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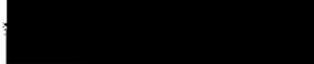
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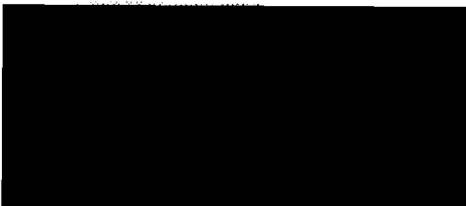
*D2*

FILE: SRC 03 217 54023 Office: TEXAS SERVICE CENTER Date: **OCT 25 2008**

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 is a beauty supply company that seeks to employ the beneficiary as a business development 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 because the proffered position is not a specialty occupation. Counsel submitted 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) 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 a business development manager. 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 the petitioner's July 28, 2003 letter, the beneficiary would perform duties that entail: planning, developing, and coordinating policies and objectives of the business organization; developing strategic business alliances inside and outside the states; building and driving sales and profits by developing strong business relationships with principals and wholesale purchasing managers; directing and managing office operations, business policies, and employees; assisting in preparing an operating budget and monthly and year-end financial operation reports; negotiating with vendors to enter into contracts for beauty supplies; and being responsible for the quality of stock, service, sales, and losses. The November 7, 2003 letter from counsel, submitted in response to the director's request for additional evidence, included the following proposed duties: research viable opportunities, strategies, and designs; develop market solutions and increase the firm's revenue and profit and margins; analyze financial information to forecast business, industry, and economic conditions in order to make investment decisions; negotiate the terms of business/commercial agreements (market research, develop business proposals and work on business plans including revenue forecasting and detailed cash flow analysis, and implement the new ideas or rework existing ideas or product line to maximize profits); serve as a monitor to members of the company and assist in their training and career development; and assist in developing product processes and pursue opportunities for new business. For the proposed position, the petitioner requires a bachelor's degree in business administration or its equivalent in a related field.

In denying the petition, the director stated that the Department of Labor's *Occupational Outlook Handbook* (the *Handbook*) reports that a baccalaureate degree in a specific academic specialty is not required for entry into advertising, marketing, promotions, public relations, and managerial jobs. The director stated that typically small stores and businesses do not require a baccalaureate degree when recruiting managers. The director found the submitted H-1B approval notices unpersuasive in establishing the offered position as a specialty occupation. The director found that 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 almost all employers prefer that a business development manager possess a bachelor's degree and have experience. Counsel states that the proposed position is similar to a marketing research analyst, which the AAO previously found to be a specialty occupation, as the beneficiary will perform market research; develop business proposals; work on business plans including revenue forecasting and detailed cash flow analysis; implement new ideas or rework existing ideas or product lines in order to maximize profits; serve as a monitor to members of the company and assist in their training and career development; assist in the development of product processes; and pursue opportunities for new business. Counsel asserts that many beauty suppliers, or similar types of businesses, employ persons with a bachelor's degree in a related area. Counsel states that the proposed position requires the theoretical and practical

application of an advanced highly specialized body of knowledge in the field of business administration, finance, or related fields, and the attainment of at least a bachelor's degree or its equivalent.

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 *Occupational Information Network (O\*NET)* in the November 7, 2003 letter are not persuasive in establishing the offered position as a specialty occupation. 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 finds that the proposed position's duties are a combination of those of operations, sales, and marketing managers, which are occupations that the *Handbook* describes as follows:

*General and operations managers* plan, direct, or coordinate the operations of companies or public and private sector organizations. Their duties include formulating policies, managing daily operations, and planning the use of materials and human resources, but are too diverse and general in nature to be classified in any one area of management or administration, such as personnel, purchasing, or administrative services. In some organizations, the duties of general and operations managers may overlap the duties of chief executive officers.

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 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 are an amalgam of those of operations, sales, and marketing managers. An operations manager, for example, will "plan, direct, or coordinate the operations of companies"; formulate policies, manage daily operations, and plan the use of materials and human resources. Similarly, the beneficiary will plan, develop, and coordinate the petitioner's policies and objectives; oversee employees; direct and manage office operations, business policies, and employees; take responsibility for the quality of stock, service, sales, and losses; negotiate with vendors to enter into contracts for beauty supplies. Sales managers "maintain contact with dealers and distributors" and "analyze sales statistics gathered by their staffs to determine sales potential and inventory requirements and to monitor customers' preferences." Likewise, the beneficiary will develop business alliances and build and drive sales and profits by developing business relationships. Marketing managers "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." Similar to this, the beneficiary will research opportunities, strategies, and designs, and develop market solutions; increase the firm's revenue and profit and margins; analyze financial information to forecast business, industry, and economic conditions to make investment decisions; and pursue opportunities for new business.

