

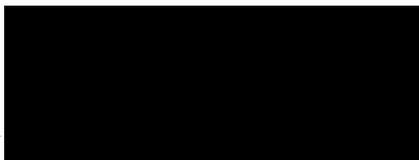
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U.S. Citizenship
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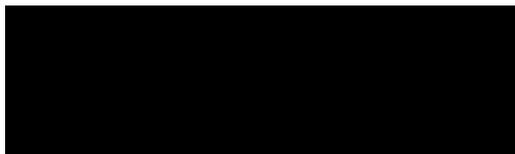
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FILE: WAC 04 232 51490 Office: CALIFORNIA SERVICE CENTER Date: AUG 07 2006

IN RE: Petitioner: [REDACTED]
Beneficiary: [REDACTED]

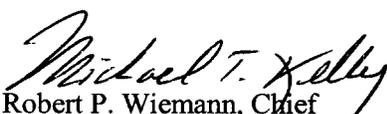
PETITION: Petition for a Nonimmigrant Worker Pursuant to Section 101(a)(15)(H)(i)(b) of the
Immigration and Nationality Act, 8 U.S.C. § 1101(a)(15)(H)(i)(b)

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.

for 
Robert P. Wiemann, Chief
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 dismissed. The petition will be denied.

The petitioner is an importer and distributor of clothing that seeks to employ the beneficiary as a business 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. On appeal, counsel submits a brief and additional evidence including copies of the following: the petitioner's leases for its three offices in California, Florida, and New York; a list of its sales representatives; and a list of its master accounts.

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 business analyst. Evidence of the beneficiary's duties includes: the I-129 petition; the petitioner's August 9, 2004 letter in support of the petition; and the petitioner's response to the director's request for evidence. According to this evidence, the beneficiary would perform duties that entail: formulating administrative and marketing strategies to increase the petitioner's business in the United States; overseeing market research; providing customer service analysis; conducting research on the social, economic, and cultural background of different regions in the United States to determine marketability of products in targeted regions; examining and analyzing statistical surveys to forecast market trends; collecting reports and information on customer preferences; developing and organizing promotional events in targeted cities; and studying and conducting compliance of customs regulations. The petitioner indicated that a qualified candidate for the job would possess a bachelor's degree in marketing, sales, business administration, or an equivalent thereof.

The director found that the proffered position was not a specialty occupation because the job is not a market research analyst position; it is a marketing manager position. Citing to the Department of Labor's *Occupational Outlook Handbook (Handbook)*, 2004-2005 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 business analyst, a position that requires a bachelor's degree in marketing, sales, business administration, or an equivalent thereof. Counsel states further that, even if the position was that of a marketing manager, it still would qualify as a specialty occupation as defined by the regulation. Counsel also states that the record contains an expert opinion letter as supporting documentation.

Upon review of the record, the petitioner has established none of the four criteria outlined in 8 C.F.R. § 214.2(h)(4)(iii)(A). Therefore, the proffered position is not a specialty occupation.

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 concurs with the director that that the proffered position is primarily that of a marketing manager. A review of the Advertising, Marketing, Promotions, Public Relations, and Sales Managers occupational category at pages 27-29 of the *Handbook*, 2006-2007 edition, confirms the accuracy of the director's assessment to the effect that the job duties parallel the responsibilities of a marketing manager. It is noted that the position also entails duties of a promotional manager. No evidence in the *Handbook* indicates that a baccalaureate or higher degree in a specific specialty, or its equivalent, is normally required for these jobs. A wide variety of

educational backgrounds is suitable for entry into these positions, including liberal arts, psychology, and literature. In view of the foregoing, the position does not satisfy the regulatory requirement for eligibility as a specialty occupation under the first criterion.

The record also contains an opinion letter from an associate dean for International Programs of an accredited business school at Portland State University, who concludes as follows:

1. The position of Business Analyst within the retail apparel industry is a specialty occupation. It requires theoretical and practical application of a body of a specialized knowledge and that the duties require the attainment of a bachelor's or higher degree as a minimum for entry into this occupation;
2. For companies in the retail apparel industry, such as [the petitioner], it is most common to find a bachelor's degree in business administration as a minimum requirement for the position of Business Analyst;
3. Virtually every position of Business Analyst, that [the associate dean] has seen advertised or personally observed within this industry, has required a minimum of a bachelor's degree in business administration;
4. A bachelor's degree in business administration is the industry standard for the position of Business Analyst;
5. The nature of the duties of a Business Analyst, as described by [the petitioner], are so specialized and complex that knowledge required to perform the duties are usually associated with the attainment of a baccalaureate or higher degree; and
6. The position of Business Analyst is common to similarly sized firms within this industry and the position normally requires a bachelor's degree.

The opinion rendered by the evaluator is not probative. Despite his experience in international student issues, neither his advisory opinion report nor any other evidence of record substantiates that he is qualified as an expert on the hiring practices and recruitment of business analysts, marketing managers, or market research analysts. The record does not indicate that the evaluator has knowledge of the particular issue here. He bases his opinion on a letter from the petitioner's president. He does not demonstrate knowledge of the petitioner's particular business operations. He does not relate any personal observations of those operations or of the work that the beneficiary would perform, nor does he state that he has reviewed any projects or work products related to the proffered position. CIS may, in its discretion, use as advisory opinions statements submitted as expert testimony. However, where an opinion is not in accord with other information or is in any way questionable, CIS is not required to accept or may give less weight to that evidence. *Matter of Caron International*, 19 I&N Dec. 791 (Comm. 1988).

The record does not include any evidence regarding parallel positions in the petitioner's industry. The record also does not include any evidence from firms, individuals, or professional associations regarding an industry standard, or documentation to support the complexity or uniqueness of the proffered position.

The petitioner, therefore, has not established the criteria set forth at 8 C.F.R. § 214.2(h)(4)(iii)(A)(1) or (2).

The AAO now turns to the 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 counsel does not address this issue on appeal, it will not be discussed further. The evidence of record does not establish this criterion.

Finally, the AAO turns to the 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 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. Therefore, the evidence does not establish that the proffered position is a specialty occupation under 8 C.F.R. § 214.2(h)(4)(iii)(A)(4).

As related in the discussion above, the petitioner has failed to establish that the proffered position is a specialty occupation. Accordingly, the AAO shall not disturb the director's denial of the petition.

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.

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