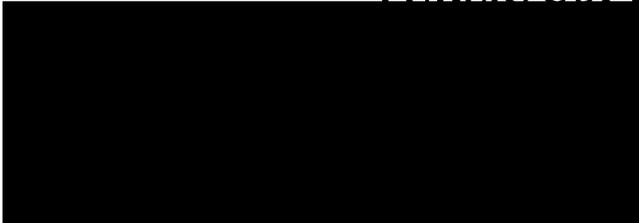


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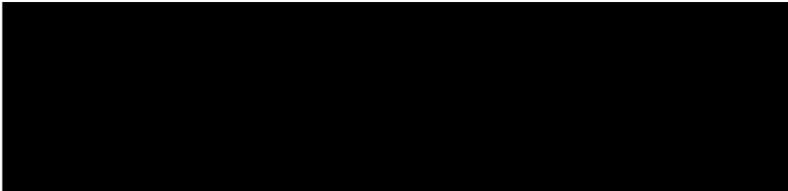
FILE: EAC 05 143 52852 Office: VERMONT SERVICE CENTER Date:

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 matter is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed. The petition will be denied.

The petitioner is engaged in the production, import/export, marketing, and distribution of ready-made apparel and seeks to employ the beneficiary as a production analyst. The petitioner 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 position did not qualify as a specialty occupation. On appeal, counsel submits a brief asserting that the proffered position is a specialty occupation.

The issue to be discussed in this proceeding is whether the proffered position qualifies as a specialty occupation.

Section 101(a)(15)(H)(i)(b) of the Act, 8 U.S.C. § 1101(a)(15)(H)(i)(b), provides, in part, for the classification of qualified nonimmigrant aliens who are coming temporarily to the United States to perform services in a specialty occupation.

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.

The term "specialty occupation" is further defined at 8 C.F.R. § 214.2(h)(4)(ii) as:

[A]n 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.

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

The petitioner is seeking the beneficiary’s services as a production analyst. Evidence of the beneficiary’s duties includes the Form I-129 petition with attachment and the petitioner’s response to the director’s request for evidence. According to this evidence the beneficiary would:

- Have primary responsibility for the analytical aspects of manufacturing programs;
- Perform research related to the analysis and study of business and financial issues of production, sales, and inventory;
- Plan and coordinate production, sales, and inventory;
- Make production forecasts, analyze production requirements, and project inventory flow;
- Utilize mathematical and statistical tools, including computer models of inventory scheduling and operations research;
- Perform the scheduling and management of production to meet merchandise demands for the marketplace;
- Analyze production specifications in light of the petitioner’s manufacturing capabilities;
- Analyze desired production volume as a factor of plant capacity data;
- Work closely with production staff; and
- Prepare reports with respect to market conditions, pricing, products, and costing and assess production requirements, devise and modify marketing opportunities, and monitor marketing and sales performance.

The petitioner requires a minimum of a bachelor's degree in economics, business administration, operations management, or finance for entry into the proffered position.

The AAO routinely consults the *Handbook* for information about the duties and educational requirements of particular occupations. The duties of the proffered position are varied and include duties normally performed by advertising, marketing, promotions, public relations, and sales managers, as well as additional duties performed by general/operations managers. In response to the director's request for evidence, the petitioner sought to substantially change the duties of the offered position, and stated that the beneficiary would perform the duties of a marketing analyst/marketing research analyst which would require an individual with a bachelor's degree in business administration and a concentration in marketing. The purpose of a request for evidence is to elicit further information that clarifies whether eligibility for the benefit sought has been established. 8 C.F.R. § 103.2(b)(8). When responding to a request for evidence, a petitioner cannot offer a new position to the beneficiary, or materially change a position's title or its associated job responsibilities. The petitioner must establish that the position that was offered to the beneficiary at the time the Form I-129 petition was filed is a specialty occupation. *See Matter of Michelin Tire*, 17 I&N Dec. 248, 249 (Reg. Comm. 1978). If significant changes are made to the initial request for approval, the petitioner must file a new petition rather than seek approval of a petition that is not supported by the facts in the record. The duties set forth in the petitioner's response to the director's request for evidence shall not, therefore, be considered, nor the Dec. 6, 1999 opinion by [REDACTED] which discusses the educational requirements for market research analysts. A decision will be made on evidence initially submitted with the filing of the Form I-129.