The AAO notes that the petitioner states that the beneficiary will assist in preparing an operating budget and monthly and year-end financial operation reports. As there is no evidence in the record of the petitioner's

budget and monthly and year-end financial operation reports, the AAO cannot determine whether the duties relating to these reports would require a baccalaureate degree in accounting or finance.

The *Handbook* conveys that employers do not normally require operations managers to possess a baccalaureate degree in a specific academic field. It states:

The formal education and experience of top executives vary as widely as the nature of their responsibilities. Many top executives have a bachelor's or higher degree in business administration or liberal arts. College presidents typically have a doctorate in the field in which they originally taught, and school superintendents often have a master's degree in education administration. (For information on lower-level managers in educational services, see the *Handbook* statement on education administrators.) A brokerage office manager needs a strong background in securities and finance, and department store executives generally have extensive experience in retail trade.

Many top executive positions are filled from within the organization by promoting experienced, lower-level managers when an opening occurs. In industries such as retail trade or transportation, for instance, it is possible for individuals without a college degree to work their way up within the company and become managers. However, many companies prefer that their top executives have specialized backgrounds and, therefore, hire individuals who have been managers in other organizations.

Top executives must have highly developed personal skills. An analytical mind able to quickly assess large amounts of information and data is very important, as is the ability to consider and evaluate the relationships between numerous factors. Top executives also must be able to communicate clearly and persuasively. Other qualities critical for managerial success include leadership, self-confidence, motivation, decisiveness, flexibility, sound business judgment, and determination.

Advancement may be accelerated by participation in company training programs that impart a broader knowledge of company policy and operations. Managers also can help their careers by becoming familiar with the latest developments in management techniques at national or local training programs sponsored by various industry and trade associations. Managers who have experience in a particular field, such as accounting or engineering, may attend executive development programs to facilitate their promotion to an even higher level. Participation in conferences and seminars can expand knowledge of national and international issues influencing the organization and can help the participants develop a network of useful contacts.

For managerial positions in marketing and sales, the *Handbook* indicates that employers typically 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 *Handbook's* information, the proposed duties correspond to those of managerial positions in operations, sales, and marketing. As the *Handbook* reports that these occupations do not require a baccalaureate degree in a specific academic field, 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 states that many beauty suppliers, or similar types of businesses, employ persons with a bachelor's degree in a related area. The record of proceeding contains: a job posting, CareerInfonet's occupation report, and two H-1B approval notices. The AAO finds this evidence unpersuasive. The job posting seeks a marketing development manager for Broward County, a public entity, which differs in nature from the petitioner, a beauty supply company. The CareerInfonet information does not state that a bachelor's degree in a specific academic discipline is required for a business operations specialist. Furthermore, the report does not specify the occupation's duties, failing to demonstrate how the beneficiary's duties parallel those of a business operations specialist. The approval notices, counsel states, relate to a business development manager employed by food and beverage business and by a gas station and convenience store. The AAO finds that these businesses are dissimilar in nature from the petitioner, a beauty supply store. Thus, the approval notices, the CareerInfonet information, and the job posting fail to establish the first alternative prong at 8 C.F.R. § 214.2(h)(4)(iii)(A)(2), which is 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. The evidence of company catalogues and brochures, the CareerInfonet occupation report, the Job Zone information, the business licenses, the H-1B approval notices, the

*Handbook's* information, and other documents in the record fail to establish the proposed position as having such a complexity or uniqueness as to require the knowledge attained from a baccalaureate degree in a specific academic discipline. Thus, the petitioner fails to establish the second alternative prong at 8 C.F.R. § 214.2(h)(4)(iii)(A)(2).

The offered position is newly created. Thus, there is no evidence to establish 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. The beneficiary's duties correspond to those of operations, sales, and marketing managers, which are occupations that the *Handbook* reports do not require a baccalaureate degree in a specific academic discipline. The submitted evidence of company catalogues and brochures, the CareerInfonet occupation report, the Job Zone information, the business licenses, the H-1B approval notices, the *Handbook's* information, and other documents fail to demonstrate that the proposed position is so specialized and complex as to require the knowledge usually associated with the attainment of a baccalaureate degree in a specific academic discipline. 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 proposed 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.

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