



U.S. Citizenship
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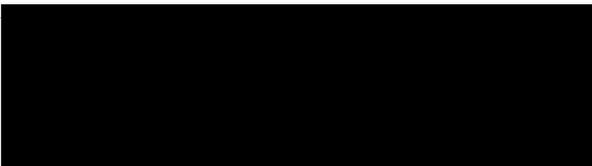
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FILE: WAC 05 046 50476 Office: CALIFORNIA SERVICE CENTER Date: **NOV 30 2006**

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 nonimmigrant visa petition was denied by the Director, California Service Center, and is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed. The petition will be denied.

The petitioner operates a tour and travel services business. It desires to employ the beneficiary temporarily in the United States as a market coordinator, at an annual salary of \$19.17 per hour, for three years. The director determined that the petitioner did not establish that the proffered position qualifies as a specialty occupation as enumerated in the regulations at 8 C.F.R. § 214.2(h)(4)(iii)(A) and denied the petition.

Counsel submits a brief in support of the appeal. In his brief, counsel states that the petitioner established that the position qualifies as a specialty occupation. Counsel also states that the proffered position is needed.

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), defines an H-1(b) temporary worker as:

an alien . . . who is coming temporarily to the United States to perform services in a specialty occupation described in section 214(i)(1) . . . and with respect to whom the Secretary of Labor determines and certifies to the Attorney General that the intending employer has filed with the Secretary an application under section 212(n)(1) . . .

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.

Similarly, the regulation at 8 C.F.R. § 214.2(h)(4)(ii) provides that:

Specialty occupation means an 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.

The regulation at 8 C.F.R. § 214.2(h)(4)(iii)(A) establishes four standards, one of which an occupation must meet to qualify as a specialty occupation:

- (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-290B and supporting documentation; (2) the director's denial letter; (3) the director's request for additional evidence; (4) the petitioner's response to the director's request; and (5) Form I-129 and supporting documentation. The AAO reviewed the record in its entirety before issuing the decision.

The Petition for a Nonimmigrant Worker (Form I-129) was filed on December 2, 2004. The petitioner is seeking the beneficiary's services as a market coordinator.

The letter submitted in support of the petition states that in the proffered position, the beneficiary's major responsibilities will involve handling marketing coordination among our United States headquarters. The duties of the proffered position are described as follows:

1. Coordinate with other department to resolve any issues regarding marketing policies of the company.
2. Coordinate marketing and promotional campaign to increase sales.
3. Evaluate the data gathered from competitors and make suggestions to the management regarding readjustment of marketing policies.
4. Examine and evaluate statistical data to forecast future market trends.
5. Provide the company's management with information needed to make decisions on the promotion, distribution and adjustment of pricing of company tour programs, or to determine the possibility of adding new programs.

6. Assist in the development of our business expansion plans with findings gained from the analysis and researches.
7. Prepare reports that present management with helpful conclusions and recommendations to solving administrative problems.
8. Assist in the reconstruction of company organizational structure layout.
9. Study management methods to improve workflow, simplify reporting procedures and implement cost reduction programs or methods.
10. Assist executive officer in coordinating mandatory office services, budgetary preparations and control, record controls, personnel staff regulations and special management studies.
11. Analyze jobs to delimit position responsibilities for use in wage and salary adjustments, promotions and evaluation.

On February 2, 2005, the director requested the petitioner to submit evidence establishing that the proffered position qualifies as a specialty occupation as set forth in the regulation at 8 C.F.R. § 214.2(h)(4)(iii)(A). CIS also requested the petitioner to submit its Form DE-6, Quarterly Wage Report and evidence that the beneficiary was in a valid nonimmigrant status at the time the present petition was filed.

In its response, dated April 20, 2005, the petitioner provided its organizational chart, Form DE-6 and resubmitted its November 30, 2004 letter that accompanied the initial filing of the petition.

In his decision, the director determined that the petitioner did not adequately establish that the duties of the position meet the criteria of a specialty occupation. The director concluded that the proffered position does not qualify as a specialty occupation under any of the criteria enumerated at 8 C.F.R. § 214.2(h)(4)(iii)(A).

In determining whether a position meets the statutory and regulatory criteria of a specialty occupation, CIS routinely consults the Department of Labor (DOL)'s *Occupational Outlook Handbook (Handbook)*, as an authoritative source of information about the duties and educational requirements of particular occupations.

To determine whether a particular job qualifies as a specialty occupation, CIS does not simply rely on a position's title. The specific duties of the proffered position, combined with the nature of the petitioning entity's business operations, are factors to be considered. 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 nor 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.

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).

The AAO turns first to 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 typically considered are whether the Department of Labor (DOL)'s *Occupational Outlook Handbook (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*, 712 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, to determine whether the degree requirement is common in the industry in parallel positions among similar organizations, and the petitioner's past hiring practices for the position. See *Shanti, Inc. v. Reno*, at 1165-66.

The petitioner states that the proffered position is that of a market coordinator. The AAO finds that the beneficiary's duties in the proffered position primarily parallel the responsibilities of a marketing manager, with some additional duties as an administrative services manager. Since counsel on appeal has characterized its position as that of a market manager, the AAO first turns to the *Handbook's* description of that occupation.

