



U.S. Citizenship
and Immigration
Services

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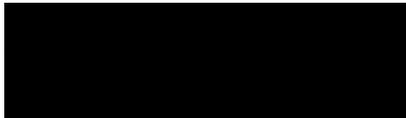
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FILE: WAC 04 026 50224 Office: CALIFORNIA SERVICE CENTER Date:

IN RE: Petitioner:
Beneficiary:



JAN 27 2006

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, Director
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 appeal will be dismissed. The petition will be denied.

The petitioner provides mortgages, loans, and home financing. It seeks to employ the beneficiary as an advertising specialist. 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 because the proffered position is not a specialty occupation. On appeal, counsel submits a brief and previously submitted 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 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 an advertising specialist. 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 gathering and preparing media materials and coordinating advertising concepts; planning and coordinating advertising policies; developing advertisements and authorizing publication content including interviews; analyzing sales promotion results to establish cost effective programs for promotional campaigns; leading research teams in search of information showing statistics related to advertising sales campaigns; creating an advertising budget for approval by management; meeting with newspapers, magazines, television stations, and advertising agencies to negotiate advertising contracts; conceptualizing activities and layouts for commercial advertisements and preparing media layouts and advertisements to conform with the petitioner's objective; preparing advertising schedules; researching, writing, and selecting photographs; designing layouts and editing material for media publications and the petitioner's website; distributing information to the public by selecting topics, writing, or approving press releases and preparing background material and press packets; gaining effective advertising results for the petitioner; responding to requests for information from the community and local media; preparing public service announcements and participating in fundraising campaigns. The petitioner's October 13, 2003 letter stated that it requires a baccalaureate degree "with coursework in advertising, communications, graphics or a related field."

The director determined that the proffered position parallels managerial positions in advertising, marketing, promotions, public relations, and sales as those occupations are described in the Department of Labor's (DOL) *Occupational Outlook Handbook* (the *Handbook*), and that the *Handbook* shows that a bachelor's degree in a specific specialty is not required for those positions. The director found the job duties described generically, providing no detail to establish the proposed position as having a uniqueness or complexity or specialization. Without marketing, advertising, and sales staff, the director stated that the duties associated with those occupations, which are not specialty occupation positions, would be performed by the beneficiary. The director stated that the beneficiary's primary duties reflect those of a marketing specialist or sales representative and are insufficient to establish that they qualify as a specialty occupation. Citing *Matter of Obaigbena*, 19 I&N Dec. 533, 534 (BIA 1988); *Matter of Ramirez-Sanchez*, 17 I&N Dec. 503, 506 (BIA 1980); and *Matter of Laureano*, 19 I&N Dec. 1, 3 (BIA 1983), the director stated that counsel's assertions regarding the complexity and uniqueness of the proposed position must be supported by documentary evidence. According to the director, although the petitioner claims to employ only individuals with bachelor's degrees or higher in business administration, the proposed position fails to meet the statutory definition of a specialty occupation. The AAO notes that the director erred by suggesting that the petitioner is in the travel agency industry; the petitioner provides mortgage, loan, and home financing services.

On appeal, counsel asserts that the director incorrectly applied the law and that CIS previously approved a similar petition filed by an employer on behalf of the beneficiary. Counsel asserts that the proposed position is encompassed within the *Handbook's* classification concerning managerial positions in advertising,

marketing, promotions, public relations, and sales; and that the *Handbook* indicates that the proposed position requires a baccalaureate degree in a particular field. Counsel states that the *Handbook* conveys that “a wide range of educational backgrounds is suitable for entry into advertising, marketing, promotions, public relations, and sales managerial jobs.” Furthermore, counsel states:

This should not be interpreted to mean that the proposed position does not require a bachelor’s degree in any particular field simply because it happens to fall under this entry. The entry describes a vast array of jobs, and specialties in the classification are very different positions with very different entry requirements. Therefore, the required degree for entry will vary depending on the type of position being offered, and the business of the employer.

