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U.S. Citizenship
and Immigration
Services

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MAY 16 2005

[Redacted]

FILE: WAC 03 135 50835 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:

[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

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 is a corporation engaged in the global sale and export of aftermarket automotive and marine parts and accessories, particularly to Japan and other Southeast Asian countries. In order to employ the beneficiary as a business coordinator, the petitioner 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 the basis that the petitioner had failed to establish that the proffered position met the requirements of a specialty occupation. The director determined that the duties of the proffered position reflect those of an "Advertising, Marketing, Promotions, Public Relations and Sales Manager," and a marketing manager in particular, as discussed in the Department of Labor's (DOL) *Occupational Outlook Handbook (Handbook)*.

On appeal, counsel contends that the complexity of the position and the knowledge necessary for its performance require "a bachelor's degree in Business Administration, Economics, or a related business discipline."

The director's decision to deny the petition was correct. The AAO based its decision upon its consideration of the entire record of proceeding before it, which includes: (1) the petitioner's Form I-129 and the supporting documentation filed with it; (2) the director's request for additional evidence (RFE); (3) the materials submitted in response to the RFE; (4) the director's denial letter; and (5) the Form I-290B and counsel's brief.

Section 101(a)(15)(H)(i)(b) of the Act, 8 U.S.C. § 1101(a)(15)(H)(i)(b), provides a nonimmigrant classification for aliens who are coming temporarily to the United States to perform services in 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.

Thus, it is clear that Congress intended this visa classification only for aliens who are to be employed in an occupation that requires the theoretical and practical application of a body of highly specialized knowledge that is conveyed by at least a baccalaureate or higher degree in a specific specialty

Consonant with section 214(i)(1) of the Act, the regulation at 8 C.F.R. § 214.2(h)(4)(ii) states that a specialty occupation means an occupation:

which [1] requires *theoretical and practical application of a body of highly specialized knowledge* in fields of human endeavor including, but not limited to, architecture, engineering, mathematics, physical sciences, social sciences, medicine and health, education, business specialties, accounting, law, theology, and the arts, and which [2] requires *the attainment of a bachelor's degree or higher in a specific specialty*, or its equivalent, as a minimum for entry into the occupation in the United States. (Italics added.)

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) has consistently interpreted 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. Applying this standard, CIS regularly approves H-1B petitions for qualified aliens who are to be employed as engineers, computer scientists, certified public accountants, college professors, and other such professions. These occupations all require a baccalaureate degree in the specific specialty as a minimum for entry into the occupation and fairly represent the types of professions that Congress contemplated when it created the H-1B visa category.

The evidence of record does not substantiate counsel's assertions on appeal and elsewhere in the record that performance of the proposed duties requires at least a bachelor's degree in a specific specialty.

The petitioner's March 6, 2003 letter of support provided this information about its proffered "business coordinator" position:

The Position Offered

In view of our continuing business growth and expansion, [the beneficiary] is being offered a full-time employment in the position of Business Coordinator to [the petitioner]. The [position] is a first-tier position within the company having responsibility over specific

project functions. The position provides administrative and analytical services in the fields of conducting researches [sic] and administering [the petitioner's] business projects as it [sic] pertains to international and domestic business activities.

[The beneficiary] will be working with our management to facilitate and implement complete and integrated marketing programs and strategies to ensure increasing sales, profitability, and market share for our products. He will be conducting studies on company product classifications, rates, and tariffs and formulate changes required to provide for increased revenues and profitability of operations.

Specifically, [the beneficiary] will be performing the following duties:

- Investigation, study and negotiation and planning for long term balanced growth of the corporation.
- Work closely with management to facilitate and implement marketing programs.
- Designing, reviewing, and implementing short and long term strategies and goals in the areas of the international and domestic business and implementing plans for the attainment of these goals including profitability, cost-effectiveness, growth and changes.
- Research capital requirements in terms of international marketing strategies.
- Market research of various transportation methods.
- Developing and maintaining relationships with key external influences on corporate performance.
- Conduct studies on company product classification, rates, and tariffs.
- Formulate and advice [sic] changes required[,] providing for increased revenues and profitability of operations.

