

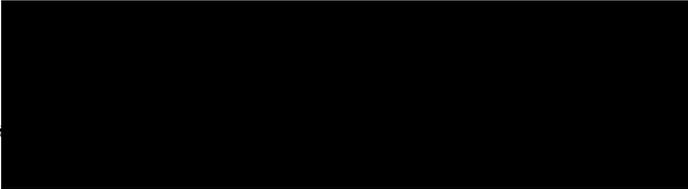
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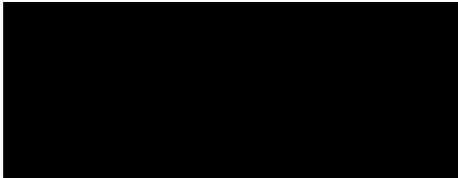
DR

FILE: EAC 03 172 52781 Office: VERMONT SERVICE CENTER Date: JUN 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:



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 retails jewelry and watches. It seeks to employ the beneficiary as a marketing analyst. 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 on two independent grounds, namely, that the petitioner had failed to establish that (1) the proffered position is a specialty occupation, and (2) the beneficiary is qualified to service in a specialty occupation. On appeal, counsel submits a brief and additional and previously submitted evidence.

The AAO will first address the 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 marketing analyst. 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 researching and analyzing market conditions for products and services; evaluating and determining the ideal marketing programs to ensure broad-based coverage of products and services; reviewing and analyzing the market forecast and estimates to determine cyclical market trends; establishing and formulating recommendations for business and expansion marketing strategies; liaising with businesses and customers to determine requirements for products; establishing the market analysis of supply and demand factors and various supply factors; conducting business and statistical analysis of various types of products of competitors and types of arts and identifying all growth areas and the competitor’s market strength and position in certain market segments. The petitioner indicates that it requires “at least a [b]achelor’s [d]egree in marketing, business administration, or [a] related discipline and related work experience within the jewelry industry.” (The petitioner’s April 30, 2003 letter of support, at page 2.)

The director stated that the proposed position’s duties are not primarily those of a market research analyst as that occupation is described in the Department of Labor’s *Occupational Outlook Handbook* (the *Handbook*); that the *Handbook* reveals that a market research analyst is not employed in the petitioner’s industry, which is retail jewelry; and that the proposed position more closely resembles a marketing manager, which is an occupation that the *Handbook* reports does not require a bachelor’s degree in a specific specialty. The director found the job postings unpersuasive in establishing that a bachelor’s degree is required for the proposed position.

On appeal, counsel contends that the *Handbook* shows that the proposed position parallels a marketing analyst, which is an occupation requiring a specific bachelor’s degree. Counsel refers to the submitted job postings and states that some small companies require the services of a market analyst. Counsel discusses three prior AAO decisions, and states that in one decision the AAO determined that the petitioner’s size, scope, and newness of operation were not dispositive in determining whether a market research analyst is a specialty occupation. Counsel asserts that establishing the first criterion at 8 C.F.R. § 214.2(h)(4)(iii)(A) requires that the petitioner establish that a bachelor degree or its equivalent is normally the minimum requirement for the proposed position. Counsel states that the director did not properly consider the evidence, which shows that the proposed position is a specialty occupation.

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 in a specific specialty is the normal minimum requirement for entry into the particular position; a specific 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 in a specific specialty.

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 which is *in a specific specialty* that is directly related to the proffered position. In the April 30, 2003 letter the petitioner states that it requires “a [b]achelor’s [d]egree in marketing, business administration, or [a] related discipline and related work experience within the jewelry industry.” This educational requirement is not enough to establish that the proposed position qualifies as a specialty occupation. As indicated in *Matter of Michael Hertz Assocs.*, 19 I&N Dec. 558, 560 (Comm. 1988), for a position to qualify as a specialty occupation:

A petitioner must establish that the position realistically requires knowledge, both theoretical and applied, which is almost exclusively obtained through studies at an institution of higher learning. The depth of knowledge and length of studies required are best typified by a degree granted by such institution at the baccalaureate level. It must be demonstrated that the position requires a precise and specific course of study which relates directly and closely to the position in question. Since there must be a close corollary between the required specialized studies and the position, the requirement of a degree of generalized title, such as business administration or liberal arts, without further specification, does not establish eligibility. . . .

In addition to accepting a baccalaureate degree in marketing, the petitioner accepts a baccalaureate degree of generalized title, business administration, without indicating further specification. As indicated in *Matter of Michael Hertz Assocs.*, this educational requirement satisfies none of the criteria at 8 C.F.R. § 214.2(h)(4)(iii)(A): (1) a baccalaureate or higher degree or its equivalent in a specific specialty is the normal minimum requirement for entry into the particular position; (2) a specific degree requirement is common to the industry in parallel positions among similar organizations or, in the alternative, that the position is so complex or unique that it can be performed only by an individual with a degree in a specific specialty; (3) the petitioner establish that it normally requires a degree or its equivalent for the position; or (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 baccalaureate or higher degree.

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

As the petitioner has not established that the beneficiary is qualified to serve in a specialty occupation in

accordance with the regulations at 8 C.F.R. §§ 214.2(h)(4)(iii)(C) and (D), the AAO shall not disturb the director's denial of the petition on the beneficiary qualification issue.

To establish the beneficiary's qualifications, the petitioner relies upon an evaluation of the beneficiary's work experience that was rendered by an assistant professor of marketing at the University of Miami. However, there is no evidence that the evaluator is an official authorized by a U.S. college or university to grant college-level credit for training or experience, as required by 8 C.F.R. § 214.2(h)(4)(iii)(D)(I). As correctly noted by the director, the evidence of record also fails to establish that the beneficiary's experience is the equivalent of at least a bachelor's degree in a specific specialty under any other criterion at 8 C.F.R. § 214.2(h)(4)(iii)(D).

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.