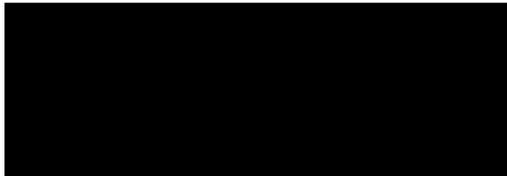




U.S. Citizenship
and Immigration
Services

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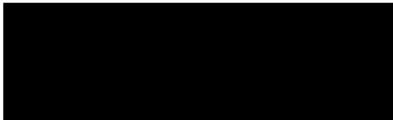
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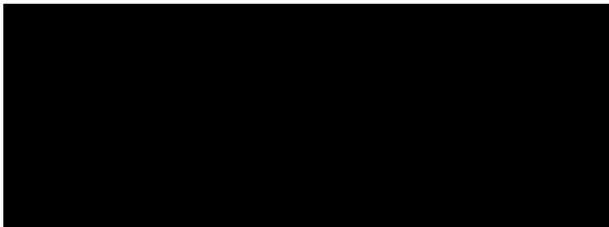
FILE: WAC 05 001 53940 Office: CALIFORNIA SERVICE CENTER Date: **MAY 24 2006**

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 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 engaged in manufacturing, designing, importing, distributing, and wholesaling jewelry, accessories, and aromatherapy products designed and manufactured by its parent company in Israel. It seeks to employ the beneficiary as a product image/distribution specialist. The petitioner 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 does not qualify as a specialty occupation. On appeal, counsel submits a brief and additional information stating that the offered position qualifies as a specialty occupation.

The issue to be discussed in this proceeding is whether the proffered position qualifies as a specialty occupation.

Section 101(a)(15)(H)(i)(b) of the Act, 8 U.S.C. § 1101(a)(15)(H)(i)(b), provides, in part, for the classification of qualified nonimmigrant aliens who are coming temporarily to the United States to perform services in 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.

The term "specialty occupation" is further defined at 8 C.F.R. § 214.2(h)(4)(ii) as:

[A]n occupation which requires theoretical and practical application of a body of highly specialized knowledge in fields of human endeavor including, but not limited to, architecture, engineering, mathematics, physical sciences, social sciences, medicine and health, education, business specialties, accounting, law, theology, and the arts, and which requires the attainment of a bachelor's degree or higher in a 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 are 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 with supporting documentation. The AAO reviewed the record in its entirety before issuing its decision.

The petitioner is seeking the beneficiary's services as a product image/distribution specialist. Evidence of the beneficiary's duties includes the Form I-129 petition and the petitioner's response to the director's request for evidence. According to this evidence the beneficiary would:

- Monitor performance in the market of the petitioner's new line of products to be able to analyze and develop target market opportunities and sales programs;
- Assist the marketing and accounting division in establishing product positioning and pricing policies;
- Develop strategies, systems and procedures to determine and sustain demand for the company's products;
- Coordinate product development and product launches with software, hardware and design engineers, as well as the marketing, sales and operating divisions;
- Plan tactical communications to identify the essential branded image;
- Conceptualize and create a corporate image for the petitioner's products and the company as a whole, considering attributes such as operational excellence, product leadership, diversification, cost effectiveness, size and exceptional customer service;
- Establish strategic plans for product image development and be responsible for the process of creating corporate image implementation in the following stages:

1. Research - The beneficiary will prepare a detailed analysis of the company in order to learn more about the company's culture, its target market, goals, and expectations. She will assess the present company profile, competition profile, marketing program, business plan, and program budget, then prepare and interpret research studies to help the petitioner determine its present position in the market, prospective customers, possible threats, opportunities, product strengths and weaknesses, the appropriate corporate image for the company, most effective choice of communications materials and their implementation, and the integration of the corporate image and all communication materials;
 2. Rendering - In this stage of creating corporate image, the beneficiary will identify creative design concepts that address the petitioner's needs and objectives. She will integrate these concepts into various communications vehicles such as brochures, newsletters, direct mail, events, stationery, web sites, training materials, relationship marketing tools and advertisements.
 3. Internalization - Once the beneficiary produces a communications campaign, she will internalize the concept and educate the entire organization on their role in the marketing process.
 4. Review - Following development of the company image, the beneficiary will track the effectiveness of all developed materials and when necessary make adjustments. She will gather internal feedback mechanisms and market surveys and monitor the life cycle of company products and anticipate possible developments.
- Determine appropriate distribution channels for company products; and
 - Coordinate with the parent company to ensure timely and continuous delivery of products to avoid business disruption.

The petitioner requires a bachelor's degree in business administration or a related field for entry into the offered position.

