

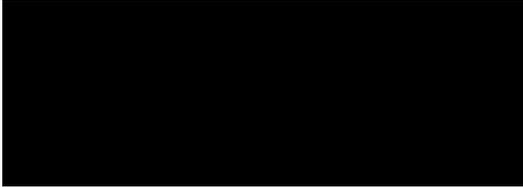
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U.S. Citizenship
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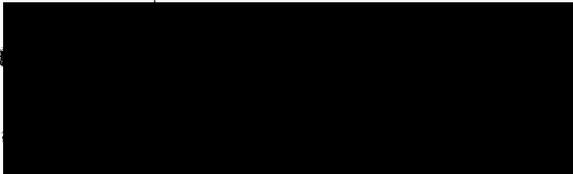
DA
MAR 08 2005

FILE: WAC 02 213 51271 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 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 sustained.

The petitioner is a gift manufacturing business that seeks to employ the beneficiary as a market research 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.

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 market research analyst. Evidence of the beneficiary's duties includes: the I-129 petition; the petitioner's June 6, 2002 letter in support of the petition; and the petitioner's response to the director's request for evidence. According to the petitioner's June 6, 2002 letter, the beneficiary would perform duties that entail: analyzing sales and financial data; implementing promotional strategies; managing marketing campaigns; devising methods to increase profitability, manage expenses, and reduce department overhead; analyzing market conditions in local and regional areas to increase sales; analyzing data through questionnaires and opinion polls; organizing study findings and preparing appropriate recommendations for marketing-related changes; forecasting future marketing trends; reviewing data gathered on competitors and analyzing their methods of marketing and distribution; making recommendations and assisting in the implementation of proposals; and reviewing and analyzing proposals submitted by the petitioner's various departments. Although not explicitly stated, it appears that the petitioner requires a baccalaureate degree or its equivalent in business administration with a major in marketing for the proffered position.

The director found that the proffered position was not a specialty occupation because the job is not a market research analyst; it is similar to advertising, marketing, promotions, public relations, and sales managers positions. Citing to the Department of Labor's *Occupational Outlook Handbook (Handbook)*, 2002-2003 edition, the director noted that the minimum requirement for entry into the position was not a baccalaureate degree or its equivalent in a specific specialty. The director found further that the petitioner failed to establish any of the criteria found at 8 C.F.R. § 214.2(h)(4)(iii)(A).

On appeal, counsel states, in part, that the proffered position is that of a market research analyst, and is not related to advertising, marketing, promotions, public relations, or sales managers positions. Counsel states further that the proposed duties are so complex as to require a baccalaureate degree in a related field.

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 *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 routinely consults the *Handbook* for its information about the duties and educational requirements of particular occupations. The AAO does not concur with counsel that the proffered position is primarily that of a market research analyst, a position that is primarily found in management, scientific, and technical consulting firms, insurance carriers, computer systems design and related firms, software publishers, securities and commodities brokers, and advertising and related firms. A review of the sales and marketing managers job descriptions in the *Handbook*, 2004-2005 edition, confirms the accuracy of the director's assessment to the effect that, the job duties parallel those responsibilities of sales and marketing managers, positions that are primarily found in industries including manufacturing, wholesale, and retail. Information in the *Handbook* indicates that a wide range of educational backgrounds is suitable for entry into these positions, but many employers prefer individuals with related experience plus a broad liberal arts background.

It is noted that not all sales and marketing manager positions may be considered specialty occupations. Each position must be evaluated based upon the nature and complexity of the actual duties. In this instance, the petitioner is a toy/gift manufacturing business that was established in 1981, with 200 employees, and a gross annual income of \$10 million. The proposed duties are of such complexity as to require a baccalaureate degree in a specialized and related area. It is noted that the beneficiary holds a bachelor's degree in business administration with a major in marketing conferred by a Filipino institution. An evaluation from a company that specializes in evaluating academic credentials finds that the beneficiary's foreign bachelor's degree is the equivalent of a bachelor's degree in business administration with a major in marketing from an accredited U.S. college or university. In view of the foregoing, it is concluded that the petitioner has demonstrated that the proffered position is a specialty occupation and that the beneficiary is qualified to perform the specialty occupation, within the meaning of the regulations.

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. Accordingly, the appeal will be sustained and the petition will be approved.

ORDER: The appeal is sustained. The director's order is withdrawn and the petition is approved.