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U.S. Citizenship
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Services

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FILE: LIN 04 800 54062 Office: NEBRASKA SERVICE CENTER Date: 07/02/11

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:



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 is an international advertising and management company. It seeks to employ the beneficiary as an advertising manager (alternative title marketing manager). 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 finding that the proffered position is not a specialty occupation and the beneficiary is not qualified to perform the duties of a specialty occupation. Counsel submits a timely appeal.

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) 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; (5) the Form I-290B and supporting evidence. The AAO reviewed the record in its entirety before issuing its decision.

The petitioner is seeking the beneficiary's services as an advertising manager (alternative title marketing manager). Evidence of the beneficiary's duties includes: the Form I-129; the attachments accompanying the Form I-129; the petitioner's support letter; and the petitioner's response to the director's request for evidence. According to this evidence, the beneficiary's duties entail the following: planning and executing the petitioner's advertising policies; conferring with clients to discuss possible new accounts and outline new policies or sales promotion campaigns; conferring with officials of newspapers, radio and television stations, billboard advertisers, Internet search engines, and affiliates and advertising agencies to negotiate advertising contracts; allocating advertising space for clients' products; reviewing and approving Internet advertisements before release and rates and Internet advertising classifications; directing staff that develop and produce advertisements; researching, gathering, and compiling information and statistics relevant to planning and executing Internet advertising sales promotion campaigns; managing the on-line advertising and search engine marketing (SEM) budget; optimizing media campaigns and performance through creative, copy, and landing page analysis; managing several on-line marketing and SEM campaigns and implementing and delivering results on SEM and on-line marketing test plans. For the proposed position the petitioner requires a bachelor's degree in business, management, marketing, advertising, or a related field.

The director denied the petition. The director stated that the Department of Labor's (DOL) *Occupational Outlook Handbook* (the *Handbook*) indicates that employers do not require an advertising manager to possess a bachelor's degree in a specialized area. The submitted job postings did not persuade the director to find that the proposed position qualifies as a specialty occupation. The director stated that the petitioner's hiring history failed to establish that it normally requires a bachelor's degree in a specialized area. According to the director, the beneficiary's education, training, and experience are not equivalent to a U.S. baccalaureate degree in a specialized area that is relevant to the proposed position.

On appeal, the petitioner states that the complexity of the beneficiary's duties requires knowledge associated with the attainment of a baccalaureate degree. "[P]lanning and executing advertising policies requires the ability to create and synthesize a strategy based on a specific body of knowledge related to marketing and advertising," the petitioner asserts. The petitioner states that:

Conversing with clients to create new promotion campaigns requires the ability to understand and ascertain the needs of the client, to apply knowledge of marketing and advertising strategies to the client's specific needs and then create new promotional ideas.

According to the petitioner:

[T]he duties require skills of negotiating contracts, reviewing and approving the work of other employees, researching and compiling information, managing budgets and increasing revenues, analysis and optimizing of media campaigns, and managing online marketing campaigns. These duties most definitely require higher level critical thinking and

communication skills and the knowledge base acquired in achieving a baccalaureate degree in the business specialties of [m]arketing or [a]dvertising and [m]anagement.

Counsel references letters from university professors and information from the publication *In Store Marketing* to establish that the offered position requires a baccalaureate degree in a specific academic specialty. On appeal, the petitioner submits job postings to establish that the offered position is a specialty occupation. According to the petitioner, it is “challenging to obtain proprietary information from competitors regarding the number of [their] employees and [their] gross annual income.” The petitioner asserts that there is no statutory requirement for it to have a certain number of employees or level of income, and that the job titles and duties of the job postings parallel the proposed position. The petitioner asserts that the beneficiary is qualified to perform the duties of the proposed position.

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 in a specific specialty or its equivalent is the normal minimum requirement for entry into the particular position; a specific 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 in a specific specialty. 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)).

The *Handbook* is routinely consulted by the AAO for information about the duties and educational requirements of occupations. Based on the evidence in the record, the proposed duties are a combination of those of advertising and marketing managers. These occupations are described as follows in the *Handbook*.

