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20 Mass. Ave., N.W., Rm. A3042
Washington, DC 20529



U.S. Citizenship
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Services

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FILE: LIN 05 212 51333 Office: NEBRASKA SERVICE CENTER Date: **JUN 02 2006**

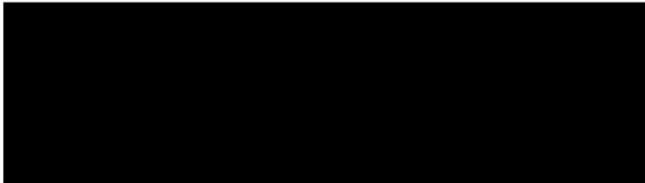
IN RE: Petitioner:



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.

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 an asset recovery company that seeks to employ the beneficiary as a title examiner and analyst 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, counsel submits a brief and additional documents.

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

The petitioner seeks the beneficiary's services as a title examiner and analyst. Evidence of the beneficiary's duties includes: the Form I-129, the response to the RFE, and the documents submitted on appeal. According to this evidence, the beneficiary would perform duties that entail: researching public records to determine overcharges and credits to individuals through information analysis such as reviewing tax property histories, warrant books, title records, and tax responsibilities; and supervising the sales department by training contact agents to review the relevant information and market the petitioner's services to potential clients. The petitioner stated that the position requires the beneficiary to have a liberal arts bachelor's degree.

The director found that the liberal arts degree requirement failed to establish that the proposed position was a specialty occupation under the criterion at 8 C.F.R. 214.2(h)(4)(iii)(A)(I). The director further found that the evidence did not establish that the asset recovery industry routinely required a bachelor's degree in a specific field of study as a prerequisite for the proposed position or that the petitioner normally required a degree in a specific specialty for the position. Finally, the director found that the proposed duties resembled those of typical title examiners and sales and marketing managers as described in the Department of Labor's *Occupational Outlook Handbook (Handbook)* and were not so specialized and complex that the knowledge required to perform them is usually associated with a bachelor's degree in a specific specialty.

On appeal, counsel submits affidavits and copies of the bachelor's degrees of three current employees and one former employee from the petitioner's research department as well as a letter from a former professor of the beneficiary's from Northwestern University. Counsel asserts that the proposed position qualifies as a specialty occupation under the first, third, and fourth criteria. Counsel asserts that the director misclassified the position as a title examiner, as that position is described in the *Handbook*. Counsel asserts that the position entails more complex duties similar to those performed by social scientists or sociologists. Counsel asserts that the petitioner has a hiring pattern that establishes that the position constitutes a specialty occupation. Finally, counsel asserts that the proposed duties are specialized and complex because, more than just summarizing research, they involve design and analysis of the data retrieved and then the marketing of the petitioner's services to potential clients.

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, the AAO concludes that the petitioner has failed to establish that its proposed title examiner and analyst position meets 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 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 bachelor's degree in a specific field of study as the minimum for entry into the occupation as required by the Act.

The AAO routinely consults the *Handbook* in its consideration of whether or not a position is a specialty occupation and for the *Handbook's* information about the duties and educational requirements of particular occupations. Based on a thorough review of the petitioner's position description and the *Handbook*, the AAO agrees with the director and finds that the proposed position most resembles a combination of the positions of title examiner, marketing manager, and sales manager at an asset recovery agency. According to the *Handbook*, title examiners search real estate records, examine titles, or summarize pertinent legal or insurance details for a variety of purposes. The proposed duties of researching public records to determine overcharges and credits to individuals through information analysis such as reviewing tax property histories, warrant books, title records, and tax responsibilities, are typical title examining duties. According to the *Handbook*,

marketing managers develop a firm's marketing strategy and identify potential markets, while sales managers assign sales territories, set goals, and establish training programs for the sales representatives. These duties mirror the proposed duty of "supervising the sales department by training contact agents to review the relevant information and market the petitioner's services to potential clients."

The AAO disagrees with counsel that the position most resembles that of social scientists or sociologists. While the beneficiary holds a bachelor's degree from Northwestern University, the petitioner will not employ her as a sociologist. None of the proposed duties appear to resemble the duties of sociologists, described by the *Handbook* as those who study society and social behavior by examining the groups and social institutions people form, as well as various social, religious, political, and business organizations; and who study the behavior of, and interaction among, groups, trace their origin and growth, and analyze the influence of group activities on individual members.