Upon review of the record, the petitioner has failed to establish that a baccalaureate or higher degree or its equivalent is normally the minimum requirement for entry into the offered position, or that a degree requirement is common to the industry in parallel positions among similar organizations, as asserted by the petitioner. Factors often considered by CIS when determining these criteria include: whether the Department of Labor's *Occupational Outlook Handbook (Handbook)* reports that the industry requires a degree; whether an industry 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)).

The AAO routinely consults the *Handbook* for information about the duties and educational requirements of particular occupations. The duties of the proffered position, though varied, are not those of a management

analyst or market research analyst as stated by the petitioner. Management analysts are primarily employed as consultants in private industry and hold master's degrees with years of experience in the field in which they consult. Market research analysts are involved in pure market research and analyze the results of their research to make recommendations to their employers about the promotion, distribution, design, and pricing of products and services. In this instance, the beneficiary's duties are varied and include duties normally performed by managers in advertising, marketing, promotions, public relations and sales. The *Handbook* notes that a wide range of educational backgrounds is suitable for entry into the aforementioned positions, but that many employers prefer related experience plus a broad liberal arts background. Bachelor's degrees in sociology, psychology, literature, journalism, philosophy, or other subjects are suitable. Requirements will vary, however, depending on the duties of a particular position. For example, some employers prefer a bachelor's or master's degree in business administration with an emphasis in marketing, for marketing, sales, and promotion management positions. In highly technical industries such as computer and electronics manufacturing a degree in engineering or science combined with a business degree may be preferred. In public relations management positions some employers prefer a bachelor's or master's degree in public relations or journalism. The *Handbook* further notes that most advertising, marketing, promotions, public relations, and sales management positions are filled by promoting experienced staff or related professional or technical personnel. Many managers are former sales representatives, purchasing agents, or promotions specialists. A baccalaureate or higher degree in a specific specialty or its equivalent is not, therefore, the minimum requirement for entry into the position. A degree in a wide range of disciplines will suffice. The petitioner has failed to establish the at criterion at 8 C.F.R. § 214.2(h)(4)(iii)(A)(1).

The petitioner has also failed to establish that a degree requirement, in a specific specialty, is common to the industry in parallel positions among similar organizations. In support of this assertion the petitioner submitted statements from the following companies: MB Jewelry Design & MFG. LTD; Masterpiece Jewelry and Watches; and Sonya Dakar Skincare, Inc. These companies state that they only employ individuals in such positions as management consultant, accountant, marketing specialist, public relations specialist, and information systems who hold a minimum of a bachelor's degree. The companies did not, however, detail the duties of the positions to which they refer so that the duties of those positions could be compared to the duties of the proffered position. Further, they did not state that they required a degree in any specific specialty for the positions referenced, or establish that they did, in fact, employ individuals in those positions who hold a bachelor's degree. The petitioner also submitted copies of two job advertisements for a product development specialist with a jewelry wholesaler/manufacturer requiring a bachelor's degree in marketing, management or advertising. Two advertisements are not sufficient in scope to establish an industry educational standard for any given position. The documentation submitted does not establish the referenced criterion at 8 C.F.R. § 214.2(h)(4)(iii)(A)(2).

The petitioner states that it normally requires a degree or its equivalent for entry into the proffered position, but offers no evidence in support of this assertion other than the statement of its president. Simply going on the 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 190 (Reg. Comm. 1972)). Further, 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 or 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 baccalaureate or higher degree in the specific specialty as the minimum for entry into the occupation as required by the Act.¹ To interpret the regulations any other way would lead to absurd results: if CIS were limited to reviewing a petitioner's self-imposed employment requirements, then any alien with a bachelor's degree could be brought into the United States to perform menial, non-professional, or an otherwise non-specialty occupation, so long as the employer required all such employees to have baccalaureate or higher degrees. *See id* at 388. The petitioner has failed to establish the criterion at 8 C.F.R. § 214.2(h)(4)(iii)(A)(3).

Finally, the duties to be performed by the beneficiary are not so specialized or complex that knowledge required to perform them is usually associated with the attainment of a baccalaureate or higher degree in a specific specialty. Nor are the duties so complex or unique that they can be performed only by an individual with a degree in a specific specialty. The duties are routine for the position in the industry and normally performed by individuals holding degrees in a wide range of educational disciplines. The petitioner has failed to establish the referenced criteria at 8 C.F.R. §§ 214.2(h)(4)(iii)(A)(2) or (4).

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.

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 failed to sustain that burden and the appeal shall accordingly be dismissed.

ORDER: The appeal is dismissed. The petition is denied.

¹ The court in *Defensor v. Meissner* observed that the four criteria at 8 C.F.R. 214.2(h)(4)(iii)(A) present certain ambiguities when compared to the statutory definition, and "might also be read as merely an additional requirement that a position must meet, in addition to the statutory and regulatory definition." *See id.* at 387.