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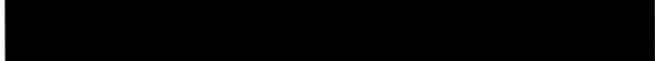
U.S. Citizenship
and Immigration
Services

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FILE: WAC 04 210 54078 Office: CALIFORNIA SERVICE CENTER Date: **MAY 26 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 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 designs, manufactures, and sells packaging machines. It seeks to employ the beneficiary as an operations/market research analyst. 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 additional 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) the Form I-129 and supporting documentation; (2) the director's denial letter; and (3) the 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 operations/market research analyst. Evidence of the beneficiary's duties includes: the Form I-129; the attachments accompanying the Form I-129; and the petitioner's support letter. According to this evidence, the beneficiary would perform duties that entail: researching operations procedures in carrying out analysis to support the improvement of performance; studying operation's problems; gathering information to determine the most efficient production level; examining storage-cost data provided by the accounting department; presenting management with recommendations based on research results; analyzing statistical data on past sales to predict future sales; devising methods and procedures for obtaining data on competitors and analyzing prices, sales, and methods of marketing and distribution, and making recommendations to senior managers; providing management with information to make decisions on promotions, distribution, design, and the pricing of products or services; and developing advertising brochures, commercials, sales plans, and product promotions. The petitioner asserts that it requires a bachelor's degree in business management, commerce, marketing, accounting, or a related field and at least two years of experience in management, sales, or marketing.

The director stated that some of the proposed duties reflect those of a market research analyst as that occupation is described in the Department of Labor's *Occupational Outlook Handbook* (the *Handbook*), and that the *Handbook* indicates that this is a specialty occupation. However, the director stated that sole reliance on duties resembling those of a market research analyst as that occupation is described in the *Handbook* and the *Dictionary of Occupational Titles* (DOT) is misplaced. When determining whether a position qualifies as a specialty occupation, the director stated that the specific duties combined with the nature of the petitioning entity are factors that CIS considers, and that each position must be evaluated based on the nature and complexity of the actual job duties. The director stated that the beneficiary's obtaining a degree in a related area does not guarantee the position is a specialty occupation. Further, the director stated that performing incidental specialty occupation duties does not establish a position as a specialty occupation. The director discussed the *Handbook's* description of a market research analyst, and stated that the petitioner does not have the organizational complexity or type or scale of business to require the services of an in-house market research analyst. The director found that the petitioner does not have any advertising, marketing, and/or sales staff (positions that do not qualify as specialty occupations); thus, the beneficiary would perform all of those non-specialty occupation duties. The director found that the offered position resembles that of a marketing manager, which is an occupation that the *Handbook* indicates does not require a baccalaureate degree in a specific specialty. The director stated that the proposed duties are generic in nature and fail to provide adequate detail so as to establish the specialized or complex nature of the position. The director found the petitioner failed to establish one of the criteria at 8 C.F.R. § 214.2(h)(4)(iii)(A).

On appeal, counsel states that the offered position qualifies as a specialty occupation because it requires skills and education in commerce, marketing, and research. Counsel contends that the *Handbook* and the DOT show that a market research analyst must hold a bachelor's degree. Counsel states that the beneficiary must be knowledgeable about the current trends in manufacturing and the petitioner's products so as to advise

clients and devise efficient methods of attaining the petitioner's objectives. Counsel states that some of the duties which the beneficiary will perform are those of an operations research analyst and that the *Handbook* indicates an operations research analyst holds a master's degree in operations research or a related field. Counsel points to job postings to show that operations research analysts are employed in the manufacturing industry. Counsel discusses the benefits of employing an in-house operations/market research analyst. Counsel refers to the *Handbook* to show that market and survey researchers are employed in most industries.

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.

The AAO first considers the criteria at 8 C.F.R. §§ 214.2(h)(4)(iii)(A)(1) and (2): a baccalaureate or higher degree or its equivalent is the normal minimum requirement for entry into the particular position; a 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. Factors often considered by CIS when determining these criteria include: whether the 2006-2007 edition of 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)).