On appeal, counsel submits a letter from Professor [REDACTED] one of the beneficiary's professors from Northwestern. The opinion offered by the professor is not probative. Professor [REDACTED] states that the beneficiary's coursework and research will "permit her significant advantages in her limited work with clients," her training of sales agents, and her title examining and analysis. However, the issue is not whether the beneficiary is qualified to perform the duties of the proposed position, but whether the proposed position is a specialty occupation. CIS may, in its discretion, use as advisory opinions 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).

Counsel also submits a letter from [REDACTED] a former employee of the petitioner who previously held the position of title examiner and analyst. Ms. [REDACTED] asserts that her sociology degree was important to her successful completion of her job duties and that she would not have been able to perform her job successfully without the preparation she received from her bachelor's degree in sociology. The *Handbook*, a compilation of nationwide data from surveys, interviews, questionnaires, studies, and other sources, indicates that the skills necessary to perform the duties of the proposed position can be acquired from a wide range of educational backgrounds, not exclusively from sociology or related fields. Ms. [REDACTED] submits a copy of her bachelor's degree but does not submit documentary evidence to support her assertions. 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)).

To determine whether the position is a specialty occupation, the AAO first turns to 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. Counsel asserts that the *Handbook* and the *O*Net* show that the proposed position normally requires a bachelor's degree. The *O*Net* database is a comprehensive source of descriptors, with ratings of importance, level, frequency or extent, for occupations that are key to the economy. *O*Net* descriptors include: skills, abilities, knowledge, tasks, work activities, work context, experience levels required, job interests, and work values/needs. This resource does not specify whether a position would require at least a bachelor's degree in a specific specialty. For this reason, the AAO does not rely on *O*Net* information. The AAO finds that the *Handbook* provides a more comprehensive description of the nature of a particular occupation and the education, training and experience normally required to enter into and advance within an occupation. The AAO reviewed the *Handbook's* discussion of the educational requirements for title examiners and marketing and sales managers to determine whether or not the petitioner has satisfied this first criterion. A review in the *Handbook* of the educational requirements for title examiners

reveals that the most significant source of postsecondary education or training is moderate-term on-the-job training. The *Handbook* reveals the following about 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. In highly technical industries, such as computer and electronics manufacturing, a bachelor's degree in engineering or science, combined with a master's degree in business administration, is preferred.

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. In small firms, where the number of positions is limited, advancement to a management position usually comes slowly. In large firms, promotion may occur more quickly.

The *Handbook* indicates that jobs in these areas do not require bachelor's degrees for entry into the field. No specific course of study is required for entry into these occupations and those without bachelor's degrees can be promoted to fill the positions. Thus, the petitioner fails to establish that a bachelor's or higher degree, or its equivalent, in a specific field of study is the normal minimum requirement for entry into the proposed position. The petitioner has failed to establish that the position is one that qualifies as a specialty occupation under the criterion at 8 C.F.R. § 214.2(h)(4)(iii)(A)(1).

Next, the AAO turns to the first alternative prong of the criterion at 8 C.F.R. § 214.2(h)(4)(iii)(A)(2) - 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 has not submitted evidence with regard to this criterion. 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 AAO now turns to the criterion at 8 C.F.R. § 214.2(h)(4)(iii)(A)(3) - the employer normally requires at least a bachelor's degree or its equivalent, in a specific field of study, for the position. As previously stated, 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 which is in a specific specialty that is directly related to the proposed position. To determine whether 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 indicates that it requires a

bachelor's degree in the liberal arts. On appeal, the petitioner submits affidavits and copies of the diplomas of several current employees and one former employee in its research department. These four individuals hold bachelor's degrees in a variety of areas, including economics, political science, and sociology. None of these degrees appear to directly relate to the proposed position. The petitioner's educational requirement is not enough to establish that the proposed position qualifies as a specialty occupation, as the requirement must be for a bachelor's degree in a specific specialty directly related to the proposed position. In this case, it means a requirement for a bachelor's degree in marketing, management, or related fields. Thus, the petitioner fails to establish that the 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 criteria related to the complexity, uniqueness, or specialized nature of the proposed position. A petitioner satisfies the second alternative prong of the 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 petitioner does not establish that the proposed position is so complex or unique that only an individual with a bachelor's degree in a specific specialty can perform it. The petitioner also does not establish 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 bachelor's degree in a specific specialty. The duties, as described by the petitioner, appear to be the typical duties of a title examiner/marketing and sales manager at an asset recovery agency, a combination of positions which the *Handbook* indicates does not normally require a bachelor's degree in a specific specialty and can be filled by a non-degreed individual based on experience not equivalent to a bachelor's degree in a specific specialty.

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.