U.S. Department of Homeland Security
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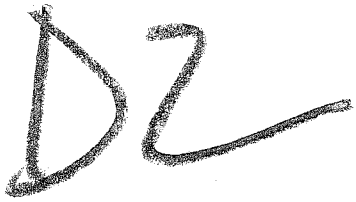
U.S. Citizenship and Immigration Services



[redacted]

FILE: LIN 04 018 50720 Office: NEBRASKA SERVICE CENTER Date:

IN RE: Petitioner: [redacted]
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:

SELF-REPRESENTED

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 The director's decision will be withdrawn and the matter remanded to the director for the entry of a new decision.

The petitioner is a consulting corporation that seeks to employ the beneficiary as a part-time marketing manager and Japanese translator and to classify her 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 beneficiary is not qualified to perform the duties of the proffered position. On appeal, the petitioner submits additional evidence relating to the beneficiary's qualifications for the proffered position. The AAO has determined that the beneficiary does qualify for the proffered position but that the proffered position is not a specialty occupation. Those two issues are addressed below.

The AAO will first address the issue of the beneficiary's qualifications. Section 214(i)(2) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1184(i)(2), states that an alien applying for classification as an H-1B nonimmigrant worker must possess full state licensure to practice in the occupation, if such licensure is required to practice in the occupation, and completion of the degree in the specialty that the occupation requires. If the alien does not possess the required degree, the petitioner must demonstrate that the alien has experience in the specialty equivalent to the completion of such degree, and recognition of expertise in the specialty through progressively responsible positions relating to the specialty.

Pursuant to 8 C.F.R. § 214.2(h)(4)(iii)(C), to qualify to perform services in a specialty occupation, an alien must meet one of the following criteria:

> (*1*) Hold a United States baccalaureate or higher degree required by the specialty occupation from an accredited college or university;
>
> (*2*) Hold a foreign degree determined to be equivalent to a United States baccalaureate or higher degree required by the specialty occupation from an accredited college or university;
>
> (*3*) Hold an unrestricted state license, registration or certification which authorizes him or her to fully practice the specialty occupation and be immediately engaged in that specialty in the state of intended employment; or
>
> (*4*) Have education, specialized training, and/or progressively responsible experience that is equivalent to completion of a United States baccalaureate or higher degree in the specialty occupation, and have recognition of expertise in the specialty through progressively responsible positions directly related to the specialty.

The record of proceeding before the AAO contains, in part: (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.

Although the petitioner only lists marketing manager as the proffered position on the I-129, based on the petitioner's description, the AAO finds that the proffered position is a dual position: marketing manager and Japanese translator. Evidence of the beneficiary's duties includes Form I-129 with attachments, the petitioner's response to the director's request for evidence, and additional evidence submitted on appeal. According to this evidence, the beneficiary's duties would include: determining the demand for products and services; identifying potential customers; translating marketing and advertising campaigns from English to Japanese, while making necessary editorial changes as needed due to cultural differences; traveling to Japan and conducting business meetings in Japanese; developing pricing strategies to maximize profits; overseeing product development; locating domestic and international companies concerning localization services; and specifically doing market research to see if a specific company would be viable in the United States.

The director asked the petitioner for the following evidence: 1) that the proffered position met at least one of the criteria of specialty occupation, 2) that the beneficiary was actually qualified for the position, and 3) that the job offer the petitioner made to the beneficiary was bona fide.

In response, the petitioner submitted the Department of Labor's Occupational Information Network (*O*Net*) description of marketing manager, a separate detailed description of duties for the proffered position, a description of the petitioner's duties, the company's articles of incorporation, a bank statement, an employment contract between the petitioner and the beneficiary, the company's website address, the beneficiary's I-20, a copy of the beneficiary's college diploma, and a copy of the beneficiary's college transcript. On appeal, the petitioner cites to the Department of Labor's *Occupational Outlook Handbook* (*Handbook*) description of marketing managers.

The director found that the beneficiary did not qualify for the proffered position because the position requires a degree in marketing and the beneficiary only has a degree in psychology. In addition, the director found the beneficiary did not qualify for the proffered position because she had not taken any business courses in college. The director did not analyze whether the proffered position was a specialty occupation that required a degree in a specific specialty.

The AAO disagrees with the director that the beneficiary is not qualified for the position and finds that the beneficiary is qualified for the proffered marketing manager/Japanese translator position. The AAO routinely consults the *Handbook* for its information about the duties and educational requirements of particular occupations. The duties of the proffered position fall within those noted for marketing managers and for translators. As the petitioner notes, for marketing manager positions, the *Handbook* indicates: "[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." (page 24). For the position of Japanese translator, the *Handbook* indicates: "Although training requirements can vary, almost all interpreters and translators have a bachelor's degree ... [k]nowing a language in addition to a native language is a given." No specific course of study is required. The beneficiary has a degree in psychology and is a native Japanese speaker. Therefore, the petitioner has established that the beneficiary is qualified for the proffered position.

The petition may not be approved, however, because the AAO finds that the proffered position is not a specialty occupation. The AAO will next address the requirements for a specialty occupation.

Section 214(i)(l) of the Act, 8 U.S.C. § 1184(i)(l), 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 proffered position does not meet the first criterion at 8 C.F.R. § 214.2(h)(4)(iii)(A)(*1*) - a baccalaureate or higher degree or its equivalent is normally the minimum requirement for entry into the particular position. The description of duties the petitioner provided, together with the description of the positions in the *Handbook* reflects that the a bachelor's degree or its equivalent, in a specific specialty, is not normally the minimum requirement for entry into the proffered position. For marketing manager positions, the *Handbook* specifically indicates that a "wide range of educational backgrounds is suitable for entry into ... marketing ... managerial jobs." (page 23). For translator positions, the *Handbook* indicates that "training requirements for translators can vary," but that almost all translators have bachelor's degrees. (page 261). Because no specific course of study is required as the minimum for entry into either occupation, the petitioner cannot establish this first criterion.

The proffered position does not meet the two alternative prongs of the second criterion at 8 C.F.R. § 214.2(h)(4)(iii)(A)(*2*) - the 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. The petitioner has not provided any evidence that the requirement of a bachelor's degree is common in the consulting corporation industry in parallel positions among similar companies. In addition, the employer has not shown that this particular marketing manager position is so complex or unique that only an individual with a bachelor's degree can perform it.

The proffered position does not meet the third 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. As the record does not contain any evidence of the

petitioner's past hiring practices, the petitioner has not met its burden of proof in this regard. *See 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 evidence does not establish that the proffered position is a specialty occupation under the fourth 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 the 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. The petitioner has not presented any evidence to establish that its marketing manager/Japanese translator position is distinguishable from those of other marketing managers/translators. Again, the *Handbook* indicates that neither marketing manager positions nor translator positions require a degree in a specific field.

No evidence contained in the record demonstrates that the proffered dual position is a specialty occupation. As the director has not made a determination on whether or not the position is a specialty occupation, the director's decision will be withdrawn and this petition will be remanded to allow the director to rule on the issue. The director may afford the petitioner reasonable time to submit evidence pertinent to the issue of whether the position is a specialty occupation and any other evidence the director may deem necessary. The director shall then render a new decision based on the evidence of record as it relates to the statutory and 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 May 10, 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.