Counsel claims that the proposed position resembles an advertising manager, and that according to the *Handbook* the requirement of a baccalaureate degree in advertising is appropriate. Counsel states:

Different positions in sales management or public relations, however, carry other academic requirements; such as a [b]achelor’s [d]egree in literature, sociology, or psychology. But a common requirement in all of these diverse positions is the minimum of a bachelor’s degree in a field related to the particular specialty. Therefore[,] the [*Handbook*] evidences that the offered position is a specialty occupation as a [b]achelor’s [d]egree or its equivalent is the normal minimum requirement for entry.

Counsel refers to submitted job postings to show that a bachelor’s degree in business administration, advertising, or a related field is a normal minimum requirement for entry into the proposed position; and to two letters from companies similar to the petitioner to demonstrate that it is common in the industry to require a baccalaureate degree for an advertising specialist. Counsel asserts that the petitioner has a past practice of hiring persons with a baccalaureate degree in a field related to the proposed position. Counsel maintains that the petitioner’s job description is detailed, showing that the position requires a baccalaureate degree in a related discipline.

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.

Counsel noted that CIS approved another petition that had been previously filed on behalf of the beneficiary. The director’s decision does not indicate whether he reviewed the prior approval of the nonimmigrant petition. If the previous nonimmigrant petition was approved based on the same assertions that are contained in the current record, the 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)

Moreover, 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, CIS is limited to the information contained in the record of proceeding. *See* 8 C.F.R. § 103.2(b)(16)(ii).

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 had approved the nonimmigrant petition on behalf of the beneficiary, 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 prior approval does not preclude CIS from denying an extension of the original visa petition based on a reassessment of the petitioner's qualifications. *Texas A&M Univ. v. Upchurch*, 99 Fed. Appx. 556, 2004 WL 1240482 (5th Cir. 2004).

The AAO next considers the criteria at 8 C.F.R. §§ 214.2(h)(4)(iii)(A)(1) and (2): a baccalaureate or higher degree in a specific specialty or its equivalent is the normal minimum requirement for entry into the particular position; a specific 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 in a specific specialty. 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)).

In determining whether a 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 *Handbook* for its information about the duties and educational requirements of particular occupations.

Counsel asserts that the *Handbook* indicates that advertising managers, an occupation that the AAO finds is similar to the proposed position, require a baccalaureate degree. The *Handbook* reports that "a wide range of educational backgrounds is suitable for entry into advertising, marketing, promotions, public relations, and sales managerial jobs"; and that:

[M]any 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.

Specifically for managerial positions in advertising, the *Handbook* relays:

For advertising management positions, some employers prefer a bachelor's degree in advertising or journalism. A course of study should include marketing, consumer behavior, market research, sales, communication methods and technology, and visual arts-for example, art history and photography.

...

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. . . .

The above excerpts from the *Handbook* reveal that employers do not normally require a baccalaureate degree in a specific specialty for managerial positions in advertising.

Job postings are referenced by counsel to show that a bachelor's degree in business administration, advertising, or a related field is a normal minimum requirement for entry into the proposed position. Counsel's assertion about the educational requirements of the proposed position is inconsistent with the petitioner's October 13, 2003 letter, however. In the letter the petitioner stated that it requires a baccalaureate degree "with coursework in advertising, communications, graphics or a related field." The petitioner does not require a baccalaureate degree in a specific specialty such as in business administration, advertising, or a related field, as claimed by counsel. The assertions of counsel do not constitute evidence. *Matter of Obaigbena*, 19 I&N Dec. 533, 534 (BIA 1988); *Matter of Ramirez-Sanchez*, 17 I&N Dec. 503, 506 (BIA 1980). As such, the petitioner's educational requirement fails to meet the definition of a specialty occupation as set forth at section 214(i)(1) of the Act, 8 U.S.C. § 1184(i)(1), as the requirement of a baccalaureate degree with coursework in particular areas is not the same as requiring a baccalaureate degree in a specific specialty.

The AAO's conclusion, from the evidence to which it has referred, is that the petitioner fails to establish the first criterion at 8 C.F.R. § 214.2(h)(4)(iii)(A): that a baccalaureate or higher degree, or its equivalent, in a specific specialty is the normal minimum requirement for entry into the particular position.