Advertising managers oversee advertising and promotion staffs, which usually are small, except in the largest firms. In a small firm, managers may serve as liaisons between the firm and the advertising or promotion agency to which many advertising or promotional functions are contracted out. In larger firms, advertising managers oversee in-house account, creative, and media services departments. The *account executive* manages the account services department, assesses the need for advertising, and, in advertising agencies, maintains the accounts of clients. The creative services department develops the subject matter and presentation of advertising. The *creative director* oversees the copy chief, art director, and associated staff. The *media director* oversees planning groups that select the communication media—for example, radio, television, newspapers, magazines, the Internet, or outdoor signs—to disseminate the advertising.

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 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.

According to the *Handbook*, employers do not require advertising and marketing managers to hold a baccalaureate degree in a specific academic specialty as it 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. 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.

For advertising management positions, some employers prefer a bachelor's degree in advertising or journalism. A course of study should include marketing, consumer behavior, market research, sales, communication methods and technology, and visual arts—for example, art history and photography.

The AAO's conclusion, based on the above discussion and the evidence in the record, is that the petitioner fails to establish the first criterion at 8 C.F.R. § 214.2(h)(4)(iii)(A): 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 similar organizations - the record contains letters from university professors and job postings. The letter from [REDACTED], with Georgia State University, concludes that the proposed position "is a specialty occupation for which an employer would

normally require an undergraduate business degree in either advertising or marketing.” bases his conclusion on the rapidly changing field in which the proposed position is situated. He stated:

Advertising managers are struggling to understand the impact of the Internet and to incorporate Internet capabilities into mainstream advertising programs. The effective use of this relatively new technology requires both analytical and conceptual skills, grounded within a marketing or advertising degree.

The proposed position, [REDACTED] stated, requires analytical skills related to campaign management, strategy skills for planning campaigns, and relationship skills for client interaction and staff management. [REDACTED] finds that the proposed position is a mid-level or higher position and that it would not be uncommon to require “MBA-level training” for the proposed position. According to [REDACTED] the nature of the specific duties described in the proposed job description, coupled with the complex interaction of variables, supports his contention that a marketing or advertising undergraduate degree is necessary for the position. He stated that the wide-spread availability and popularity of the master’s of business administration degree has increased the minimum acceptable academic training, for the type of job described here, to an undergraduate marketing business degree. According to [REDACTED] the trend has been that employers and funding agencies all seek increased accountability from universities to demonstrate that graduates have acquired key competencies. This supports the claim that the advertised position requires an undergraduate business degree, [REDACTED] asserts.

The letter from [REDACTED] Marketing and International Business Department, University of Washington Business School, indicated that a baccalaureate or higher degree in business administration - marketing is a minimum requirement for the proposed position. [REDACTED] stated that business competition has forced companies to hire persons with already acquired skill sets. According to [REDACTED] the advertising manager job is at the executive, management level of any organization as it requires “skillful management and decisions balancing the marketing mix of an organization’s product, pricing, place (distribution), and promotion.” [REDACTED] stated “it is possible that over time an individual could learn these marketing management skills, however, the speed of business and lack of time today mandates already learned skill sets.”

The letters from [REDACTED] and [REDACTED] are not persuasive in establishing that the proposed position requires a baccalaureate degree in a specific discipline. Neither professor notes that the petitioner employs three persons and grosses about \$43,000 a year, although they convey that the proposed position is a mid-level or higher position. The authors do not indicate that they reviewed company information about the petitioner, visited the site, or interviewed the petitioner. [REDACTED] indicated that an advertising manager must “incorporate Internet capabilities into mainstream advertising programs” and that “effective use of this relatively new technology requires both analytical and conceptual skills, grounded within a marketing or advertising degree.” The *Handbook* acknowledges that “[c]omputer skills are vital because marketing, product promotion, and advertising on the Internet are increasingly common.” However, it does not indicate that a marketing or advertising degree is required to incorporate Internet capabilities in advertising campaigns. While some advertising and marketing manager positions may require a bachelor’s degree in

marketing or advertising or a related field, neither professor gives sufficient details about the complexity of the duties in relation to the petitioner's advertising and management business to substantiate his conclusions. There is thus an inadequate factual foundation to support the opinions. The AAO may, in its discretion, use as advisory opinion statements submitted as expert testimony. However, where an opinion is not in accord with other information or is in any way questionable, the AAO is not required to accept or may give less weight to that evidence. *Matter of Caron International*, 19 I&N Dec. 791 (Comm. 1988). The record establishes that the proposed duties do not exceed the scope of a typical advertising or marketing manager. The AAO is not persuaded that the nature of the specific duties of the proposed position is more specialized and complex than that of a typical advertising or marketing manager and that the knowledge required to perform the duties is usually associated with the attainment of a bachelor's or higher degree in advertising, marketing, or a related field. The AAO notes that Mr. Eguchi conceded that it is possible that over time an individual could learn the marketing management skills that he claims are required for the proposed position.

