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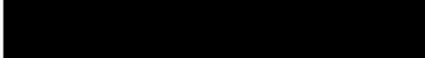
U.S. Citizenship
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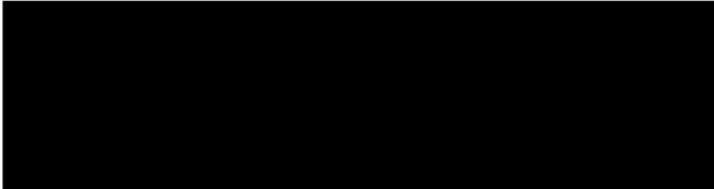
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FILE: WAC 04 230 50840 Office: CALIFORNIA SERVICE CENTER Date: **MAY 08 2008**

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 materials 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 service center director denied the nonimmigrant visa petition. The matter is now on appeal before the Administrative Appeals Office (AAO). The appeal will be sustained. The petition will be approved.

The petitioner is a floor covering company. It seeks to employ the beneficiary as a market analyst 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 ground that the record failed to establish that the proffered position is 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.

As provided in 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 evidence (RFE); (3) the petitioner's response to the RFE; (4) the notice of decision; and (5) Form I-290B and an appeal brief. The AAO reviewed the record in its entirety before issuing its decision.

The petitioner describes itself as a floor covering company, in business since 1957, with 70 employees, gross annual income of approximately \$25 million, and net annual income of approximately \$1.5 million. Due to the regional and national boom in housing construction and home improvements, the petitioner declares, it is in need of a market analyst to maintain its competitive edge. The duties of the proffered position, and the percentage of time required by each duty, are listed by the petitioner as follows:

- 10% Consult newspapers, trade journals and other publications to keep abreast of new technologies and innovations in this industry.
- 10% Collect and analyze data on customer demographics, preferences, needs and buying habits to identify potential markets and factors affecting product demand.
- 15% Be responsible for all aspects of market research in formulating, conducting, and preparing reports of planning and research programs to identify current trends in the carpet/decorating/interior design field.
- 5% Study demand in domestic businesses versus residential properties as well as product decorative versus functional purposes.
- 15% Be responsible for examination and analysis of statistical data to forecast North American market trends for products and services.
- 20% Research competitors' strategies and study economic reports, journals and other resource materials to monitor current market conditions.
- 10% Examine and analyze gathered data and determine potential sales as well as future marketing and consumer purchasing trends in different demographic areas.
- 15% Provide marketing information to management to make or amend policies and decisions for ongoing and future business opportunities.

According to the petitioner, the minimum educational requirement for the position is a bachelor's degree in business administration, marketing, statistics, or a related field. The beneficiary is qualified to perform the job, the petitioner declares, by virtue of his bachelor of business administration from Loyola Marymount University in Los Angeles, California, granted in August 1997, and his master of business administration in human and organizational development from Azusa Pacific University in Azusa, California, granted in July 2000.

In his decision the director determined that the duties of the proffered position, though they included some functions of market research and analysis, are primarily those of a marketing manager as described in the Department of Labor (DOL)'s *Occupational Outlook Handbook (Handbook)*. The *Handbook*, as the director pointed out, indicates that a baccalaureate level of education in a specific specialty is not a normal, industry-wide requirement for entry into the occupation. The record did not establish that a degree requirement in a specific field of study is common to the industry in parallel positions among similar organizations, the director stated, or that the proffered position is so complex or unique that it could only be performed by an individual with a degree in a specific specialty. The director noted that no documentation had been submitted showing that the petitioner had previously hired the beneficiary for the position or required the beneficiary, or any other individual in the position, to have a degree in a specific specialty. Nor did the record establish that the duties of the position are so specialized and complex that the knowledge required to perform them is usually associated with a baccalaureate or higher degree in a specific specialty. The director concluded that the proffered position did not qualify as a specialty occupation under any of the criteria enumerated at 8 C.F.R. § 214.2(h)(4)(iii)(A).

On appeal counsel asserts that the director erred in finding that the petitioner would not be employing the beneficiary as a market analyst, and for not advising the petitioner of its doubt in the RFE so that the petitioner could address the issue in its response to the RFE. Counsel objects to the director's statement that the petitioner lacks a sufficient consumer base to warrant the services of a market analyst, pointing out that metropolitan Los Angeles, where the petitioner operates, is a very large market. The previously submitted factual and documentary record, counsel contends, establishes the nature of the proffered position and the beneficiary's eligibility for H-1B classification.