To establish the first alternative prong at 8 C.F.R. § 214.2(h)(4)(iii)(A)(2) the petitioner must establish that a specific degree requirement is common to the industry in parallel positions among similar organizations. The submitted job postings and the letters from [REDACTED] Inc. are not persuasive in establishing this prong. The employers in the postings are dissimilar in size and scope to the petitioner, a small mortgage, loan, and home financing company; their nature is not revealed; or they do not require a baccalaureate degree in a specific specialty. Ashley Furniture Industries is in the furniture industry; Advanced Marketing Services, Inc. distributes books; U.S. Bank does not require a specific baccalaureate degree; and American Century Investments, Zale Corporation, and Washington Mutual are not described. The [REDACTED] & [REDACTED] Inc. letters indicate a requirement of a

baccalaureate degree in advertising for an advertising specialist position. Nonetheless, this is not the same as the petitioner's educational requirement since the petitioner requires a baccalaureate degree "with coursework in advertising, communications, graphics or a related field." For these reasons, the submitted job postings fail to establish that a specific degree requirement is common to the industry in parallel positions among similar organizations.

The petitioner has not satisfied the second alternative prong at 8 C.F.R. § 214.2(h)(4)(iii)(A)(2) as no evidence in the record shows the proffered position is so complex or unique that it can be performed only by an individual with a degree in a specific specialty. According to the director, the job duties are described generically, providing no detail to establish the proposed position as having a uniqueness or complexity or specialization. The AAO finds that the job duties are quite specific; nonetheless, the *Handbook* reveals that the proposed position is similar to an advertising manager, which is an occupation that does not require a baccalaureate degree in a specific specialty. Equally important, as already discussed in this decision, the petitioner does not require a baccalaureate degree in a specific specialty for the proposed position as it merely requires a baccalaureate degree "with coursework in advertising, communications, graphics or a related field." (October 13, 2003 letter). Thus, the petitioner fails to establish the second alternative prong at 8 C.F.R. § 214.2(h)(4)(iii)(A)(2).

To satisfy the regulation at 8 C.F.R. § 214.2(h)(4)(iii)(A)(3) the petitioner must normally require a degree or its equivalent for the position. Counsel asserts that the petitioner has established this criterion, and refers to a evidence of a baccalaureate degree in advertising and two baccalaureate degrees in business administration, which are the degrees held by previous advertising specialists. The requirement of a baccalaureate degree in business administration however, does not qualify a position as a specialty occupation. As indicated in *Matter of Michael Hertz Assocs.*, 19 I&N Dec. 558, 560 (Comm. 1988), for a position to qualify as a specialty occupation:

A petitioner must establish that the position realistically requires knowledge, both theoretical and applied, which is almost exclusively obtained through studies at an institution of higher learning. The depth of knowledge and length of studies required are best typified by a degree granted by such institution at the baccalaureate level. It must be demonstrated that the position requires a precise and specific course of study which relates directly and closely to the position in question. Since there must be a close corollary between the required specialized studies and the position, the requirement of a degree of generalized title, such as business administration or liberal arts, without further specification, does not establish eligibility.

The petitioner's acceptance of a baccalaureate degree in business administration, without indicating a specific field of concentration, fails to establish the requirement of a baccalaureate degree, or its equivalent, in a specific specialty for the proposed position. Thus, the evidence fails to establish the third criterion at 8 C.F.R. § 214.2(h)(4)(iii)(A).

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 them is usually associated with the attainment of a baccalaureate or higher degree. Counsel claims that the proposed duties are specialized and complex and require a baccalaureate degree in a related field. The *Handbook*, however, undermines counsel's assertion by revealing that an advertising manager does not require a baccalaureate degree in a specific specialty. The assertions of counsel do not constitute evidence. *Matter of Obaigbena*, 19 I&N Dec. 533, 534 (BIA 1988); *Matter of Ramirez-Sanchez*, 17 I&N Dec. 503, 506 (BIA 1980). In addition, as already addressed above, the evidence shows that the petitioner does not require a baccalaureate degree in a specific specialty for the proposed position as it simply requires a baccalaureate degree "with coursework in advertising, communications, graphics or a related field." (October 13, 2003 letter). Accordingly, the petitioner fails to establish this last criterion at 8 C.F.R. § 214.2(h)(4)(iii)(A).

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 on this ground.

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.