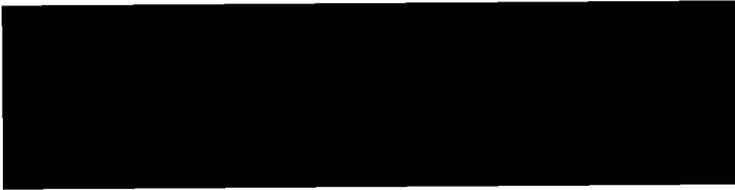


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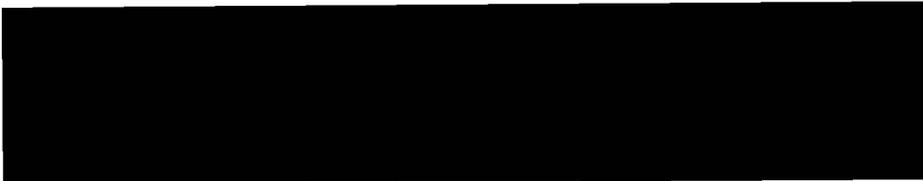
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FILE: WAC 04 141 50948 Office: CALIFORNIA SERVICE CENTER Date: APR 03 2006

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.

Robert P. Wiemann
Robert P. Wiemann, Director
Administrative Appeals Office

DISCUSSION: The 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 a wholesaler and trader of quality apparel accessory items that seeks to continue its employment of the beneficiary as a business development specialist. The petitioner, therefore, endeavors to extend the beneficiary's classification 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 prove that the proposed position qualifies for classification as a specialty occupation. On appeal, counsel contends that the position qualifies for classification as a specialty occupation. Counsel contends that the director's denial of the petition was arbitrary, capricious, an abuse of discretion, and not in accordance with the law.

The record of proceeding before the AAO contains (1) the Form I-129 and supporting documentation; (2) the director's request for evidence (RFE); (3) the petitioner's RFE response and supporting documentation; (4) the director's denial letter; and (5) the Form I-290B and supporting documentation. The AAO reviewed the record in its entirety before issuing its decision.

Section 214(i)(1) of the Immigration and Nationality Act (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.

The term "specialty occupation" is further defined at 8 C.F.R. § 214.2(h)(4)(ii) as:

[A]n occupation which 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 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.

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 proposed position.

The petitioner’s April 12, 2004 letter of support stated that the duties of the proposed position would include gathering and analyzing financial data to determine business opportunities for the petitioner domestically, abroad, and online; conducting research on product development and market conditions while implementing financial analysis and strategic planning; marketing products internationally to meet the petitioner’s rapidly growing global demand; administering contracts and generating new accounts; researching, developing, and marketing new and existing products to establish an advantage in e-commerce-based sales; interpreting data concerning price, stability, future trends, and economic influences pertinent to the sales of accessories; using computer programs to prepare reports and draw charts and graphs illustrating profit and cost analysis; and analyzing records of present and past operations, costs, estimated and realized revenues, administrative commitments, and obligations incurred to project future revenues and expenses.

In determining whether a proposed position qualifies as a specialty occupation, CIS looks beyond the title of the position and determines, from a review of the duties of the position and any supporting evidence, whether the position actually requires the theoretical and practical application of a body of highly specialized knowledge, and the attainment of a baccalaureate degree in a specific specialty, as the minimum for entry into the occupation as required by the Act. The AAO routinely consults the Department of Labor’s *Occupational Outlook Handbook* (the *Handbook*) for its information about the duties and educational requirements of particular occupations.

The petitioner’s August 24, 2004 response to the director’s request stated that the duties of the proposed position were similar to those of budget analysts, market research analysts, and public relations specialists, as those positions are described in the *Handbook*. In his denial, the director found the duties of the proposed position similar to those of budget analysts, market research analysts, and marketing managers, as those positions are described in the *Handbook*.

The AAO agrees with counsel and the director that the duties of the proposed position are an amalgam of the duties of budget analysts, market research analysts, public relations specialists, and marketing managers and will adjudicate the petition accordingly.

As such, for the reasons discussed below, the proposed position does not qualify for classification as a specialty occupation under 8 C.F.R. § 214.2(h)(4)(iii)(A)(I), that a baccalaureate or higher degree or its equivalent is normally the minimum requirement for entry into the position.

The *Handbook* states that private and governmental firms generally require candidates for budget analyst positions to hold a bachelor’s degree, but that many prefer or require a master’s degree. Within the Federal Government, a bachelor’s degree in any field is sufficient for an entry-level position. State and local governments have varying requirements, but a bachelor’s degree in one of many areas – accounting, finance, business or public administration, economics, political science, statistics, or a social science such

as sociology may qualify for entry into the occupation. Other employers may prefer a degree in a field closely related to that of the employing industry or organization, such as engineering or business. Many government employers may prefer candidates with strong analytical and policy analysis backgrounds that may be obtained through such majors as political science, economics, public administration, or public finance. Occasionally, budget-related or finance-related work experience can be substituted for formal education. The *Handbook* is clear, however, that a degree in a specific specialty is not normally required for entry into an occupation as a budget analyst, as degrees in a wide range of educational disciplines will suffice for positions requiring a college education.

