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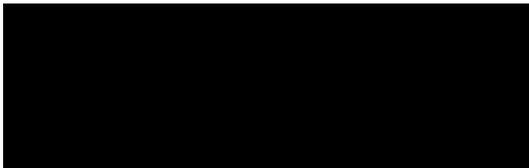
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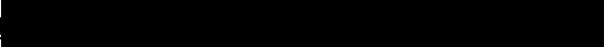
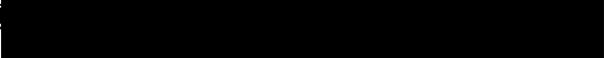


U.S. Citizenship
and Immigration
Services

D2



FILE:  Office: CALIFORNIA SERVICE CENTER Date: MAY 26 2005

IN RE: Petitioner: 
Beneficiary: 

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

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 that operates a Web-based hotel reservation system. In order to employ the beneficiary as a promotions manager, 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 set forth at 8 C.F.R. § 214.2(h)(4)(iii)(A). On appeal, counsel contends that the director failed to recognize that the petitioner had satisfied the criteria at 8 C.F.R. §§ 214.2(h)(4)(iii)(A)(2) and (4). As will be discussed below, upon consideration of the entire record of proceeding, including the job advertisements from other Internet travel businesses and the documentation about the proffered position, the AAO has concluded that the director's decision to deny the petition was correct.

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.

In the December 19, 2003 letter of support filed with the Form I-129, the petitioner provided the following information about the proposed duties:

Offered Position

[The petitioner] seeks to employ [the beneficiary] in the specialty-occupation of Promotions Manager. As Promotions Manager, [the beneficiary] will be responsible for promoting, managing and directing the [the petitioner’s] reservation systems for hotels in Mexico. In particular, [the beneficiary] will:

- Research of [sic] market conditions to determine potential sales of our company’s products and services, including establishing research methodology;
- Design, implement and administer systems of promoting travel to Mexico in the U.S. using [the petitioner’s] reservation system;
- Initiate, organize, and supervise the production of promotional materials that focus on [the petitioner’s] services in making travel to Mexico easy and inexpensive;

- Allocate [the petitioner's] resources in creating and implementing promotional campaigns and/or relationships with travel industry vendors and customers;
- Discover, create and foster relationships with hotels in Mexico and organizations that depend on outside reservation systems to enable [the petitioner] to establish and maintain its services and reputation with Mexico hotels and consumers;
- Consult newspapers, trade journals, and other publications that list upcoming conventions and social events to seek out opportunities to present [the petitioner's] services;
- Gauge customer satisfaction with [the petitioner's] services to develop lines of business in response, address customer service needs, and examine customer demand to formulate promotional campaigns;
- Determine and design the feasibility of expanding [the petitioner's] services to other markets, in particular, Costa Rica, Venezuela, and Argentina.

Due to the complexity of the duties of the offered position, the incumbent must possess at minimum a Bachelor's Degree in Tourism or Marketing. This requirement ensures that the incumbent will possess the necessary tools to perform the duties outlined above. Due to our size, the incumbent will be performing a combination of duties that [are] similar [to those found in larger companies,] but larger companies usually divide [the duties and responsibilities] among various positions.

The evidence of record does not support counsel's contention that the petitioner has satisfied 8 C.F.R. §§ 214.2(h)(4)(iii)(A)(2) and (4); nor does it satisfy the two other criteria at 8 C.F.R. § 214.2(h)(4)(iii)(A). The each criterion will be discussed in the order in which it appears in the regulations.

The petitioner has not satisfied the criterion at 8 C.F.R. § 214.2(h)(4)(iii)(A)(1), which assigns specialty occupation status to a position for which the normal minimum entry requirement is a baccalaureate or higher degree, or the equivalent, in a specific specialty closely related to the position's duties.