The job postings are not persuasive in establishing that a specific degree requirement is common to the industry in parallel positions among similar organizations to the petitioner. The companies in the postings either differ in nature from the petitioner, a small international advertising and management company, or their nature is not revealed by the posting. Shutterfly and Pluck Corporation are not described in their postings. Kaplan Higher Education Corporation is in the educational field; TJX Companies, Inc., Microsoft, and Best Buy are billion dollar companies; American Van Equipment sells truck equipment; InFocus Corporation develops and markets large format display products and services; Match.com is a dating company; Autobyte.com, Inc. is in the automotive industry; BuyDomains is an online publisher and market maker of Internet domain names; and e-Bay, Inc. is a publicly-traded company. The positions with Management Recruiters of Franktown, Leavitt Management Group, Inc., e-Bay, Inc., and the travel website advertising company located in Scottsdale, Arizona, do not require a bachelor's degree in a specific academic discipline. For the stated reasons the job postings fail to establish that a specific degree requirement is common to the industry in parallel positions among organizations similar to the petitioner.

To establish the second alternative prong at 8 C.F.R. § 214.2(h)(4)(iii)(A)(2) the petitioner must show that the proffered position is so complex or unique that it can be performed only by an individual with a degree in a specific specialty. The *Handbook* reveals that employers do not require a bachelor's degree in a specific specialty for advertising and marketing manager positions. The record establishes that the proposed duties do not exceed the scope of a typical advertising or marketing manager. The AAO has already discussed the letters from [REDACTED] and [REDACTED] and explained why they are not persuasive in establishing that the proposed position requires a baccalaureate degree in a specific discipline. As such, the evidence fails to establish that the proposed position has a complexity or uniqueness that requires a baccalaureate degree in marketing, advertising, or a related discipline. Consequently, the petitioner fails to establish the second alternative prong at 8 C.F.R. § 214.2(h)(4)(iii)(A)(2).

No evidence establishes the regulation at 8 C.F.R. § 214.2(h)(4)(iii)(A)(3), which is that the petitioner must show that it 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 the duties is usually associated with the attainment of a baccalaureate or higher degree. The proposed duties parallel those of advertising and marketing managers, and the *Handbook* reveals that employers do not require a baccalaureate degree in a specific specialty for these positions. No evidence demonstrates that the proposed duties are so specialized and complex as to require a baccalaureate degree in marketing, advertising, or a related field. The letters from [REDACTED] and [REDACTED] are not persuasive in establishing that the proposed position requires a baccalaureate degree in a specific discipline. The evidence therefore fails to establish the 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 director found that the beneficiary is not qualified to perform the duties of a specialty occupation. The record contains two educational evaluations that evaluate the same educational documents relating to the beneficiary. The evaluation from Career Consulting International indicates that the beneficiary holds the educational equivalent of a U.S. regionally accredited bachelor of arts degree in marketing and management. The evaluation from the Foundation for International Services, Inc. states that the beneficiary holds the equivalent of a bachelor's degree in sports management from a regionally accredited college or university in the United States. The AAO notes that although the evaluators base their opinion on the same educational documents, they reach different conclusions. CIS uses an evaluation by a credentials evaluation organization of a person's foreign education as an advisory opinion only. Where an evaluation is not in accord with previous equivalencies or is in any way questionable, it may be discounted or given less weight. *Matter of Sea, Inc.*, 19 I&N Dec. 817 (Comm. 1988).

The AAO found that the proposed position does not require a bachelor's degree in a specific academic discipline. Thus, the beneficiary's qualifications to perform the proposed position do not bear on the outcome of this proceeding.

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.