As conveyed earlier in this decision, 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 proposed position.

When a range of degrees, e.g., the liberal arts, or a degree of generalized title without further specialization, e.g., business administration, can perform the duties, the position does not qualify as a specialty occupation. See *Matter of Michael Hertz Associates*, 19 I&N Dec. 558 (Comm. 1988). To prove that a job requires the theoretical and practical application of a body of specialized knowledge as required by Section 214(i)(1) of the Act, a petitioner must establish that the position requires the attainment of a bachelor’s or higher degree in a specific course of study.

The *Handbook* states the following with regard to the educational qualifications necessary for entry-level positions as market research analysts:

A bachelor’s degree is the minimum educational requirement for many market and survey research jobs. However, a master’s degree may be required, especially for technical positions, and increases opportunities for advancement to more responsible positions. Also, continuing education is important in order to keep current with the latest methods of developing, conducting, and analyzing surveys and other data. Market and survey researchers may earn advanced degrees in business administration, marketing, statistics, communications, or some closely related discipline. Some schools help graduate students find internships or part-time employment in government agencies, consulting firms, financial institutions, or marketing research firms prior to graduation.

In addition to completing courses in business, marketing, and consumer behavior, prospective market and survey researchers should take other liberal arts and social science courses, including economics, psychology, English, and sociology. Because of the importance of quantitative skills to market and survey researchers, courses in mathematics, statistics, sampling theory and survey design, and computer science are extremely helpful. Many corporation and government executives have a strong background in marketing.

As the *Handbook* finds that market research analyst positions impose no specific degree requirement on individuals seeking employment in the field, the petitioner cannot establish that its proposed market research analyst position requires the beneficiary to hold a baccalaureate or higher degree, or its equivalent, in a specific specialty. The petitioner has not indicated that the position is a technical position

requiring an advanced degree.¹ When a range of baccalaureate degrees can perform the duties of a position, it cannot qualify as a specialty occupation under 8 C.F.R. § 214.2(h)(4)(iii)(A)(I).

The *Handbook* states the following with regard to the educational qualifications required for advertising, marketing, promotions, public relations, and sales managers:

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. . . .

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.

Thus, a position as a marketing manager does not qualify for classification as a specialty occupation under 8 C.F.R. § 214.2(h)(4)(iii)(A)(I). The *Handbook* indicates that most marketing manager positions are filled on the basis of experience (most positions “are filled by promoting experienced staff or related professional personnel”). Moreover, the fact that some employers “prefer” a degree or that individuals possessing degrees “should have the best job opportunities” does not rise to this criterion’s standard of employers normally requiring at least a bachelor’s degree or its equivalent in a specific specialty. As such, marketing managers do not qualify as a specialty occupation under the first criterion.

Finally, the *Handbook* states that there are no defined standards for entry into a public relations career, but that a college degree combined with experience such as an internship is considered excellent preparation. Many entry-level public relations specialists have a college major in public relations, journalism, advertising, or communications. Other employers, however, seek applicants with demonstrated communications skills and training or experience in a field related the firm’s business—science, engineering, sales, or finance, for example. The *Handbook* is clear, however, that a degree in a specific specialty is not normally required for entry into an occupation as a public relations specialist, as degrees in a wide range of educational disciplines will suffice for positions requiring a college education.

¹ The record indicates that the beneficiary received a master’s degree in business administration from Central State University in Oklahoma. The letter of support does not indicate that the petitioner, however, requires a master’s degree for the position. The AAO notes that the master’s degree is not recognized by CIS, as it was received from a non-accredited institution. 8 C.F.R. § 214.2(h)(4)(iii)(C)(I). See <http://ope.ed.gov/accreditation>.

Accordingly, the petitioner has not established its proposed position as a specialty occupation under the first criterion at 8 C.F.R. § 214.2(h)(4)(iii)(A).

Nor does the proposed position qualify as a specialty occupation under either prong of 8 C.F.R. § 214.2(h)(4)(iii)(A)(2). The first prong of this regulation requires a showing that a specific degree requirement is common to the industry in parallel positions among similar organizations.

The AAO has reviewed the job postings submitted by counsel. Counsel, however, has failed to consider the specific requirements at 8 C.F.R. § 214.2(h)(4)(iii)(A)(2) for establishing a baccalaureate or higher degree as an industry norm. In order to meet the burden of proof imposed by the regulatory language, a petitioner must establish that its degree requirement exists in parallel positions among similar organizations.

There is no evidence in the record to demonstrate that any of these postings come from companies similar in size or scope of business operations to the petitioner, a wholesaler and trader of quality apparel accessory items with fifteen employees. According to their postings, eNewLife is engaged in health food product research and Core Business Solutions, Inc. provides document management software. No information was submitted regarding the unnamed company advertising its vacancy through Careerbuilder.com. No information has been submitted that would demonstrate that these companies are “similar” to the petitioner as required by the regulation.