The *Handbook*, 2006-07 edition, gives the following information about the nature of the work of a marketing manager, in part, 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 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.

The *Handbook*, 2006-07 edition, gives the following information about the nature of the work of an administrative services manager, in part, as follows:

Administrative services managers perform a broad range of duties in virtually every sector of the economy. They coordinate and direct support services to organizations as diverse as insurance companies, computer manufacturers, and government offices. These workers manage the many services that allow organizations to operate efficiently, such as secretarial and reception, administration, payroll, conference planning and travel, information and data processing, mail, materials scheduling and distribution, printing and reproduction, records

management, telecommunications management, security, parking, and personal property procurement, supply and disposal.

The *Handbook*, 2006-07 edition, gives the following information about the training of a marketing manager, in part, as follows:

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

The *Handbook*, 2006-07 edition, gives the following information about the training of an administrative services manager, in part, as follows:

Educational requirements for these managers vary widely, depending on the size and complexity of the organization. In small organizations, experience may be the only requirement needed to enter a position as office manager. . . . Specific requirements vary by job responsibility. For first-line administrative services managers of secretarial, mailroom, and related support activities, many employers prefer an associate degree in business or management, although a high school diploma may suffice when combined with appropriate experience. . . .

Therefore, a baccalaureate or higher degree or its equivalent is not normally the minimum requirement for entry into this particular position. The *Handbook*, 2006-07 edition, does not state that a bachelor's degree in a specific specialty is required to perform the duties of the occupation. Further, the petitioner has not demonstrated that the duties of the proffered position would require a bachelor's degree in a precise and specific course of study that relates directly and closely to the position in question. The petitioner's business consists of four employees, namely, the president, secretary, director and driver. The petitioner has no personnel or marketing staff that the beneficiary will manage. The record does not establish other departments with whom the beneficiary will coordinate marketing policies. Further, the beneficiary will handle the marketing coordination among the petitioner's other United States headquarters; however, the petitioner has not provided any financial or documentary evidence to substantiate the viability of any other United States offices. Simply going on 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 Dec. 190 (Reg. Comm. 1972)). Therefore, while the petitioner may require a bachelor's degree, the proffered position does not require a bachelor's degree, or its equivalent, in a specific specialty for entry into the occupation. Thus, the information contained in the record of proceeding does not establish that the position is a specialty occupation under the first criterion at 8 C.F.R. § 214.2(h)(4)(iii)(A)(I).

The record does not include any evidence that a degree requirement is common in parallel positions among similar organizations in the tourism industry. The record does not include any evidence from firms, individuals, or professional associations regarding a tourism industry standard, or documentation establishing that a baccalaureate degree in a specific specialty is common in the proffered position among similar tour and travel services. Therefore, the petitioner has not demonstrated that a degree requirement is common to the industry in parallel positions among similar organizations under the first alternative prong of 8 C.F.R. § 214.2(h)(4)(iii)(A)(2).

The petitioner has not satisfied the second alternative prong of 8 C.F.R. § 214.2(h)(4)(iii)(A)(2), which provides a petitioner the opportunity to show that its particular position is so complex or unique that it can be performed only by an individual with at least a bachelor's degree in a specific specialty. The petitioner has not established that the complexity of the petitioner's business would require a degree in a specific specialty. The record does not include any evidence or documentation establishing the complexity or uniqueness of the proffered position.

The AAO turns next to consideration of the third criterion at 8 C.F.R. § 214.2(h)(4)(iii)(A)(3). The record does not contain evidence of the petitioning entity's past employment history of hiring persons with a degree or its equivalent for the position. Consequently, the petitioner has not established that the employer normally requires a degree in a specialty field or its equivalent for the position. The petitioner has not established the third criterion at 8 C.F.R. § 214.2(h)(4)(iii)(A)(3).

The AAO now considers the merits of the fourth criterion at 8 C.F.R. § 214.2(h)(4)(iii)(A)(4). The petitioner's letter dated April 20, 2005 states that the company has a total of four employees. Its 2003 United States Corporation Income Tax return reflects the petitioner's gross annual income as of the petition's filing date as \$697,626. The petitioner has not presented any evidence to show that the skills utilized in its daily operations are so specialized and complex that the knowledge required to perform the duties of the proffered position is usually associated with the attainment of a baccalaureate or higher degree, or its equivalent, in a specific specialty. Simply going on record without supporting documentary evidence is not sufficient for purposes of meeting the burden of proof in these proceedings. *Matter of Soffici*. Therefore, the petitioner has not established the fourth criterion at 8 C.F.R. § 214.2(h)(4)(iii)(A)(4).

As related in the discussion above, the petitioner has not established the proffered position is a specialty occupation. Accordingly, the decision of the director shall not be disturbed.

The petitioner has not established that the proffered position qualifies as a specialty occupation. Thus, the beneficiary's qualifications are immaterial.

The burden of proof in these proceedings rests solely with the petitioner. Section 291 of the Immigration and Nationality Act, 8 U.S.C. § 1361. Here, the petitioner has not met that burden.

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