In determining whether a position meets the statutory and regulatory criteria of a specialty occupation, CIS routinely consults the DOL *Handbook* as an authoritative source of information about the duties and educational requirements of particular occupations. Factors typically considered are whether the *Handbook* indicates a degree is required by the industry; 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*, 764 F.Supp. 1095, 1102 (S.D.N.Y. 1989)). CIS also analyzes the specific duties and complexity of the position at issue, with the *Handbook's* occupational descriptions as a reference, as well as the petitioner's past hiring practices for the position. See *Shanti, Inc. v. Reno, id.*, at 1165-66.

In accord with the director's decision, the AAO is not persuaded by the evidence of record that the duties of the proffered position are those of a market research analyst. The AAO agrees with the director that while the duties appear to involve some research and analysis, the position is that of a marketing manager. That occupation is described as follows in the DOL *Handbook*, 2006-07 edition:

Marketing managers develop the firm's marketing strategy in detail. With the help of subordinates . . . they estimate the demand for products and services offered by the firm and its competitors. In addition, they identify potential markets – for example, business firms, wholesalers, retailers, government, or the general public. Marketing managers develop pricing strategy to help firms maximize profits and market share while ensuring that the firm's customers are satisfied. . . . [T]hey monitor trends that indicate the need for new products and services and they oversee product development

With respect to the educational requirements of the occupation, the *Handbook, id.*, states the following:

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.

[M]ost advertising, marketing, promotions, public relations, and sales management positions are filled by promoting experienced staff or related professional personnel.

As the *Handbook* clearly indicates, a baccalaureate or higher degree in a specific specialty is not the normal, industry-wide requirement for entry into a marketing manager position. Many employers give favorable consideration to a broad spectrum of degrees, as well as relevant work experience, in hiring for such a position. Thus, a marketing manager does not meet the first alternative criterion of a specialty occupation, at 8 C.F.R. § 214.2(h)(4)(iii)(A)(1), because a baccalaureate degree in a specific specialty is not the normal minimum requirement for entry into such a position.

Based on the evidence of record, however, the AAO determines that the duties of the proffered position are so specialized and complex that the knowledge required to perform them is usually associated with a baccalaureate or higher degree, which qualifies the position as a specialty occupation under 8 C.F.R. § 214.2(h)(4)(iii)(A)(4). The petitioner's description of the job duties, as noted by the director in his decision, indicates that the proffered position includes research and analysis functions that exceed the scope of a basic marketing manager position. The record includes an organizational chart, which does not list any other position or employee with a marketing management function, as well as state and federal wage and withholding statements that show the scale of the petitioner's business operations. As indicated in the original petition and on appeal, the petitioner's gross annual income is around \$25 million and its market encompasses metropolitan Los Angeles. Taking these factors into consideration, as well as the research and analysis functions of the job, the AAO is persuaded that the duties of the proffered position are more specialized and complex than those of a typical marketing manager and that knowledge usually associated with the attainment of a baccalaureate degree is required to perform those duties. The AAO concludes that the proffered position qualifies as a specialty occupation under 8 C.F.R. § 214.2(h)(4)(iii)(A)(4).

The director's decision denying the petition on the ground that the proffered position is not a specialty occupation shall be withdrawn.

As provided in 8 C.F.R. § 214.2(h)(4)(iii)(C), the beneficiary must meet one of the following criteria to qualify to perform services in a specialty occupation:

- (1) Hold a United States baccalaureate or higher degree required by the specialty occupation from an accredited college or university;
- (2) Hold a foreign degree determined to be equivalent to a United States baccalaureate or higher degree required by the specialty occupation from an accredited college or university;
- (3) Hold an unrestricted State license, registration or certification which authorizes him or her to fully practice the specialty occupation and be immediately engaged in that specialty in the state of intended employment; or
- (4) Have education, specialized training, and/or progressively responsible experience that is equivalent to completion of a United States baccalaureate or higher degree in the specialty occupation, and have recognition of expertise in the specialty through progressively responsible positions directly related to the specialty.

The record establishes that the beneficiary earned a bachelor of business administration in August 1997 at Loyola Marymount University in Los Angeles, California, and a master of business administration in human and organizational development at Azusa Pacific University in Azusa, California, in July 2000. The transcript from Azusa Pacific University shows that the beneficiary's master's degree program included such courses as international business management; strategy and planning; organizational development and change; marketing management and planning; and applied research and analysis. The AAO determines that the beneficiary's master's degree meets the criterion of 8 C.F.R. § 214.2 (h)(4)(iii)(C)(I) and thereby qualifies the beneficiary to perform services in the specialty occupation.

Thus, the record establishes that the proffered position is a specialty occupation and that the beneficiary is qualified to perform services in that occupation.

The petitioner bears the burden of proof in these proceedings. *See* section 291 of the Act, 8 U.S.C. § 1361. The petitioner has met that burden. Accordingly, the AAO will sustain the appeal and approve the petition.

ORDER: The appeal is sustained. The petition is approved.