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U.S. Citizenship
and Immigration
Services

D2



FILE: WAC 04 067 51615 Office: CALIFORNIA SERVICE CENTER Date: JUN 10 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.

Handwritten signature of Robert P. Wiemann in cursive.

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 appeal will be dismissed. The petition will be denied.

The petitioner is a freight forwarding and air courier consulting business that seeks to employ the beneficiary as a marketing management analyst. The petitioner endeavors to classify the beneficiary as a nonimmigrant worker in a specialty occupation pursuant to § 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 and the beneficiary is not qualified to perform a specialty occupation. On appeal, counsel submits a brief and additional evidence, including a letter from the petitioner and a letter from the Associate Dean for Academic Affairs, Continuing Education and UCLA Extension, at the University of California at Los Angeles.

The AAO will first address the director's conclusion that the position is 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.

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 management analyst. Evidence of the beneficiary's duties includes: the I-129 petition; the petitioner's January 2, 2004 letter in support of the petition; and the petitioner's response to the director's request for evidence. According to this evidence, the beneficiary would perform duties that entail: conducting research, conceptualizing and developing new freight forwarding strategies including research of competitive environment, and targeting markets in the industry; exploring new target areas, especially in Latin and South American countries; studying pricing strategies; designing and coordinating promotional strategies through direct mail, telemarketing, and corporate website; developing cost-reduction distribution strategies; and developing and implementing a five-year marketing strategy. The petitioner indicated that a qualified candidate for the job would possess a bachelor's degree in marketing or a related field.

The director found that the proffered position was not a specialty occupation because the petitioner failed to establish any of the criteria found at 8 C.F.R. § 214.2(h)(4)(iii)(A). The director further found that the petitioner had not demonstrated that there is a bona fide position that can be considered a specialty occupation.

On appeal, the petitioner's president states, in part, that the proposed duties, which involve researching, strategizing, and implementing the four marketing areas of product, pricing, distribution, and promotion, are clearly the duties of a specialty occupation. She states further that the record contains a copy of the petitioner's newspaper advertisement for the proffered position that demonstrates the requirement of a bachelor's degree.

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 turns first to 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 *Occupational Outlook Handbook (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)).

The AAO does not concur with counsel that the proffered position is that of a market research analyst or a strategic management analyst. The petitioner has not sufficiently established that the proposed duties entail the level of responsibility of a market research analyst and/or a strategic management analyst. In this case, information on the petition, which was signed by the petitioner's president on January 5, 2004, indicates that the petitioner is a freight forwarding and air courier consulting business with four employees and a gross annual income of \$1,500,000. The record, however, contains no evidence that as of January 5, 2004, the petitioner had

the claimed four employees and a gross annual income of \$1,500,000. In response to the director's request for additional evidence, the petitioner's president stated, in part, that the petitioner's gross annual income of \$1,500,000 that is reflected on the petition is actually a projected gross annual income for the year 2003, based upon the petitioner's estimates. The record contains no evidence that the petitioner generates this level of income. Going on record without supporting documentary evidence is not sufficient for purposes of meeting the burden of proof in these proceedings. *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)). Furthermore, in response to the director's request for the petitioner's quarterly wage reports and payroll summary, the petitioner's president states as follows: "The petitioner is unable to provide copies of DE-6 forms or Payroll Summary based upon the advice of our corporate legal counsel that such disclosure might be in violation of privacy laws regarding our employees in the state of California." In response to the director's second request for additional evidence, including quarterly wage reports for all of the petitioner's employees for the last four quarters that were accepted by the State of California, the petitioner submitted only one quarterly wage report "for the most recent quarter." The petitioner provided no explanation for not submitting the four quarterly wage reports that were requested by the director. Failure to submit requested evidence that precludes a material line of inquiry shall be grounds for denying the petition. 8 C.F.R. § 103.2(b)(14). The non-existence or other unavailability of required evidence creates a presumption of ineligibility. 8 C.F.R. § 103.2(b)(2)(i). Based on the foregoing, the petitioner has failed to establish that it will employ the beneficiary as a full-time marketing management analyst, and that the beneficiary will be coming to perform services in a specialty occupation, in accordance with Section 101(a)(15)(H)(i)(b) of the Act, 8 U.S.C. § 101(a)(15)(H)(i)(b). Upon review of the record in its entirety, the proffered position appears to be primarily that of a marketing manager. No evidence in the *Handbook*, 2004-2005 edition, indicates that a baccalaureate or higher degree in a specific specialty, or its equivalent, is required for a marketing manager position.

The record does not include any evidence regarding parallel positions in the petitioner's industry. The record also does not include any evidence from professional associations regarding an industry standard, or documentation to support the complexity or uniqueness of the proffered position. The petitioner, therefore, has not established the criteria set forth at 8 C.F.R. § 214.2(h)(4)(iii)(A)(1) or (2).

The AAO now turns to the criterion at 8 C.F.R. § 214.2(h)(4)(iii)(A)(3) – the employer normally requires a degree or its equivalent for the position. In a January 15, 2004 response to the director's request for additional evidence, the petitioner's president states that the petitioner has always required a bachelor's degree for the position of marketing management analyst and provides the names of three employees who previously held the position. The record, however, does not contain any evidence of the petitioner's past hiring practices and therefore, the petitioner has not met its burden of proof in this regard. Going on record without supporting documentary evidence is not sufficient for purposes of meeting the burden of proof in these proceedings. *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 AAO turns to the 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 knowledge required to perform the duties is usually associated with the attainment of a baccalaureate or higher degree.

To the extent that they are depicted in the record, the duties do not appear so specialized and complex as to require the highly specialized knowledge associated with a baccalaureate or higher degree, or its equivalent,

in a specific specialty. Therefore, the evidence does not establish that the proffered position is a specialty occupation under 8 C.F.R. § 214.2(h)(4)(iii)(A)(4).

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

The director also found that the beneficiary is not qualified to perform the proposed duties because the record contains inadequate supplemental information pertaining to the beneficiary's UCLA extension coursework that was utilized by the credentials evaluator in determining that the beneficiary's education is equivalent to a baccalaureate degree related to the proffered position. On appeal, counsel submits a letter from the Associate Dean for Academic Affairs, Continuing Education and UCLA Extension, at the University of California at Los Angeles, who states, in part, that the courses that appear on the beneficiary's transcript are approved for college-level credit and that such courses, along with all other UCLA extension courses, are developed and administered in accordance with Extension policy and the regulations of the Academic Senate at the University of California. The Associate Dean for Academic Affairs goes on to attest that the UCLA Extension is accredited by the Western Association of Schools and Colleges. As discussed above, the proffered position appears to be primarily that of a marketing manager. No evidence in the *Handbook* indicates that a baccalaureate or higher degree in a specific specialty, or its equivalent, is required for a marketing manager position. In this case, the record contains an evaluation from a company that specializes in evaluating academic credentials indicating that the beneficiary's foreign bachelor's degree and her U.S. coursework are equivalent to a regionally accredited U.S. bachelor's degree in business administration with a major in marketing. As such, the petitioner has demonstrated that the beneficiary is qualified to perform the duties of the proffered position. The petition may not be approved, however, because the proffered position is not 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.