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**U.S. Citizenship
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Services**

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02



FILE: WAC 02 186 52001 Office: CALIFORNIA SERVICE CENTER Date: FEB 07 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:
[Redacted]

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.

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 a beauty salon. It seeks to employ the beneficiary as an operations manager and to classify him 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 grounds that the proffered position was not 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 to the RFE; (4) the notice of decision; and (5) Form I-290B, the appeal brief, and supporting documentation. The AAO reviewed the record in its entirety before issuing its decision.

The petitioner is seeking the beneficiary's services as an operations manager. The duties of the position are described in the petitioner's Form I-129 and response to the RFE as follows:

In general manage the day to day affairs of the petitioner corporation; submit to management a strategic plan that would control marketing of the company's services in the next three years; identify for the management the target market and the specific characteristics of said market so as to enable the petitioner-company to come up with a plan of action that would improve the company's competitive chance in the marketplace; submit a study to the management as to the specific characteristics of the Filipino-American market which the company intends to penetrate as its major market niche; assist management in the identification of special services that the company should offer to the public to improve if not assure its success in the market place; submit to management specific recommendations targeted towards the delivery of high quality services to assure client or customer satisfaction for repeat sales; submit specific recommendations towards modernizing the company's facilities in order to improve the company's competitiveness; and handle the financial matters of the company, particularly the sourcing and usage of funds.

The petitioner indicated that the proffered position is newly created. The petitioner asserted that a qualified candidate for the job must have a bachelor's degree in any field and at least six years of experience in managing a beauty salon. The beneficiary graduated in 1984 from Notre Dame of Dadiangas College in General Santos City, the Philippines, with a bachelor of arts in English, assertedly equivalent to a B.A. degree in English from a U.S. college or university.

In his decision the director determined that the duties of the position proffered by the petitioner reflected those of an administrative services manager as described in the Department of Labor's *Occupational Outlook Handbook (Handbook)*, 2002-2003 edition. After quoting *Handbook* excerpts on the educational requirements for administrative services managers, the director declared that a position involving managerial or executive duties is not generally considered to be a specialty occupation unless (a) it involves the supervision of one or more employees performing a specialty occupation or (b) the duties exceed in scope and complexity those normally encountered in the occupation. The operations manager position proffered by the petitioner did not meet either of these tests, the director concluded, and therefore did not qualify as a specialty occupation. The director also determined that the beneficiary was ineligible for classification as a nonimmigrant worker in a specialty occupation pursuant to section 101(a)(15)(H)(i)(b) of the act because the employees he would be supervising as the operations manager are not members of a specialty occupation.

On appeal counsel asserts that the director erred as a matter of law in holding that a position involving managerial or executive duties must involve the supervision of persons employed in a specialty occupation in order to be considered a specialty occupation itself. Counsel also asserts that the duties of the proffered position are so specialized and complex that the knowledge required to perform them is usually associated with a baccalaureate or higher degree, thereby qualifying the position as a specialty occupation under the alternative criterion set forth at 8 C.F.R. § 214.2(h)(4)(iii)(A)(4).

The AAO agrees with counsel that the law does not require a position involving managerial or executive duties to involve the supervision of employees in a specialty occupation in order to qualify as a specialty

occupation. The appeal does not turn on that point, however, because the AAO does not agree with the director's categorization of the proffered position as an administrative services manager as described in the *Handbook*.

The duties of administrative services managers are described in the *Handbook*, 2004-05 edition, page 21, as follows:

They coordinate and direct support services to organizations as diverse as insurance companies, computer manufacturers and government offices. [They] manage the many services that allow organizations to operate efficiently, such as secretarial and reception, administration, payroll, conference planning and travel, information and data processing, mail, materials scheduling and distribution, printing and reproduction, records management, telecommunications management, security, parking, and personal property procurement, supply, and disposal.

The above described duties are decidedly different from the duties of the proffered position in this case. The AAO finds that the position at issue here is not that of an administrative services manager. Rather, the position fits within the *Handbook's* broad category of advertising, marketing, promotions, public relations, and sales managers, whose duties are described generally on page 23 of the *Handbook*, 2004-05 edition, as "coordinat[ing] market research, marketing strategy, sales, advertising, promotion, pricing, product development, and public relations activities." The duties of the proffered position most closely reflect the description of a marketing manager, on page 23 of the *Handbook*:

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 and promotion managers to promote the firm's products and services and to attract potential users.

Based on the foregoing analysis, the AAO concludes that the proffered position in this case is akin to that of a marketing manager.

In determining whether a position meets the statutory and regulatory criteria of a specialty occupation, CIS routinely consults the *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. Slattery*, 764 F.Supp. 872, 1102 (S.D.N.Y. 1991)). 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, id.*, at 1165-66.

As the *Handbook* clearly indicates, a baccalaureate or higher degree in a specific specialty is not the normal, industry-wide requirement for entry into a marketing manager position:

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.

Handbook, 2004-05 edition, at page 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)(1) because a baccalaureate degree in a specific specialty is not the normal minimum requirement to enter into the particular position.

With regard to the second alternative criterion of a specialty occupation, the petitioner has not demonstrated that a degree requirement in a specific specialty is common to the beauty industry in parallel positions among similar organizations. 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. To the contrary, the evidence of record indicates that the scope and complexity of the position are in line with those of a typical marketing manager. Accordingly, the proffered position does not qualify as a specialty occupation under 8 C.F.R. § 214.2(h)(4)(iii)(A)(2).

Since the proffered position is newly created the petitioner has no history of requiring a specialty degree or its equivalent. Accordingly, the position does not qualify as a specialty occupation under the third alternative criterion at 8 C.F.R. § 214.2(h)(4)(iii)(A)(3).

Finally, the record does not show that the duties of the proffered position are so specialized and complex that they require knowledge at the level of a baccalaureate or higher degree. As previously noted, the evidence does not demonstrate that the duties of the position exceed those of a typical marketing manager in their scope or complexity. Accordingly, the position does not qualify as a specialty occupation under the fourth alternative criterion at 8 C.F.R. § 214.2(h)(4)(iii)(A)(4).

For the reasons discussed above, the record does not establish that the position proffered by the petitioner meets any of the criteria set forth in 8 C.F.R. § 214.2(h)(4)(iii)(A) to qualify as a specialty occupation. Thus, 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), and 8 C.F.R. § 214.2(h)(1)(ii)(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.