

identifying data deleted to
prevent clearly unwarranted
invasion of personal privacy



U.S. Citizenship
and Immigration
Services

PUBLIC COPY



D2

FILE: SRC 04 001 50154 Office: TEXAS SERVICE CENTER Date: **JUL 26 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:

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, Chief
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 computer equipment importer and exporter that seeks to employ the beneficiary as a marketing and commercial manager and to classify him 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 failed to establish that its proposed position was a specialty occupation.

The petitioner submitted a timely Form I-290B on March 30, 2005 and indicated that it would send a brief and/or additional evidence to the AAO within 30 days. As of this date, however, the AAO has not received any brief or additional evidence. Therefore, the record is complete.

The issue before the AAO is whether the proposed position qualifies as a specialty occupation. To meet its burden of proof in this regard, a petitioner must establish that the job it is offering to the beneficiary meets the following statutory and regulatory requirements.

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 one 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 above criteria to mean not just any bachelor's or higher degree, but one in a specific specialty that is directly related to the proposed position.

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

The petitioner seeks the beneficiary's services as a marketing and commercial manager. Evidence of the beneficiary's duties includes: the Form I-129 and the petitioner's support letter; the response to the RFE; and the Form I-290B. The petitioner stated that the beneficiary's duties would entail, in part: directing the entire marketing operations of the company; conducting investment analysis and economic and financial research; compiling data; elaborating periodic reports in order to assess the company's financial growth; studying and applying methods to lower operational costs while employing more efficient systems to increase profitability; devising methods and procedures for collecting and processing data related to research areas such as employment, productivity, wages and hours; elaborating and supervising the application of collecting methods and credit analysis systems to be used with major international clients to advise on changes in financing methods and policies; helping to formulate solutions for economic problems related to international monetary policies or policies that regulate investment and transfer of capital; analyzing financial tables and reports in order to achieve market and sales targets; suggesting strategies to develop sales in the region for approval by the general manager; studying sales records; analyzing reports and budgets; planning and establishing administrative policies; supervising supplying contracts; negotiating favorable deals; and participating in fairs, shows, and administrative talks. The petitioner stated that the position required a bachelor's degree and years of experience.

The director found that the evidence did not demonstrate that the proposed duties required the theoretical and practical application of a body of highly specialized knowledge requiring the attainment of a bachelor's degree in marketing. The director further found that the beneficiary's degree in electrical engineering did not qualify the beneficiary to perform the duties of a marketing manager.

On appeal, the petitioner asserts that the proposed position requires experience working with computer equipment and that the beneficiary's degree in electrical engineering qualifies him for the proposed position.

The petitioner need only satisfy one of the criteria at 8 C.F.R. 214.2(h)(4)(iii)(A) to establish that a position is a specialty occupation. Upon a thorough review of the record, the AAO concludes that the petitioner has not established that the proposed position meets any of the 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 particular job qualifies as a specialty occupation, CIS does not simply rely on a position's title, but reviews the specific duties of the proposed position, combined with the nature of the petitioning entity's business operations. CIS must examine the ultimate employment of the alien, and determine whether the position qualifies as a specialty occupation. *Cf. Defensor v. Meissner*, 201 F. 3d 384 (5th Cir. 2000). The critical element is not the title of the position nor an employer's self-imposed standards, but whether the position actually requires the theoretical and practical application of a body of highly specialized knowledge, and the attainment of a bachelor's or higher degree in the 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 of particular occupations. Based on the petitioner's description and a thorough review of the *Handbook*, the AAO finds that the duties of the proposed position resemble those of marketing managers, who, according to the *Handbook*, identify potential markets and promote the firm's products and services to attract potential users. Marketing managers develop pricing strategy with an eye towards maximizing the firm's share of the market and its profits while ensuring that the firm's customers are satisfied. They also identify potential markets and determine the

demand for products and services offered by the firm and its competitors. These duties are similar to such duties of the proposed position as “directing the entire marketing operations of the company” and “analyzing financial tables and reports in order to achieve market and sales targets.”

To determine if the proposed position qualifies as a specialty occupation under the criterion at 8 C.F.R. 214.2(h)(4)(iii)(A)(1) – 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 managers. Regarding the educational requirements for those in this field, the *Handbook* notes that:

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* clearly indicates that jobs in this field do not require a specific bachelor’s degree for entry into the field. Employers consider those with liberal arts degrees and relevant work experience suitable for jobs in this area. Employers prefer, but do not require, marketing managers to possess bachelor’s degrees in specific fields of study. Thus, 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 marketing manager position.

The proposed position does not meet the two alternative prongs of the second criterion at 8 C.F.R. § 214.2(h)(4)(iii)(A)(2) – that the degree requirement is common to the industry in parallel positions among similar organizations or that a particular position is so complex or unique that it can be performed only by an individual with a degree. The petitioner has not provided any evidence that the requirement of a bachelor’s degree in a specific specialty is common in the computer parts industry in parallel positions among similar companies. In addition, the employer has not shown that this particular marketing manager position is so complex or unique that only an individual with a bachelor’s degree can perform it.

The AAO now turns to 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 the position. To determine if a petitioner has established this criterion, the AAO generally reviews the petitioner’s past employment practices, including the histories of those employees who previously held the position, as well as their names, dates of employment, and copies of their diplomas. The petitioner asserts that it has “never hired and will not hire an individual in the capacity of a market and commercial manager with the duties and responsibilities as delineated above, who did not hold at least a bachelor’s degree or the equivalent.” In the instant case, the petitioner has not submitted evidence to establish its normal hiring practices for the proposed position. 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)). In the absence of an employment

history for the position, the petitioner has not established that its position qualifies as a specialty occupation under the criterion at 8 C.F.R. § 214.2(h)(4)(iii)(A)(3).

Finally, the AAO turns to the criterion at 8 C.F.R. § 214.2(h)(4)(iii)(A)(4) - 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. To the extent that they are depicted in the record, the duties of the proposed position are routine for marketing managers, which the *Handbook* indicates may be performed by persons without a bachelor's degree in a related field. The petitioner has failed to establish the referenced criteria at 8 C.F.R. §§ 214.2(h)(4)(iii)(A)(4).

No evidence contained in the record demonstrates that the proposed position is a specialty occupation. The petitioner has not overcome the director's decision in this regard.

With respect to the beneficiary's qualifications, the AAO has determined that the petition cannot be approved on the basis that the proposed position is not a specialty occupation. Therefore, it will not address the issue of the beneficiary's qualifications. A beneficiary's credentials to perform a particular job are relevant only when a job is found to be a specialty occupation.

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.