In sum, [the beneficiary] will have autonomous control over, and exercise wide latitude and discretionary decision-making in, [sic] establishing the most advantageous courses of action for the successful management and direction of [the petitioner's] international and domestic market project.

The nature of the duties of our Business Coordinator requires theoretical, analytical and practical applications of highly specialized knowledge usually associated with the attainment of a baccalaureate degree. Due to the complexity of the duties of the position, we would not hire anyone with less than a baccalaureate degree or its equivalent to fill this position. This is

a professional specialty position requiring at least a Bachelor's Degree in Business Administration or a similar discipline.

The record's copy of the petitioner's job advertisement describes the duties in the same language as above, and, as the minimum educational requirement, it specifies "Bachelor in Business Administration, Economics or related business discipline."

Counsel's February 3, 2003 letter identifies some additional duties that are included in those already described. Among these additional duties are requirements for the beneficiary to: design and create promotional and advertising programs; "design, review, and implement the company's short-term and long-term strategies and goals in the areas of international and domestic business"; find and determine "what capital the company needs to compete in the highly competitive global automotive and marine parts and accessories market"; "conduct analytical market surveys and studies to identify target markets for the company's products and services"; "develop and maintain a method of tracking and reporting territorial and regional sales with respect to current market trends, while ensuring that [the petitioner] is taking advantage of all market advancement opportunities but at the same time monitoring marketing declines;" "design, develop, and implement research programs and prepare numerous reports concerning market conditions, pricing level, market niche, and market opportunities"; "research on various transportation methods and conduct studies on company product classification, rates, and tariffs to develop incentive pieces, create 'point of sale' materials, and develop and implement sales promotions when and where needed"; "formulate and advice [sic] changes required to achieve increased revenues and profitability of operations"; "develop programs and relationships with referral sources in targeted markets pursuant to marketing and business development plans, plans that derived after extensive surveys, studies, and analyses"; and "going to the psyche of the potential customers and figuring out what they want and what kind of automotive and marine parts and accessories they prefer."

The criterion at 8 C.F.R. § 214.2(h)(4)(iii)(A)(3) is not a factor, as the petitioner did not present evidence to establish that the proffered position is one for which the employer has a history of normally requiring at least a baccalaureate degree or its equivalent in a specific specialty. The AAO finds that the evidence of record is not sufficient to satisfy any of the other criteria of 8 C.F.R. § 214.2(h)(4)(iii)(A).

To determine whether a particular job qualifies as a specialty occupation, CIS does not simply rely on a position's title or generalized descriptions of duties. It looks primarily for evidence about the specific duties, and about the nature of the petitioning entity's business operations. CIS must examine the ultimate employment of the alien, and determine whether the position qualifies as a specialty occupation. [REDACTED] Neither the title of the position, abstract descriptions of its duties, nor an employer's self-imposed standards are persuasive in the critical assessment that CIS must make: whether the evidence of record establishes that performance of the position actually requires the theoretical and practical application of a body of highly specialized knowledge, and the attainment of a baccalaureate or higher degree in the specific specialty as the minimum for entry into the occupation, as required by the Act. The position's title, abstract descriptions of duties, and a petitioner's declaration of a minimum educational credential do not impart why a job is specialty occupation work.

The duty descriptions noted above are illustrative of the fact that, at all stages of the proceeding, the information about the proposed duties is presented in generic and generalized terms that convey no meaningful information about the specific tasks that would engage the beneficiary, or about the particular knowledge, skills, and competencies that the beneficiary would have to apply to perform his duties. Consequently, the petitioner has not presented sufficient evidence to satisfy any criterion of 8 C.F.R. § 214.2(h)(4)(iii)(A) and thereby establish that the proffered position requires the practical and theoretical application of a body of highly specialized knowledge that is acquired by at least a bachelor's degree, or its equivalent in a specific specialty, as required by the Act.

