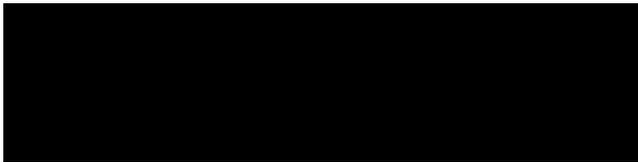




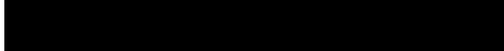
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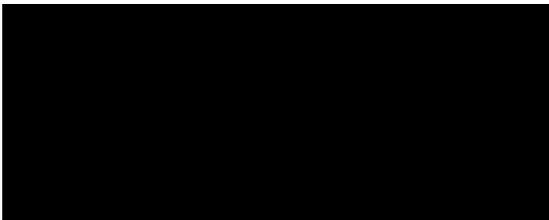


FILE: WAC 04 059 52523 Office: CALIFORNIA SERVICE CENTER Date: **NOV 22 2005**

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, 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 The director's decision will be withdrawn. The petition will be remanded.

The petitioner provides marketing and public relations services. It seeks to employ the beneficiary as a vice-president of marketing (marketing manager). 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 the ground that the proffered position is not a specialty occupation. On appeal, counsel submits a brief and additional evidence.

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 vice-president of marketing (marketing manager). Evidence of the beneficiary's duties includes: the Form I-129; the attachments accompanying the Form I-129; the petitioner's support letter; and the petitioner's response to the director's request for evidence. According to this evidence, the beneficiary will provide clients with sophisticated marketing and public relations plans to reposition products and companies in their markets; analyze markets and the strengths and weaknesses of companies and industries; identify market niches and develop advertising campaigns to promote clients' products; oversee the implementation of hiring professionals and firms to create advertisements, build brand equity, and introduce online or web-based mediums to reposition companies to take advantage of market dynamics; meet with executives and promotions staff of clients and provide presentations about the petitioner's marketing and public relations services and present ideas and plans; meet with press in the industry to provide high-level public relations services for clients; recommend, locate, and oversee the work of advertising agencies, graphic artists, and market research consultants for clients; oversee the hiring of the petitioner's staff in California and work with the petitioner's firm in Canada, which will provide support services to the petitioner's clients in California; and manage the day-to-day operations of the California office.

The director stated that the proposed duties reflect those of advertising, marketing, promotions, public relations, and sales managers as those occupations are described in the Department of Labor's (DOL) *Occupational Outlook Handbook* (the *Handbook*), and that the *Handbook* reveals that those occupations do not require a baccalaureate degree in a specific specialty. The director found unpersuasive the information in the Online Wage Library and the submitted job postings. The evidence of record, the director stated, is not persuasive in showing that the job offered could not be performed by a person whose educational training falls short of a bachelor's degree.

On appeal, counsel states that as shown in his book, *Professionals: A Matter of Degree*, prior decisions reflect that a marketing/public relations specialist is a specialty occupation. Referring to the regulation at 20 C.F.R. § 656.2(b)(2)(iv), counsel asserts that the DOL considers the term "preference" to also mean "requirement." When employers prefer a bachelor's or master's degree, counsel asserts, there is no ambiguity as this is the standard of education in the industry. Counsel states that the petitioner is a start-up company with no prior track record of hiring, and that *Young China Daily v. Lois Chappell*, 742 F. Supp. 522 (N.D. Cal. 1989) indicates that the size of a firm is irrelevant for visa purposes. According to counsel the job postings submitted in the record were intended to show the breadth to which degrees are required in the industry.

Upon review of the record, the petitioner has established one of the four criteria outlined in 8 C.F.R. § 214.2(h)(4)(iii)(A). Therefore, the proposed position is a specialty occupation.

The fourth criterion at 8 C.F.R. § 214.2(h)(4)(iii)(A) requires that the petitioner establish that the nature of the specific duties is so specialized and complex that the knowledge required to perform them is usually associated with the attainment of a baccalaureate or higher degree. The petitioner's September 30, 2003 letter

states that it has two major clients: the California Raisin Board and the Culinary Institute of America. In a January 12, 2004 letter, the petitioner states that representing large a client such as a commodity marketing board in California (the California Raisin Board) requires knowledge attained from a baccalaureate degree or equivalent experience; and the petitioner indicates it plans to expand sales worldwide to raise demand for crops, and further states that marketing management and public relations for large companies and trade groups require a detailed plan and an integrated approach.

