



U.S. Citizenship
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Services

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FILE: LIN 04 207 51096 Office: NEBRASKA SERVICE CENTER Date: AUG 30 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:



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, Chief
Administrative Appeals Office

DISCUSSION: The director of the service center denied the nonimmigrant visa petition and the matter is now before the Administrative Appeals Office (AAO) on appeal. The director's decision is withdrawn and the petition remanded for entry of a new decision.

The petitioner is a construction company that seeks to employ the beneficiary as a marketing director. The petitioner, therefore, 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 on the ground that the proffered position is not a specialty occupation. Counsel submits a timely appeal.

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) 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 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 marketing director. Evidence of the beneficiary's duties includes: the Form I-129; the attachments accompanying the Form I-129; the petitioner's support letter; and the petitioner's response to the director's request for evidence. According to this evidence, the beneficiary would perform duties that entail the following: analyzing and segmenting the residential consumer market in the Washington area; identifying target markets; selecting appropriate market approach methods for each market segment; recruiting marketing staff; implementing and supervising marketing activities; analyzing the feedback of market responses; and developing requirements for service product differentiations in the market. The petitioner's response to the request for evidence elaborated on the proposed duties. For the proposed position the petitioner requires a bachelor's degree in business and two years of experience in marketing design and management.

In the denial letter, the director found the petitioner's reference to the *Dictionary of Occupational Titles (DOT)* and the *Occupational Information Network (O*Net)* and submission of job postings insufficient to establish the offered position as a specialty occupation. The director stated that the proposed duties are encompassed within the Department of Labor's (DOL) *Occupational Outlook Handbook's* (the *Handbook*) classification of advertising, marketing, promotions, public relations, and sales managers. According to the director, the *Handbook* indicates that occupations in this classification do not require a baccalaureate degree in a specific academic discipline.

On appeal, counsel states that the submitted evidence indicates that the offered position is that of a market research analyst and that the *Dictionary of Occupational Titles (DOT)* and the *Handbook* reveal that a market research analyst requires at least a bachelor's degree. Counsel asserts that the job postings describe positions requiring at least a baccalaureate degree. Counsel submits a letter from the petitioner that states that the petitioner's growth necessitates the services of a marketing director, and he also submits a detailed breakdown of the duties of the proposed position. This breakdown indicates that the duties are a combination of those of a market and survey researcher, a marketing manager, and a computer and information systems manager.

Upon review of the record, the petitioner has established one of the four criteria outlined in 8 C.F.R. § 214.2(h)(4)(iii)(A). Therefore, the proffered position is a specialty occupation.

To satisfy the regulation at 8 C.F.R. § 214.2(h)(4)(iii)(A)(4), the petitioner must establish that the nature of the specific duties is so specialized and complex that the knowledge required to perform such duties is usually associated with the attainment of a baccalaureate or higher degree. The nature of the petitioner, the proposed job description, the income tax records, and other evidence of record reflect that a bachelor's degree in a specific discipline is required for the proposed position of marketing director. The petitioner submitted sufficient evidence that provides a factual basis in which to conclude that the nature of the proposed duties is so specialized and complex that the knowledge required to perform the duties is usually associated with the attainment of a baccalaureate degree in marketing, statistics, or a related field. Accordingly, the petitioner establishes the criterion at 8 C.F.R. § 214.2(h)(4)(iii)(A)(4).

The AAO will now consider the beneficiary's qualifications for the proposed position of marketing director.

The record contains the beneficiary's transcript and degree in business administration from Yonsei University in Seoul, Korea, and certificates of employment from DACOM Corporation, Tellabs Korea, Inc., Airmedia Corporation, and HelloStory Corporation. The record, however, does not contain an educational evaluation of the beneficiary's degree in business administration. Thus, the petition may not be approved at this time as the evidence contained in the record is insufficient to demonstrate that the beneficiary is qualified to perform the duties of the proposed position – marketing director. The director may afford the petitioner reasonable time to provide evidence pertinent to the issue of whether the beneficiary is qualified to perform the duties of the proposed position, and any other evidence the director may deem necessary. The director shall render a new decision based on the evidence of record as it relates to the regulatory requirements for eligibility. 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 March 10, 2005 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.