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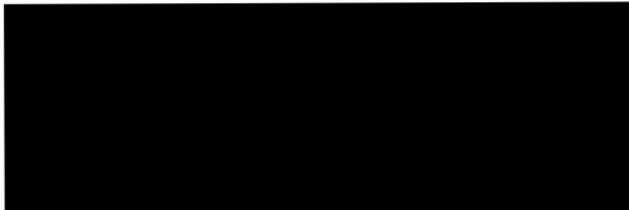
U.S. Department of Homeland Security
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Washington, DC 20529



U.S. Citizenship
and Immigration
Services

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APR 03 2006

FILE: WAC 04 131 51240 Office: CALIFORNIA SERVICE CENTER Date:

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:

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.

for Michael T. Kelly
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 appeal will be dismissed. The petition will be denied.

The petitioner is a home garden furniture importer that seeks to employ the beneficiary as a market and management assistant 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 position is not a specialty occupation. On appeal, the petitioner 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 bachelor's or higher degree, but one in a specific field of study that is directly related to the proposed position.

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

The petitioner lists the proposed position as a market and management assistant. Evidence of the beneficiary's duties includes the Form I-129 with accompanying support letter, the response to the RFE, and additional evidence submitted with the appeal. The duties of the proposed position entail, in part: assisting the executives in managing and analyzing company operations including customer reception, production procedures, supplier/vendor selection, shipping and ordering and common office operations to determine possible improvements; gathering and organizing information on present operational problems; conducting operational effectiveness reviews to ensure functional systems are applied and functioning as designed; developing and updating functional or operational manuals, outlining established methods of performing work in accordance with company policy; assisting executives in business operations by coordinating managerial and administrative work; organizing, maintaining, and filing business documents; providing support to internal and external communications; developing the necessary structure to meet inbound and outbound with compliance requirements of the region; assisting in advertisement and tradeshow exhibition; providing assistance to company budget and cost control management, as well as warehouse management; preparing business proposal for shipping guidelines, supplier/vendor selection, logistics options and costs; planning and developing a budget proposal to deploy the manpower, equipment, and material resources to optimally operate all activities while ensuring that cost control is applied; ensuring new materials and services are sourced and procured at the best cost and quality; implementing effective material management systems in the warehouse to ensure that materials are properly handled and stored at cost-effective stock level; participating in a panel with management in drafting the company's standard operational procedures for daily business operations and comprehensive operation plans and budget plans for the business expansion for the next three years; collecting and integrating the sales record and sales volume of each individual salesperson on a quarterly basis for evaluation and recruitment for a stronger sales force; assisting in analyzing market demands in both nationwide market and worldwide market according to sales data; collecting and organizing information on ordering activities, goods status, shipping and delivering information; analyzing the current market trends and service demands through examination of the data gathered; evaluating the possibility of adding new items to the petitioner's existing services and lines and identify what type of items should be added in the future that would yield maximum profit; assisting to establish various marketing research approaches and forecast towards project development with statistical analysis; monitoring and tracking market and competitor's trend; constructing various sets of market surveys targeted to determine the usage habit of the targeted market segments in the U.S. and the international markets; distributing the surveys to obtain data; contacting managers and officials of businesses, and users to obtain feedback regarding their interests in garden furniture and home decor accessories; contacting potential customers to obtain feedback regarding their interests in setting up contract service with us; and performing other duties as assigned; assisting the marketing manager in retrieving and collecting data from computer maps to plan sales territories and pin point direct marketing prospects by using TIGER (Topologically Integrated Geographic Encoding and Referencing System); assisting the CEO in developing strategies for remaining competitive in the market; assisting the sales manager to review, modify, design and rewrite a bilingual catalog; conferring with the sales manager to define the key points of the products catalogue; determining the style of writing (including English and Chinese) to be used and specialized terminology in message; contacting international portal industry such as media, email, OEM etc., to develop and extend our existing global portal relationships while expanding into new areas and mining previously untapped resources in major online mainstream portal and media distribution; managing and sustaining contact with existing partners and affiliates; creating status reports, projections and proposals for all projects; establishing project milestones and ensuring timely completion; identifying and pursuing the potential for new distribution opportunities; managing creative, technical and business development timelines; delivering client metrics and follow up analysis; coordinating with multidisciplinary teams to accomplish tasks; managing new partners' start-up,

implementation and operation; documenting all project-related communications; securing all required project approvals, and facilitating the timely flow of information and exchange of information; providing assistance to company budget and cost control management, as well as shipping & warehouse management; preparing a bilingual business proposal for production and shipping guidelines, logistics options and costs; planning and developing a budget proposal to deploy the manpower, equipment and material resources to optimally operate all activities while ensuring that cost control is applied; ensuring new materials and services are sourced and procured at the best cost and quality; implementing an effective material management system in the warehouse to ensure that inventory is kept in good records; participating in a panel with management in drafting the company's standard operational procedures for daily business operations and comprehensive operation and budget plans for the business operation & possible expansion for the next 3 years covering product, market, and organization development; assisting the CEO to coordinate the collection and preparation of daily operating reports, such as time-and-attendance records, termination, new hires, transfers, budget expenditures and records of all of employees' performance; assisting the CEO to negotiate with suppliers to draw up procurement contracts; coordinating the work of the sales department to implement the fulfillment of contracts; and helping the CEO to evaluate and monitor contract performance to determine necessity for amendment or extensions of contracts. The petitioner stated that it required at least a bachelor's degree in business administration, managing, or marketing for the position.