The AAO considered the evidence of record in light of relevant information in the Department of Labor's *Occupational Outlook Handbook (Handbook)*, which CIS recognizes as an authoritative source on the duties and educational requirements of a wide variety of occupations.¹ As described in the record, the proffered position most closely resembles a position with consolidated functions of the advertising, marketing, and promotions managers generally described in the *Handbook's* section "Advertising, Marketing, Promotions, Public Relations, and Sales Managers." The *Handbook* indicates that such a position is not one for which the usual

¹ The AAO consulted the current, 2004-2005 edition of the *Handbook*.

minimum entry requirement is at least a bachelor's degree, or its equivalent, in a specific specialty. For instance, the *Handbook* includes these statements:

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.

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. Courses in business law, economics, accounting, finance, mathematics, and statistics are advantageous. In highly technical industries, such as computer and electronics manufacturing, a bachelor's degree in engineering or science, combined with a master's degree in business administration, is preferred.

....

For all these specialties, courses in management and completion of an internship while in school are highly recommended. Familiarity with word processing and database applications also is important for many positions. Computer skills are vital because marketing, product promotion, and advertising on the Internet are increasingly common. The ability to communicate in a foreign language may open up employment opportunities in many rapidly growing areas around the country, especially in cities with large Spanish-speaking populations.

Most advertising, marketing, promotions, public relations, and sales management positions are filled by promoting experienced staff or related professional personnel. For example, many managers are former sales representatives, purchasing agents, buyers, or product, advertising, promotions, or public relations specialists. In small firms, where the number of positions is limited, advancement to a management position usually comes slowly. In large firms, promotion may occur more quickly.

The record contains no expert opinions or other authoritative evidence to contest the *Handbook's* information. Further, as will be explained in the discussion of the next criterion, the record's copies of job advertisements from other employers are inconsequential to the specialty occupation issue.

Because the evidence of record does not establish that the proffered position is one for which the normal minimum entry requirement is at least a bachelor's degree, or the equivalent, in a specific specialty closely related to the position's duties, the petitioner has not satisfied the criterion at 8 C.F.R. § 214.2(h)(4)(iii)(A)(1).

Contrary to counsel's view, 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 discussed above, the petitioner has not established that the proffered position is one for which the *Handbook* reports an industry-wide requirement for a bachelor's degree in a specific specialty. Also, there are no submissions from professional associations, individuals, or firms in the petitioner's industry.

The petitioner relies upon a variety of job vacancy advertisements from other firms in the petitioner's industry, but these documents have no significant evidentiary value. The advertisements are too few to be indicative of an industry-wide practice, and they do not indicate a common requirement for a degree in a specific specialty. While clearly the firms advertising operate in the same general business as the petitioner, the record does not demonstrate that those businesses are substantially similar to the petitioner. There is, for instance, no evidence that any advertiser is similar to the newly-independent, relatively small petitioner in size and scope of operations, business efforts, and expenditures. Also, the information about the duties and responsibilities of both the advertised positions and the one proffered here is general and does not support a meaningful comparison of their actual performance and specialty knowledge requirements. Therefore, the AAO is presented with no basis to conclude that the advertised positions and the one proffered here are parallel, as required by the regulation.

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.

Complexity is not alone sufficient to meet this criterion. Rather, the petitioner must demonstrate that the position is so complex as to preclude its performance by anyone not holding at least a bachelor's degree in a specific specialty. The evidence does not reach this threshold. Numerous duties are described, but all in generalized terms, such as "research of market conditions"; "design, implement, and administer systems of promoting travel"; "initiate, organize, and supervise the production of promotional materials"; "discover, create, and foster relationships"; "gauge customer satisfaction"; and "determine and design the feasibility" of expanding the petitioner's services. Alone or combined, such generally described duties do not convey a position that requires the highly specialized knowledge of a specialty degree.

The petitioner neither asserted or presented evidence to satisfy the criterion at 8 C.F.R. § 214.2(h)(4)(iii)(A)(3), which is for a position for which the employer normally requires at least a baccalaureate degree or its equivalent in a specific specialty.

Finally, 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. The duties described do not establish such specialization and complexity. 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.