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U.S. Citizenship
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Services

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JUN 01 2005

FILE: [Redacted] Office: TEXAS 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:
[Redacted]

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 provides telecommunication services. It seeks to employ the beneficiary as a contract 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 states the proposed position is 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 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 contract administrator. 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 coordinating the administration of communications services and the contemplated import/export unit; interpreting and translating documents in the Spanish and English languages; reviewing existing and proposed agreements for conformity with company rates, rules, and policies; negotiating contracts with domestic and international clients; recommending contract modifications and amendments; preparing contracts for signature; understanding tax implications of transactions; serving as a liaison between the petitioner and the international marketplace; and maintaining ongoing relationships with existing accounts. The petitioner stated that a candidate for the proffered position must possess a bachelor's degree in law or a related area and have extensive experience in analyzing contracts and international business issues.

The director determined that the proffered position is not a specialty occupation. The director stated that the petitioner submitted standardized contracts that are in the Spanish and English languages and require minimal information such as the customer's name, address, sale amount, signature, and equipment. The director stated that counsel asserts that the proposed position is similar to a marketing manager as that occupation is described in the Department of Labor's *Occupational Outlook Handbook* (the *Handbook*). According to the director, the *Handbook* reveals that marketing managers do not require a baccalaureate or higher degree. The director found the job posting unpersuasive: it is for a company that is dissimilar in scope to the petitioner. The director stated that she performed a search of job postings on jobsearchsite.com for a contract administrator, and many show that employers prefer a strong legal background, including paralegal training; however, they do not consistently require a baccalaureate degree.

On appeal, counsel states that the proffered position is a specialty occupation, and refers to previously submitted evidence.

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 first 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 Department of Labor's (DOL) *Occupational Outlook Handbook* (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.

The AAO routinely consults the *Handbook* for its information about the duties and educational requirements of particular occupations. In the July 27, 2003 letter counsel analogizes the proposed position to a marketing manager. With respect to the educational requirements of a marketing manager, the *Handbook* explains:

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.

The *Handbook* reports that 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.

A "specialty occupation" is defined in the Act as an occupation that *requires* theoretical and practical application of a body of highly specialized knowledge, and the 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. The *Handbook* reports that some employers prefer a bachelor's degree in a specific specialty for a marketing manager. The terms "prefer" and "require" are not synonymous. The *American Heritage Dictionary of the English Language* defines the term "prefer" as to select in preference to another or others; value more highly; like better, and "require" as to have use for as a necessity or need. Given the term "prefer" is not synonymous with "require," the petitioner fails to establish that a marketing manager *requires* a specific baccalaureate degree.

The director correctly concluded that the submitted contracts are standardized agreement forms; thus, the beneficiary is not required to negotiate or substantially modify them. As such, baccalaureate-level education would not be required to perform the duties relating to contracts.

Based on the above discussion, the petitioner fails to establish that a bachelor's degree is the normal minimum requirement for entry into the particular position.

The submitted job postings are insufficient to establish that a degree requirement is common to the industry in parallel positions among similar organizations. [REDACTED] Inc. is a large multinational company, and no information in the posting describes the nature of LucasArts. Thus, neither employer is

similar to the petitioner, a small provider of telecommunications services. The submitted evidence about courses offered at the University of Nebraska, Lincoln's law school is irrelevant in establishing that employers require a specific baccalaureate degree for the proposed position. Accordingly, the petitioner fails to establish that a degree requirement is common to the industry in parallel positions among similar organizations.

No evidence in the record establishes that the proffered position is so complex or unique that it can be performed only by an individual with a degree. The *Handbook* reveals that marketing managers do not require a specific baccalaureate degree, and the submitted contracts are standardized agreement forms; thus, the beneficiary is not required to negotiate or substantially modify them. As such, baccalaureate-level education would not be required to perform the duties relating to contracts.

No evidence establishes the third criterion at 8 C.F.R. § 214.2(h)(4)(iii)(A): that the petitioner normally requires a 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. As already discussed, the marketing managers do not require a bachelor's degree in a specific specialty. Furthermore, because the submitted contracts are standardized agreement forms, the beneficiary is not required to negotiate or substantially modify them. As such, baccalaureate-level education would not be required to perform the duties relating to contracts.

As related in the discussion above, the petitioner has failed to establish that the proffered position is a specialty occupation. Accordingly, the AAO shall not disturb the director's denial of the petition.

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.