The director found that the proposed duties reflected those of a combination of positions, including marketing manager, sales manager, and administrative assistant. The director concluded that the proposed position did not meet any of the four criteria for classification as a specialty occupation.

On appeal, the petitioner asserts that the director did not consider all of the proposed job duties and incorrectly characterized the position as a marketing/sales manager position that did not require a specialized bachelor's degree. The petitioner asserts that the proposed position is a combination of positions - a bilingual technical writer, a managerial/financial cost control specialist, and a contract specialist/coordinator.

Upon review of the record, the AAO finds that the petitioner has not established any of the four criteria outlined in 8 C.F.R. § 214.2(h)(4)(iii)(A). Therefore, the proposed position is not a specialty occupation.

To determine whether a position qualifies as a specialty occupation, CIS looks beyond the title of the position and determines, from a review of the duties and any supporting evidence, whether the position actually requires the theoretical and practical application of a body of highly specialized knowledge as required by the Act.

The AAO routinely consults the Department of Labor's *Occupational Outlook Handbook (Handbook)* for its information about the duties of particular occupations. Based on a thorough review of the duties of the proposed position alongside the *Handbook's* description of several occupations, the AAO finds that the proposed duties reflect those of a marketing and sales manager, those of an administrative services manager, and also those of a bilingual technical writer. The *Handbook* states that marketing managers develop a firm's marketing strategy in detail, identify potential markets, develop pricing strategy to help firms maximize profits and market share while ensuring that the firm's customers are satisfied, and monitor trends that indicate the need for new products and services, and they oversee product development. These duties mirror the proposed duties of "retrieving and collecting marketing information by using TIGER system" and evaluating "the possibility of adding new items to [the petitioner's] existing services and lines and identify[ing] what type of items should be added in the future that would yield maximum

profits.” Sales managers “analyze sales statistics gathered by their staffs to determine sales potential and inventory requirements and to monitor customers’ preferences.” These duties reflect the proposed duties of “collecting and integrating the sales record and sales volume of each individual salesperson on a quarterly basis for evaluation and recruitment for a stronger sales force” and assisting in analyzing market demands in both nationwide market and worldwide market according to sales data.” Administrative services managers “develop departmental plans, set goals and deadlines, and implement procedures to improve productivity and customer service.” These duties reflect several of the proposed duties, such as “assisting executives in business operations by coordinating managerial and administrative work” and “organizing, maintaining, and filing business documents.” According to the *Handbook*, technical writers put technical information into easily understandable language. They prepare catalogs, sales promotion materials, and project proposals. They plan and edit technical materials and oversee the preparation of illustrations, photographs, diagrams, and charts. These duties are similar to the proposed duties of modifying, designing and rewriting a bilingual catalog and creating “bilingual status reports, Chinese business correspondence, bilingual trade show promotion materials and bilingual proposals for all projects.”

The AAO disagrees with the petitioner that part of the proposed duties reflect those of a contract administrator. The duties the petitioner called contract administration are not the duties of contract administrators as they are described in the *Handbook*. On appeal, the petitioner asserts that 1) assisting the CEO to negotiate with suppliers to draw up procurement contracts, 2) coordinating the work of the sales department to implement fulfillment contracts, and 3) assisting the CEO in evaluating contract performance to determine the necessity for amendment of contracts are the duties of a contract administrator. The petitioner asserts that these duties require the beneficiary to hold at least a bachelor’s degree in business, human resources, or finance. The AAO finds that these duties would be part of the duties of a marketing, sales and administrative services manager not those of a contract administrator, which the *Handbook* says oversee the preparation, analysis, negotiation, and review of contracts related to the purchase or sale of equipment, materials, supplies, products, or services.

To determine whether or not the proposed position is a specialty occupation under the first criterion at 8 C.F.R. 214.2(h)(4)(iii)(A) – a bachelor’s or higher degree or its equivalent, in a specific field of study is normally the minimum requirement for entry into the particular position - the AAO turns to the *Handbook*’s discussion of the educational requirements for marketing 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.

The *Handbook* lists the following as educational requirements for administrative services managers:

Educational requirements for these managers vary widely, depending on the size and complexity of the organization. In small organizations, experience may be the only

requirement needed to enter a position as office manager. When an opening in administrative services management occurs, the office manager may be promoted to the position based on past performance. In large organizations, however, administrative services managers normally are hired from outside and each position has formal education and experience requirements. Some administrative services managers have advanced degrees.

The *Handbook* lists the following as educational requirements for technical writers:

A college degree generally is required for a position as a writer or editor. Although some employers look for a broad liberal arts background, most prefer to hire people with degrees in communications, journalism, or English. For those who specialize in a particular area, such as fashion, business, or law, additional background in the chosen field is expected. Knowledge of a second language is helpful for some positions.