The brochures in the record describe clients of NextPhase Strategy offices located in Vancouver and Seattle; the clients range from the British Columbia Wine Institute to Compel Corporation (a designer and builder of data centers) and International Connectors & Cable (a telecom/datacom firm) to the automotive company Daewoo. Based on the petitioner's job description and the evidence in the record describing the diverse clientele represented by the petitioner's offices, the proposed duties have the specialization and complexity that would require a baccalaureate degree in marketing or a closely related field. Consequently, the petitioner establishes the last criterion at 8 C.F.R. § 214.2(h)(4)(iii)(A).

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

The AAO will now address whether the beneficiary is qualified for the proposed position.

When CIS determines an alien's qualifications pursuant to 8 C.F.R. § 214.2(h)(4)(iii)(D)(5), three years of specialized training and/or work experience must be demonstrated for each year of college-level training the alien lacks. It must be clearly demonstrated that the alien's training and/or work experience included the theoretical and practical application of specialized knowledge required by the specialty occupation; that the alien's experience was gained while working with peers, supervisors, or subordinates who have a degree or its equivalent in the specialty occupation; and that the alien has recognition of expertise in the specialty evidenced by at least one type of documentation such as:

- (i) Recognition of expertise in the specialty occupation by at least two recognized authorities in the same specialty occupation<sup>1</sup>;
- (ii) Membership in a recognized foreign or United States association or society in the specialty occupation;
- (iii) Published material by or about the alien in professional publications, trade journals, books, or major newspapers;

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<sup>1</sup> *Recognized authority* means a person or organization with expertise in a particular field, special skills or knowledge in that field, and the expertise to render the type of opinion requested. A recognized authority's opinion must state: (1) the writer's qualifications as an expert; (2) the writer's experience giving such opinions, citing specific instances where past opinions have been accepted as authoritative and by whom; (3) how the conclusions were reached; and (4) the basis for the conclusions supported by copies or citations of any research material used. 8 C.F.R. § 214.2(h)(4)(ii).

- (iv) Licensure or registration to practice the specialty occupation in a foreign country; or
- (v) Achievements which a recognized authority has determined to be significant contributions to the field of the specialty occupation.

The record reflects that the beneficiary does not possess a baccalaureate degree in marketing or a related field. Thus, the beneficiary must establish eligibility to perform the proposed position based on his experience. When CIS determines an alien's qualifications pursuant to 8 C.F.R. § 214.2(h)(4)(iii)(D)(5), three years of specialized training and/or work experience must be demonstrated for each year of college-level training the alien lacks. It must be clearly demonstrated that the alien's training and/or work experience included the theoretical and practical application of specialized knowledge required by the specialty occupation; that the alien's experience was gained while working with peers, supervisors, or subordinates who have a degree or its equivalent in the specialty occupation; and that the alien has recognition of expertise in the specialty.

The evidence indicates that the beneficiary has experience during which he held managerial and executive positions in marketing. However, other than the beneficiary's certification of prior employment and a letter from Allegro Professional that attests that the company provided technical consulting and custom database systems for the beneficiary's company, the record does not contain evidence of the beneficiary's employment from September 1988 to April 1998. Thus, the evidence in the record is insufficient establish that the beneficiary is qualified to perform the proposed position which requires a bachelor's degree in marketing or a related field. The director must afford the petitioner reasonable time to provide evidence pertinent to the issue of whether the beneficiary is qualified to perform the duties of the proposed position which requires a bachelor's degree in marketing or a related field, and any other evidence the director may deem necessary. The director shall render a new decision based on the evidence of record as it relates to the regulatory requirements for eligibility. As always, the burden of proving eligibility for the benefit sought remains entirely with the petitioner. Section 291 of the Act, 8 U.S.C. §1361.

**ORDER:** The director's February 4, 2004 decision is withdrawn. The petition is remanded to the director for entry of a new decision, which if adverse to the petitioner, is to be certified to the AAO for review.