Counsel's reference to and assertions about the relevance of information from the *DOT* are not persuasive. Neither a specific vocational preparation (SVP) rating nor a Job Zone category indicates that a particular occupation requires the attainment of a baccalaureate or higher degree, or its equivalent, in a specific specialty as a minimum for entry into the occupation. An SVP rating and Job Zone category are meant to indicate only the total number of years of vocational preparation required for a particular position. Neither classification specifies the particular type of degree, if any, that a position would require. It is the *Handbook* that the AAO routinely consults for information about the duties and educational requirements of particular occupations.

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 agrees with counsel's assertion that the *Handbook* reports that market and survey researchers are employed in most industries. However, the AAO finds that the director was correct in finding that the *Handbook* reveals that the proposed duties are a combination of those of marketing and sales managers. A marketing and sales manager is described in the *Handbook* as follows:

Marketing managers develop the firm's marketing strategy in detail. With the help of subordinates, including *product development managers* and *market research managers*, they estimate the demand for products and services offered by the firm and its competitors. In

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. In collaboration with sales, product development, and other managers, they monitor trends that indicate the need for new products and services, and they oversee product development. Marketing managers work with advertising and promotion managers to promote the firm's products and services and to attract potential users.

Sales managers direct the firm's sales program. They assign sales territories, set goals, and establish training programs for the sales representatives. . . . Sales managers advise the sales representatives on ways to improve their sales performance. In large, multiproduct firms, they oversee regional and local sales managers and their staffs. Sales managers maintain contact with dealers and distributors. They analyze sales statistics gathered by their staffs to determine sales potential and inventory requirements and to monitor customers' preferences. Such information is vital in the development of products and the maximization of profits.

The proposed duties resemble those of sales and marketing managers. The beneficiary will research operations procedures to improve performance; study operation's problems; gather information to determine the most efficient production level; examine storage-cost data provided by the accounting department; present management with recommendations based on research results; analyze statistical data on past sales to predict future sales; devise methods and procedures for obtaining data on competitors and analyzing prices, sales, and methods of marketing and distribution; provide management with information to make decisions on promotions, distribution, design, and the pricing of products or services; and develop advertising brochures and commercials, sales plans, and product promotions. Such duties are encompassed within the *Handbook's* description of sales and marketing managers. For example, a marketing manager will "estimate the demand for products and services offered by the firm and its competitors"; "develop pricing strategy to help firms maximize profits and market share"; and "monitor trends that indicate the need for new products and services." A sales manager will "analyze sales statistics gathered by their staffs to determine sales potential and inventory requirements."

For managerial positions in marketing and sales, the *Handbook* indicates that employers do not require a baccalaureate degree in a specific academic discipline. It states:

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.

Based on the proposed duties, which resemble those of managerial positions in sales and marketing, and the *Handbook's* information that those occupations do not require a baccalaureate degree in a specific specialty, the petitioner fails to establish the criterion at 8 C.F.R. § 214.2(h)(4)(iii)(A)(1): 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), that a specific degree requirement is common to the industry in parallel positions among organizations that are similar to the petitioner, counsel claims to have submitted into the record job postings. The AAO notes, however, that the record does not contain any job postings. As such, the petitioner fails to establish that a specific degree requirement is common to the industry in parallel positions among organizations that are similar to the petitioner.

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. For the reasons discussed at 8 C.F.R. § 214.2(h)(4)(iii)(A)(1), the petitioner fails to establish that the offered position normally requires a baccalaureate degree in a specific academic specialty. Thus, the petitioner fails to establish the second alternative prong at 8 C.F.R. § 214.2(h)(4)(iii)(A)(2).

No evidence in the record establishes the regulation at 8 C.F.R. § 214.2(h)(4)(iii)(A)(3): that the petitioner normally requires a degree or its equivalent for the position.

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 such duties is usually associated with the attainment of a baccalaureate or higher degree. As discussed at 8 C.F.R. § 214.2(h)(4)(iii)(A)(1), the petitioner failed to establish the offered position as normally requiring a baccalaureate degree in a specific specialty. Accordingly, the petitioner fails to establish this last criterion at 8 C.F.R. § 214.2(h)(4)(iii)(A)(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 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.

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