Increasingly, technical writing requires a degree in, or some knowledge about, a specialized field—for example, engineering, business, or one of the sciences. In many cases, people with good writing skills can acquire specialized knowledge on the job. Some transfer from jobs as technicians, scientists, or engineers. Others begin as research assistants or as trainees in a technical information department, develop technical communication skills, and then assume writing duties.

The *Handbook* indicates that jobs in these fields do not require specific bachelor's degrees for entry into the fields. Employers consider those with liberal arts degrees and relevant work experience suitable for jobs in these areas. Employers sometimes prefer, but do not require, marketing, sales, and administrative services managers and technical writers to possess bachelor's degrees in specific fields of study. The *Handbook* also notes that many employers fill marketing, sales, administrative services management, and technical writing positions by promoting experienced staff or related personnel. As no specific course of study is required for entry into these occupations and those without specific bachelor's degrees can be promoted into the positions, the petitioner fails to establish that a bachelor's or higher degree in a specific field of study is the normal minimum requirement for entry into the proposed position.

The AAO turns next to the first alternative prong of the second criterion at 8 C.F.R. § 214.2(h)(4)(iii)(A) - a specific degree requirement is common to the industry in parallel positions among similar organizations. To determine if a position is a specialty occupation under this criterion, CIS generally considers whether or not letters or affidavits from companies or individuals in the industry attest that such companies "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 petitioner asserts that similar organizations in its industry require business-related bachelor's degrees for positions similar to the instant position. To support this assertion, the petitioner submitted the files of six petitions CIS approved for positions that the petitioner asserts are similar to the proposed position.

First, this evidence is not persuasive as each nonimmigrant petition is a separate proceeding with a separate record. See 8 C.F.R. § 108(d). In making a determination of statutory eligibility, CIS is limited to the information contained in the record of proceeding. See 8 C.F.R. § 103.2(b)(16)(ii). Further, service center directors' decisions are not binding on the AAO. *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 AAO does note, however, that if the facts in the record relating to the second petition were similar to the facts in this

record, the director's approval of the petition would constitute gross error. The AAO is not required to approve a petition where eligibility has not been demonstrated, merely because of another approval that may have been erroneous. See, e.g., *Matter of Church Scientology International*, 19 I&N Dec. 593, 597 (Comm. 1988).

Second, these other cases are distinct from the instant case in several significant ways. For example, in the [REDACTED] petition, the petitioner was neither similar in size nor in scope to the instant petitioner. There, the petitioner, a power supply manufacturer, employed more than 50 individuals and grossed over \$10 million. Here, the petitioner imports home garden furniture, employs 13 individuals, and grosses about \$1.5 million. In the petition by [REDACTED] the petitioner, a baseball cap distributor, had branches in three different states, grossed nearly five times the amount of money as the instant petitioner, and employed almost twice as many people. In the [REDACTED] petition, the petitioner employed 108 individuals and grossed over \$7 million. All of the example petitions submitted were from California businesses and none were from garden furniture importers similar in size and scope to the petitioner. The petitioner has submitted no other evidence to support its assertion that a specialized degree requirement is common to the industry in parallel positions among garden furniture importers similar to it in size and scope. Therefore, the proposed position does not qualify as a specialty occupation under the first alternative prong at 8 C.F.R. § 214.2(h)(4)(iii)(A)(2).

The third criterion at 8 C.F.R. § 214.2(h)(4)(iii)(A) - the employer normally requires at least a bachelor's degree or its equivalent, in a specific field of study, for this position - is not a factor in this proceeding as the petitioner stated that this a newly created position.

Finally, the AAO turns to the criteria related to the complexity, uniqueness, or specialized nature of the proposed position. A petitioner satisfies the second alternative prong of the second criterion at 8 C.F.R. § 214.2(h)(4)(iii)(A)(2) if it establishes that a particular position is so complex or unique that it can be performed only by an individual with a bachelor's degree in a specific field of study. The criterion at 8 C.F.R. § 214.2(h)(4)(iii)(A)(4) requires a petitioner to establish that 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 bachelor's or higher degree in a specific field of study. The duties of the proposed position, as described by the petitioner, do not establish a requirement for a higher degree of knowledge and skill than would normally be required of marketing, sales, and administrative managers/bilingual technical writers equipped with less than a bachelor's degree level of knowledge. The petitioner asserts that the knowledge needed to perform the duties of writing and translating the company's official business documents from English to Chinese can only be acquired through a bachelor's degree in English, communication, or a business-related field. The record, however, lacks evidence that substantiates that the combined duties, as described by the petitioner, are so complex or unique that they can only be performed by an individual with a specific degree, or that they are so specialized and complex as to require knowledge usually associated with the attainment of a bachelor's degree or higher in a related field. The petitioner's assertions are not supported by any document in the record. Going on record without supporting documentary evidence is not sufficient for purposes of meeting the burden of proof in these proceedings. *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)).

No evidence contained in the record demonstrates that the proposed position is a specialty occupation.

The burden of proving eligibility for the benefit sought remains entirely 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.