As previously noted, the duties of the proffered position are varied and include duties normally performed by advertising, marketing, promotions, public relations, and sales managers, as well as additional duties performed by general/operations managers. The *Handbook* notes that a wide range of educational backgrounds is suitable for entry into advertising, marketing, promotions, public relations, and sales manager positions, but that many employers prefer related experience plus a broad liberal arts background. Bachelor's degrees in sociology, psychology, literature, journalism, philosophy, or other subjects are suitable. Requirements will vary, however, depending on the duties of a particular position. For example, some employers prefer a bachelor's or master's degree in business administration with an emphasis in marketing, for marketing, sales, and promotion management positions. In highly technical industries such as computer and electronics manufacturing a degree in engineering or science combined with a business degree may be preferred. In public relations management positions some employers prefer a bachelor's or master's degree in public relations or journalism. The *Handbook* notes that most advertising, marketing, promotions, public relations, and sales management positions are filled by promoting experienced staff or related professional or technical personnel. Many managers are former sales representatives, purchasing agents, or promotions specialists. A baccalaureate or higher degree in a specific specialty or its equivalent is not, therefore, the minimum requirement for entry into the position. A degree in a wide range of disciplines will suffice.

The *Handbook* further notes that the formal education and experience of general/operations managers varies as widely as the nature of their responsibilities. Many have a bachelor's or higher degree in business administration or liberal arts, while others obtain their positions by promotion from lower level management positions. Thus, it is possible to obtain a position as a general or operations manager without a college degree by promotion from within the organization based upon performance alone. It is apparent from the *Handbook* that a baccalaureate or higher degree, in a specific specialty, is not the minimum requirement for entry into

these management positions. Positions requiring a college degree are filled from a wide range of educational disciplines. A degree in a specific specialty, however, is not required. The petitioner has failed to establish the first criterion of 8 C.F.R. § 214.2(h)(4)(iii)(A).

The petitioner has also failed to establish that a degree requirement, in a specific specialty, is common to the industry in parallel positions among similar organizations, and offers no evidence in this regard. The petitioner has not, therefore, established the referenced criterion at 8 C.F.R. § 214.2(h)(4)(iii)(A)(2).

The petitioner does not state that it normally requires a degree for entry into the proffered position as the position is new with the company. The petitioner does state, however, that the duties of the positions were previously performed by the company president, and that past management employees have held bachelor's degrees. The petitioner did not, however, provide proof of any degree held by any member of management to establish that the duties of this position were previously performed by individuals with a degree in a specific educational discipline. Simply going on the 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 190 (Reg. Comm. 1972)). The petitioner has failed to establish the criterion at 8 C.F.R. § 214.2(h)(4)(iii)(A)(3).

Finally, the duties to be performed by the beneficiary are not so specialized or complex that knowledge required to perform them is usually associated with the attainment of a baccalaureate or higher degree in a specific specialty. Nor are the duties so complex or unique that they can be performed only by an individual with a degree in a specific specialty. The petitioner has generally described the duties to be performed by the beneficiary. Without a more specific description of the tasks to be performed, however, it cannot be determined that the duties are so complex or unique that their performance requires a degree in a specific specialty. For example, the petitioner states that the beneficiary will: be responsible for the analytical aspects of the manufacturing program; perform research related to the analysis and study of business and financial issues of production, sales and inventory; and make production forecasts, analyze production requirements and project inventory flow. The record does not contain evidence of the specific tasks to be performed by the beneficiary in being responsible for the analytical aspects of the manufacturing program. Nor does the record provide any evidence of what tasks would actually be performed by the beneficiary in performing research (or what type of research) related to the study of business and financial issues of production, sales and inventory, or describe the actual duties to be performed by the beneficiary in making production forecasts and analyzing production requirements and projecting inventory flow. Without specific detailed descriptions of the actual tasks to be performed in accomplishing these duties, an evaluation of the complexity or uniqueness of the tasks cannot be accomplished. Nothing in the record describes the manufacturing and production operations that the beneficiary will be analyzing. Simply going on the 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 190 (Reg. Comm. 1972)). As described by the petitioner, the enumerated tasks appear to be regularly and routinely performed by advertising, marketing, promotions, public relations, sales and operations managers who have education in a wide range of educational disciplines. The record does not establish that the specific tasks to be performed in this instance require a specific course of study that conveys a body of highly specialized knowledge closely and directly related to the duties of the proffered position. The petitioner has, therefore, failed to establish the referenced criteria at 8 C.F.R. §§ 214.2(h)(4)(iii)(A)(2) or (4).

The petitioner has failed to establish that the offered position meets any of the criteria listed at 8 C.F.R. § 214.2(h)(4)(iii)(A). Accordingly, the AAO shall not disturb the director's denial of the petition.

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 and the appeal shall accordingly be dismissed.

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