The second prong of 8 C.F.R. § 214.2(h)(4)(iii)(A)(2) requires the petitioner to prove that the duties of the proposed position are so complex or unique that only an individual with a degree can perform them. The nature of the duties of the proposed position as set forth in the petition does not support such a finding, as they are similar to those of budget analysts, market research analysts, public relations specialists, and marketing managers, as those positions are discussed in the *Handbook*, none of which require a baccalaureate degree in a specific specialty. The record contains no documentation to support a finding that the proposed position is so complex or unique that, in contrast to similar positions with no specific degree requirement, it can only be performed by an individual with at least a bachelor’s degree, or its equivalent, in a specific specialty.

Therefore, the petitioner has not established that the proposed position qualifies as a specialty occupation under either prong of 8 C.F.R. § 214.2(h)(4)(iii)(A)(2).

Nor does the proposed position qualify as a specialty occupation under 8 C.F.R. § 214.2(h)(4)(iii)(A)(3), which requires a showing that the petitioner normally requires a degree or its equivalent for the proposed position. To determine a petitioner’s ability to meet this criterion, the AAO normally reviews the petitioner’s past employment practices, as well as the histories, including names and dates of employment, of those employees with degrees who previously held the position, and copies of those employees’ diplomas. However, no such evidence has been submitted.

Accordingly, the proposed position does not qualify as a specialty occupation under 8 C.F.R. § 214.2(h)(4)(iii)(A)(3).

The AAO next turns to the criterion at 8 C.F.R. § 214.2(h)(4)(iii)(A)(4), which requires a demonstration that 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 of the proposed position 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. There is no information in the record to support a finding that the proposed position is more specialized and complex than the general range of budget analyst, market research analyst, public relations specialist, and marketing manager positions for which the *Handbook* indicates no requirement for the highly specialized knowledge associated with at least a bachelor's degree in a specific specialty. Therefore, the evidence does not establish that the proposed position is a specialty occupation under 8 C.F.R. § 214.2(h)(4)(iii)(A)(4).

Previous counsel submitted information from the *Dictionary of Occupational Title's (DOT)* Standard Vocational Preparation (SVP) rating. The *DOT* is not persuasive sources of information regarding whether a particular job requires the attainment of a baccalaureate or higher degree in a specific specialty, or its equivalent, as a minimum for entry into the occupation. Its assessment (the SVP rating) is meant only to indicate the total number of years of vocational preparation required for a particular position. It does not describe how those years are to be divided among training, formal education, and experience, and does not specify the particular type of degree, if any, that a position would require.

Finally, the AAO turns to the issue of the beneficiary's previous H-1B approval. Each nonimmigrant petition is a separate proceeding with a separate record. See 8 C.F.R. § 103.2(b)(16)(ii). If the previous petition was approved based upon the same evidence contained in this record, that approval would constitute material and gross error on the part of the director. The AAO is not required to approve applications or petitions where eligibility has not been demonstrated, merely because of prior approvals that may have been erroneous. See, e.g. *Matter of Church Scientology International*, 19 I&N Dec. 593, 597 (Comm. 1988). It would be absurd to suggest that CIS or any agency must treat acknowledged errors as binding precedent. *Sussex Engg. Ltd. v. Montgomery*, 825 F.2d 1084, 1090 (6th Cir. 1987), *cert. denied*, 485 U.S. 1008 (1988).

Furthermore, the AAO's authority over the service centers is comparable to the relationship between a court of appeals and a district court. Even if a service center director did approve a nonimmigrant petition similar to the one at issue here, the AAO would not be bound to follow the contradictory decision of a service center. *Louisiana Philharmonic Orchestra v. INS*, 2000 WL 282785 (E.D. La.), *aff'd*, 248 F.3d 1139 (5th Cir. 2001), *cert. denied*, 122 S.Ct. 51 (2001).

The petitioner has failed to establish that the position qualifies for classification as a specialty occupation under any of the criteria set forth at 8 C.F.R. §§ 214.2(h)(4)(iii)(A)(1), (2), (3), and (4), and the petitioner was properly denied. As the proposed position is not a specialty occupation, the beneficiary's qualifications to perform its duties are immaterial. Accordingly, the AAO will not disturb the director's denial of the petition.

Beyond the decision of the director, the record does not reflect that the beneficiary is qualified to perform the duties of a specialty occupation. As noted in footnote 1, the beneficiary obtained a master's degree in business administration from Central State University in Edmunton, Oklahoma. That institution is not accredited, as required by 8 C.F.R. § 214.2(h)(4)(iii)(C)(1). See <http://ope.ed.gov/accreditation>. The record does not reflect the beneficiary's undergraduate education. Thus, the record does not establish that the beneficiary has a baccalaureate degree or its equivalent. For this additional reason, the petition may not be approved.

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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.