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U.S. Citizenship
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Services

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APR 15 2005

FILE: [redacted] Office: CALIFORNIA SERVICE CENTER Date:

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:



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 sustained. The petition will be approved.

The petitioner provides film development and production. It seeks to employ the beneficiary as a director of marketing. 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 a brief and 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) 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 is seeking the beneficiary's services as a director of marketing. Evidence of the beneficiary's duties includes: the Form I-129; the attachments accompanying the Form I-129; the company support letter; and the petitioner's response to the director's request for evidence. According to this evidence, the beneficiary would perform duties that entail establishing research methodology and designing formats for data gathering including researching and assessing the best film research testing techniques, demographics, and research testing groups; determining distribution patterns and strategies for product releases; researching and assessing how to secure domestic distribution deals; examining and analyzing statistical data to forecast future marketing trends, including researching the legal ramifications of marketing materials and public relations initiatives; establishing research methodology and designing formats for testing the efficacy of print, television, and radio advertising campaigns to promote products; testing audience responses through exit polling; hiring regional, national, and specialty publicity firms; overseeing the creation of audio/video support materials and incorporating data collected from consumer research testing; managing submissions and staff for worldwide film festivals; supervising market research analysts including film testing research groups, traditional and web-based testing analysts, exit polling analysts, foreign sales prediction consultants, foreign sales agencies and domestic distributor marketing and publicity departments, publicity firms, web developers, creative and publicity agencies, and junior marketing assistants and staff paralegals. The petitioner stated that the beneficiary qualifies for the proposed position because she possesses the educational equivalent to a bachelor's degree in marketing from an accredited college or university in the United States.

The director determined that the proffered position was not a specialty occupation. Referring to the Department of Labor's (DOL) *Occupational Outlook Handbook*, the director stated that it shows that the proposed position is performed by advertising, marketing, promotions, public relations, and sales managers, and that a bachelor's degree in a specific specialty is not a normal, industry-wide minimum requirement for entry into the occupations.

On appeal, counsel states that the proposed position qualifies as a specialty occupation, and refers to previously submitted evidence and a letter from Dr. [REDACTED] Seattle University, to substantiate his assertion.

Upon review of the record, the petitioner has established that the proffered position is a specialty occupation.

The petitioner has satisfied the fourth criterion at 8 C.F.R. § 214.2(h)(4)(iii)(A), which requires that the petitioner establish 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 in a specific specialty as a marketing director for the petitioner. As described in the petitioner's November 10, 2003 and December 4, 2003 letters, the beneficiary's duties are highly complex, resembling those of a marketing research analyst, which is an occupation that requires at least a bachelor's degree in specific fields, including marketing.

As related in the discussion above, the petitioner has established that the proffered position is a specialty occupation.

The AAO notes that the beneficiary is qualified to perform the duties of the proffered position. The beneficiary holds a bachelor of arts degree from McGill University in Montreal, Canada, and has over six years of experience. An evaluation from an official who has authority to college-level credit for training and/or experience in the specialty at an accredited college or university which has a program for granting such credit based on an individual's training and/or work experience concluded that the beneficiary's education and work experience are the educational equivalent to a bachelor's degree in marketing. The evaluation is accompanied by a letter from the university indicating that the official has the authority within the School of Business to grant college-level credit for experience, and that the university has such a program. Based on this evidence, the beneficiary is qualified to perform the proposed position.

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 sustained that burden.

ORDER: The appeal is sustained. The petition is approved.