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U.S. Citizenship
and Immigration
Services

D2



FILE: SRC 04 237 50160 Office: TEXAS SERVICE CENTER Date: **APR 12 2006**

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:

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 appeal will be dismissed. The petition will be denied.

The petitioner is an immigration law firm and seeks to employ the beneficiary as a European client support specialist. The petitioner 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 because the proffered position does not qualify as a specialty occupation. On appeal, the petitioner submits a brief and additional information stating that the offered position qualifies as a specialty occupation.

The issue to be discussed in this proceeding is whether the proffered position qualifies as a specialty occupation.

Section 101(a)(15)(H)(i)(b) of the Act, 8 U.S.C. § 1101(a)(15)(H)(i)(b), provides, in part, for the classification of qualified nonimmigrant aliens who are coming temporarily to the United States to perform services in a specialty occupation.

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.

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 are 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) the 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) the Form I-290B with supporting documentation. The AAO reviewed the record in its entirety before issuing its decision.

The petitioner is seeking the beneficiary’s services as a European client support specialist. Evidence of the beneficiary’s duties includes the Form I-129 petition with attachment, the petitioner’s response to the director’s request for evidence, and its appeal. According to this evidence the beneficiary would:

- Gather data in English, German and French on personal and business immigration issues;
- Investigate and research investment options in the U.S. for foreign business people and entrepreneurs, as well as work opportunities in the U.S. for international professionals who are highly-skilled or have been recognized for their achievements or talents in their respective fields;
- Translate foreign language documents and other materials into English for use by the management team and sales staff;
- Translate English language documents and other materials into German and French for use by European clientele and business contacts;
- Research market conditions in Europe to determine potential sales of U.S. business immigration legal services;
- Establish research methodology and design format for data gathering activities;
- Examine and analyze statistical data to forecast future marketing trends;
- Collect data on needs and preferences of potential foreign customers; and
- Consult with foreign clients to define business immigration issues and needs.

The petitioner requires a minimum of a bachelor's degree in international law, linguistics or marketing for entry into the proffered position.

Upon review of the record, the petitioner has failed to establish that a baccalaureate or higher degree or its equivalent is normally the minimum requirement for entry into the offered position, or that a degree requirement is common to the industry in parallel positions among similar organizations, as asserted by the petitioner. Factors often considered by CIS when determining these criteria include: whether the Department of Labor's *Occupational Outlook Handbook (Handbook)* reports that the industry requires a degree; whether an industry 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 information about the duties and educational requirements of particular occupations. The duties of the proffered position appear to fall within those noted for interpreters/translators, legal assistants and marketing managers. With regard to the marketing duties to be performed by the beneficiary, they are duties that are normally performed by marketing managers in the petitioner's business environment, not market research analysts. Marketing managers develop detailed marketing strategy, and determine the demand for products and services offered. They identify potential markets and in collaboration with other managers monitor trends that indicate the need for new products and services and oversee product development. The *Handbook* notes that a wide range of educational backgrounds is suitable for employment as a marketing manager, but that many employers prefer related experience plus a broad liberal arts background. Bachelor's degrees in sociology, psychology, literature, journalism, philosophy, or other subjects are suitable. Requirements will vary, however, depending on the duties of a particular position. For example, some employers prefer a bachelor's or master's degree in business administration with an emphasis in marketing, for marketing, sales, and promotion management positions. In highly technical industries such as computer and electronics manufacturing a degree in engineering or science combined with a business degree may be preferred. In public relations management positions some employers prefer a bachelor's or master's degree in public relations or journalism. The *Handbook* further notes that most advertising, marketing, promotions, public relations, and sales management positions are filled by promoting experienced staff or related professional or technical personnel. Many managers are former sales representatives, purchasing agents, or promotions specialists. A baccalaureate or higher degree in a specific specialty or its equivalent is not, therefore, the minimum requirement for entry into the position. A degree in a wide range of disciplines will suffice. The petitioner has, accordingly, failed to establish the first criterion of 8 C.F.R. § 214.2(h)(4)(iii)(A) with regard to the marketing duties to be performed by the beneficiary.

The translator/interpreter duties to be performed by the beneficiary also fail to qualify the position as a specialty occupation. The *Handbook* notes that while the educational backgrounds of interpreters and translators vary, a bachelor's degree is almost always required. A degree in a specific specialty, however, is not required. Knowledge of a language in addition to a native language is a given, but beyond that, there are many educational options. Interpreters and translators note that it is acceptable to major in something other than a language in order to successfully perform the duties of the position. Specialized training in how to do the work is also generally required. It is, therefore, apparent that a degree in a specific specialty is not a

minimum requirement for entry into the proffered position as interpreters and translators may come from a variety of educational disciplines. The petitioner has not satisfied the first criterion of 8 C.F.R. § 214.2(h)(4)(iii)(A) with respect to these duties.

