts in that region; developing a plan for specialty products including fish, wild rice, and buffalo meat; preparing and translating all relevant information; translating and preparing comprehensive reports for the petitioner's departments; and working with the petitioner's creative team.

In the request for evidence, the director asked the petitioner for evidence that the beneficiary qualified for the proposed position.

In response, the petitioner submitted a letter of support from the petitioner that contained a detailed description of the position duties and the beneficiary's qualifications; a copy of the beneficiary's transcript from the University of Minnesota; and several examples of the beneficiary's experience in marketing.

The director found that the beneficiary did not qualify for the proposed position because the position requires a degree in marketing and the beneficiary only has a degree in public affairs. In addition, the director found the petitioner did not show that the beneficiary qualified for the position by offering evidence that the beneficiary's work experience is equivalent to a United States bachelor's or higher degree in marketing. The director did not analyze whether the proposed position was a specialty occupation that required at least a bachelor's degree in a specific field of study.

The AAO disagrees with the director that the beneficiary is not qualified for the position and finds that the beneficiary is qualified for the proposed marketing manager/Slavic languages translator position. The AAO routinely consults the *Handbook* for its information about the duties and educational requirements of particular occupations. The duties of the proposed position fall within those noted for marketing managers and for translators.

Regarding the educational requirements for marketing manager positions, the *Handbook* notes that:

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.

For the position of Slavic language translator, the *Handbook* indicates:

Although training requirements can vary, almost all interpreters and translators have a bachelor's degree . . . [k]nowing a language in addition to a native language is a given.

No specific course of study is required for either occupation. The beneficiary has a master's degree in public affairs and is a native Serbian speaker. Therefore, the petitioner has established that the beneficiary is qualified for the proposed position.

The petition may not be approved, however, because the AAO finds that the proposed position is not a specialty occupation. The AAO will next address the requirements for 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.

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 bachelor's or higher degree, but one in a specific field of study that is directly related to the proposed position.

The *Handbook* describes what marketing managers do in the following way:

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—for example, business firms, wholesalers, retailers, government, or the general public. 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.

Upon review of the record, the petitioner has not established any of the four criteria outlined in 8 C.F.R. § 214.(h)(4)(iii)(A). Therefore, the proposed position is not a specialty occupation.

Factors often considered by CIS to determine whether these criteria have been met 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/Baker Corp. v. Sava*, 712 F. Supp. 1095, 1102 (S.D.N.Y. 1989)).

To determine 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 bachelor's degree in a specific field of study as the minimum for entry into the occupation as required by the Act.

The AAO turns to the first criterion at 8 C.F.R. § 214.2(h)(4)(iii)(A)(1) - a bachelor's or higher degree or its equivalent is normally the minimum requirement for entry into the particular position. The duties of the proposed position mirror those listed for marketing managers and translators in the *Handbook*. The *Handbook* plainly states that neither marketing manager jobs nor translator jobs require a specific bachelor's degree. The *Handbook* reveals that employers prefer, but do not require, marketing managers and translators to possess bachelor's degrees in specific fields of study. Based on the evidentiary record, the petitioner fails to establish that a bachelor's or higher degree in a specific field of study is the normal minimum requirement for entry into the particular position, marketing manager/Slavic languages translator.

The proposed position does not meet the two alternative prongs of the second criterion at 8 C.F.R. § 214.2(h)(4)(iii)(A)(2) - the 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. The petitioner has not provided any evidence that the requirement of a bachelor's degree is common in the advertising and marketing industry in parallel positions among companies of similar focus and size. In addition, the employer has not shown that this particular marketing manager position is so complex or unique that only an individual with a bachelor's degree in a specific field of study can perform it.

The proposed position does not meet the third criterion at 8 C.F.R. § 214.2(h)(4)(iii)(A)(3) - the employer normally requires a bachelor's degree or its equivalent, in a specific field of study, for the position. As the record does not contain any evidence of the petitioner's past hiring practices for this particular position, the petitioner has not met its burden of proof in this regard. See *Matter of Soffici*, 22 I&N Dec. 158, 165 (Comm. 1998) (citing *Matter of Treasure Craft of California*, 14 I&N Dec. 190 (Reg. Comm. 1972)).

Finally, the evidence does not establish that the proposed position is a specialty occupation under the fourth criterion at 8 C.F.R. § 214.2(h)(4)(iii)(A)(4): 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 bachelor's or higher degree, in a specific field of study. To the extent that they are depicted in the record, none of the proposed duties exceeds the scope of those performed by marketing managers or translators, positions that do not require bachelor's degrees in specific fields.

No evidence contained in the record demonstrates that the proposed position is a specialty occupation. As the director has not made a determination on whether or not the position is a specialty occupation, the director's decision will be withdrawn and this petition will be remanded to allow the director to rule on the issue. The director may afford the petitioner reasonable time to submit evidence pertinent to the issue of whether the position is a specialty occupation and any other evidence the director may deem necessary. The director shall then render a new decision based on the evidence of record as it relates to the statutory and regulatory requirements for eligibility.

As always, the burden of proving eligibility for the benefit sought remains entirely with the petitioner. Section 291 of the Act, 8 U.S.C. § 1361.

ORDER: The director's May 20, 2004 decision is withdrawn. The petition is remanded to the director for entry of a new decision, which if adverse to the petitioner, is to be certified to the AAO for review.