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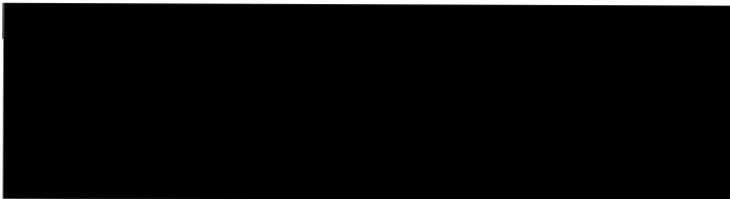
FILE: WAC 04 059 52523 Office: CALIFORNIA SERVICE CENTER Date: NOV 02 2006

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.

Robert P. Wiemann, Chief  
Administrative Appeals Office

**DISCUSSION:** The service center director denied the nonimmigrant visa petition and the Administrative Appeals Office (AAO) withdrew the decision, remanded the matter to the director for entry of a new decision, and ordered that if the decision was adverse to the petitioner it was to be certified to the AAO for review. On remand, the director denied the petition and certified his decision to the AAO for review. The director's decision will be affirmed. The petition will be denied.

The petitioner provides marketing and public relations services. It seeks to employ the beneficiary as a vice-president of marketing (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 nonimmigrant visa petition on the ground that the offered position does not qualify as a specialty occupation. The AAO withdrew the decision, finding that the position qualifies as a specialty occupation, and remanded the matter to the director to determine whether the beneficiary is qualified for the position, which the AAO found to require a bachelor's degree in marketing or a related field. The AAO ordered that if the director's decision was adverse to the petitioner it was to be certified to the AAO for review. On remand, the director issued a request for evidence, dated January 31, 2006, which sought evidence from the petitioner that would establish that the beneficiary is qualified to perform the proposed position, which requires a baccalaureate degree in marketing or a related field. In his June 9, 2006 decision the director stated that counsel did not submit a response to the January 31, 2006 request for evidence. Consequently, the director concluded that the petitioner failed to establish that the beneficiary is qualified to perform the duties of the proposed position. The director certified his decision to the AAO for review.

Upon review of the record, the AAO finds that the beneficiary is not qualified to perform the duties of the proposed position.

The AAO decision, dated November 22, 2005, found that the proposed position is a specialty occupation requiring a baccalaureate degree in marketing or a related field. The AAO further found that the evidence in the record was insufficient to establish that the beneficiary held a bachelor's degree, or the equivalent, in marketing or a related field. On certification, the AAO concurs with the director's finding that the evidence of record fails to establish that the beneficiary is qualified to perform the duties of the proposed position as the beneficiary does not possess a baccalaureate degree or the equivalent in marketing or a related field.

As related in the discussion above, the petitioner has failed to establish that the beneficiary is qualified to perform the duties of the proffered position. 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.

**ORDER:** The director's June 19, 2006 decision is affirmed. The petition is denied