In addition to the aforementioned duties, the beneficiary would also gather information from clients for work to be performed by attorneys. These interviewing and data gathering duties are regularly performed in the petitioner's business environment by legal assistants or other administrative personnel. The *Handbook* does not require a baccalaureate level education in a specific specialty to perform these duties. The petitioner has not satisfied the first criterion of 8 C.F.R. § 214.2(h)(4)(iii)(A) with respect to these duties.

The petitioner has also failed to establish that a degree requirement, in a specific specialty, is common to the industry in parallel positions among similar organizations. In support of this assertion the petitioner submitted copies of numerous job advertisements. Those advertisements do not establish the referenced regulatory criterion, however, in that they are not for positions parallel to the proffered position, and are not from organizations similar to that of the petitioner. The majority of the positions advertised simply noted that a bachelor's degree was required, but did not state that the degree need be in any specific educational discipline. Further, some of the advertisements only preferred a degree, but did not require one. The advertisements are, therefore, of little evidentiary value and do not establish the referenced criterion at 8 C.F.R. § 214.2(h)(4)(iii)(A)(2).

The petitioner does not assert that it normally requires a degree in a specific specialty for the offered position, and offers no evidence in this regard. The regulatory criterion at 8 C.F.R. § 214.2(h)(4)(iii)(A)(3), therefore, has not been established.

The combined duties to be performed by the beneficiary are not so specialized or complex that knowledge required to perform them is usually associated with the attainment of a baccalaureate or higher degree in a specific specialty. Nor are the combined duties so complex or unique that they can be performed only by an individual with a degree in a specific specialty. The duties as defined, appear to be routine for translators, marketing specialists and legal/administrative assistants. The petitioner submitted an opinion letter from ██████████ Assistant Dean for International Law and Policy Development at the Chicago-Kent College of Law. Ms. ██████████ states that the duties of the position are unique in that they fall within the areas of legal information gathering, market analysis and translation. Ms. ██████████ also states that the duties are of such complexity that they require a degree or higher in a specific specialty, and are normally associated with the attainment of a bachelor's or higher degree in International Law. The record clearly indicates, however, that the employer does not itself require a degree only in International Law for entry into the position. The employer will accept a degree in International Law, linguistics or marketing. The opinion of Ms. ██████████ is contrary to the evidence submitted by the petitioner with respect to the educational requirements of the position. CIS may, in its discretion, use as advisory opinion 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). Ms. ██████████ also does not reference any industry survey or other data in support of her conclusion. Simply going on the 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 190 (Reg. Comm. 1972)).

The petitioner also makes reference to the O*Net and *Dictionary of Occupational Titles (DOT)* to establish that the offered position normally requires a baccalaureate level education. The petitioner's assertions in this regard are not persuasive. Neither the *DOT's* SVP rating nor a Job Zone category indicate that a particular occupation requires the attainment of a baccalaureate or higher degree, or its equivalent, in a specific specialty as a minimum for entry into the occupation. An SVP rating and Job Zone category are meant to indicate only the total number of years of vocational preparation required for a particular position. Neither classification describes how those years are to be divided among training, formal education, and experience, nor specifies the particular type of degree, if any, that a position would require. The petitioner has failed to establish the referenced regulatory criteria at 8 C.F.R. § 214.2(h)(4)(iii)(A)(2) or (4).

Finally, the petitioner makes reference to other positions which have received H-1B approval in an effort to establish that the present position is a specialty occupation. This reference will not sustain the petitioner's burden of establishing H-1B qualification in the petition now before the AAO. This record of proceeding does not contain the entire record of proceedings in the petitions referred to by counsel. Accordingly, no comparison of the positions can be made. Each nonimmigrant petition is a separate proceeding with a separate record. *See* 8 C.F.R. § 103.8(d). In making a determination of statutory eligibility, the AAO is limited to the information contained in the record of proceeding. *See* 8 C.F.R. § 103.2(b)(16)(ii). It warrants noting that Congress intended this visa classification for aliens that are to be employed in an occupation that requires the theoretical and practical application of a body of highly specialized knowledge. Congress specifically stated that such an occupation would require, as a *minimum* qualification, a baccalaureate or higher degree in the specialty. CIS regularly approves H-1B petitions for qualified aliens who are to be employed as engineers, computer scientists, certified public accountants, college professors, and other such professions. These occupations all require a baccalaureate degree in the specialty occupation as a minimum for entry into the occupation and fairly represent the types of professions that Congress contemplated when it created that visa category. In the present matter, the petitioner has offered the beneficiary a position as a European client support specialist. For the reasons discussed above, the proffered position does not require attainment of a baccalaureate or higher degree in a specific specialty as a minimum for entry into the occupation, and approval of a petition for another beneficiary based on identical facts would constitute material error, gross error, and a violation of 8 C.F.R. § 214.2 paragraph (h).

The proffered position does not meet any of the requirements of 8 C.F.R. § 214.2(h)(4)(iii)(A). Accordingly, the director's denial of the I-129 petition shall not be disturbed.

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 failed to sustain that burden and the appeal shall accordingly be dismissed.

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