It is noted that, on appeal and in response to the RFE, counsel repeatedly asserts that the duties of the proffered position require the knowledge conveyed by a bachelor's degree in business administration, economics, or a related field. However, neither counsel nor the petitioner presents evidence to substantiate this claim. Simply going on record without supporting documentary evidence is not sufficient for the purpose 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, the assertions of counsel do not constitute evidence. *Matter of Obaigbena*, 19 I&N Dec. 533, 534 (BIA 1988); *Matter of Ramirez-Sanchez*, 17 I&N Dec. 503, 506 (BIA 1980).

The evidence of record does not satisfy the criterion at 8 C.F.R. § 214.2(h)(4)(iii)(A)(1). This provision assigns specialty occupation status to those positions for which the normal minimum entry requirement is a baccalaureate or higher degree, or the equivalent, in a specific specialty related to the positions' duties.

The AAO recognizes the *Handbook* as an authoritative source on the duties and educational requirements of a wide variety of occupations. The generalized extent to which the proffered position and its duties are presented in the record do not establish that the beneficiary would be working as more than a marketing manager in charge of the petitioner's overall advertising, marketing, promotions, public relations, and sales activities. The section on "Advertising, Marketing, Promotions, Public Relations, and Sales Managers" in the current, 2004-2005 edition of the *Handbook* (at pages 23-26) indicates that a bachelor's degree or higher, or the equivalent, in a specific specialty is not a normal minimum-entry requirement for such a position. No evidence of record refutes this information. Accordingly, the petitioner has not satisfied the criterion at 8 C.F.R. § 214.2(h)(4)(iii)(A)(1).

The petitioner has not satisfied either of the alternative prongs of 8 C.F.R. § 214.2(h)(4)(iii)(A)(2).

The first alternative prong assigns specialty occupation status to a proffered position with a requirement for at least a bachelor's degree, in a specific specialty, that is common to the petitioner's industry in positions that are both (1) parallel to the proffered position and (2) located in organizations that are similar to the petitioner.

In determining whether there is such a common degree requirement, factors often considered by CIS 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)).

As already discussed, the *Handbook* does not indicate that the proffered position requires a degree in a specific specialty. There are no submissions from individuals, other firms, or professional associations in the petitioner's industry, and there is no other evidence of record relevant to this criterion.

The evidence of record does not qualify the proffered position under the second alternative prong of 8 C.F.R. § 214.2 (h)(4)(iii)(A)(2), which provides a petitioner the opportunity to show that its particular position is so complex or unique that it can be performed only by an individual with at least a bachelor's degree in a specific specialty. Here the evidence of record does not establish that the proffered position is so unique or complex. In fact, as already noted, the generalized and generic evidence about the proffered position does not distinguish it from marketing management positions for which the *Handbook* indicates that there is no normal minimum requirement for a bachelor's degree in a specific specialty.

The evidence does not satisfy the criterion at 8 C.F.R. § 214.2(h)(iii)(A)(4) for positions with specific duties so specialized and complex that their performance requires knowledge that is usually associated with the attainment of a baccalaureate or higher degree in a specific specialty. Counsel's assertions relevant to this criterion are not substantiated by the evidence of record. The petitioner has presented no details that establish that the specific duties are so specialized and complex.

Finally, the fact that the petitioner finds a bachelor's degree in business administration, with no specific concentration, adequate for the job is convincing evidence that the proffered position is not a specialty occupation. A petitioner must demonstrate that the proffered position requires a precise and specific course of study that 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 with a generalized title, such as business administration or liberal arts, without further specification, does not establish the position as a specialty occupation. *See Matter of Michael Hertz Associates*, 19 I&N Dec. 558 (Comm. 1988).

As the petitioner has failed to establish that the proffered position qualifies as a specialty occupation under any criterion of 8 C.F.R. § 214.2(h)(4)(iii)(A), the director's decision shall not be disturbed.

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. Accordingly, the appeal will be dismissed.

ORDER: The appeal is dismissed. The petition is denied.