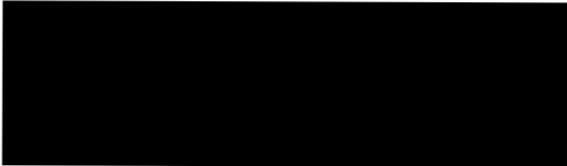


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FILE: LIN 05 179 53382 Office: NEBRASKA SERVICE CENTER Date:

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 sustained. The petition will be approved.

The petitioner is a multi-national advertising agency and seeks to employ the beneficiary as a strategic manager. 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 and additional information asserting that the proffered position is a specialty occupation.

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

The petitioner is seeking the beneficiary’s services as a strategic planner. Evidence of the beneficiary’s duties was set forth in the petitioner’s support letter dated May 20, 2005. According to this evidence the beneficiary would:

- Develop and optimize creative briefs, researching and analyzing consumer, brand, category and cultural insights throughout the creative development process;
- Lead creative briefings and work closely with Creative Directors, Art Directors, Copywriters and other individuals on the brand team throughout the creative development process;
- Manage day-to-day planning activities, qualitative research projects, and other strategic initiatives that address consumer and brand issues;
- Identify opportunities for the brand by performing market research;
- Use a variety of approaches, tools and techniques to identify, unearth and leverage uncommon insights to grow the value of the brand; and
- Be responsible for determining new approaches to increase the value of brands to which he or she has been assigned.

In explaining the nature of the proffered position, the petitioner noted that strategic planners (account planners) determine through research and analysis, consumer desires. After analyzing and interpreting the research data, an agency is able to create an advertising campaign that effectively addresses the needs of the customers and more effectively promotes brand identity and success of client products and services.

The petitioner requires a minimum of a bachelor’s degree in business with a concentration in marketing or advertising, communications, psychology or related fields for entry into the proffered position.

The AAO routinely consults the Department of Labor's *Occupational Outlook Handbook (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 marketing professionals. Those duties, however, are not the same duties normally performed by advertising, marketing, promotions, public relations, and sales managers as described in the *Handbook*. They are more complex in nature as detailed by the petitioner in its business environment. The duties require not only an individual who can direct and create an advertising campaign, but one who has considerable research and analytical skills, coupled with management and communication skills. As noted in documentation provided by the petitioner, the American Association of Advertising Agencies (AAAA – the national trade association of the advertising business with 1,196 member agency offices employing approximately 65,000 people) states that the discipline of account planning continues to evolve and grow in the United States. This assertion is confirmed in an opinion letter from ██████████ the Global Planning Director for ██████████ Ltd. (a global advertising agency headquartered in London, England with offices in Singapore, New York, Tokyo, Shanghai, and Sao Paulo), who states that the position of strategic planner is relatively new to the United States market, and originated in the United Kingdom over 37 years ago. Mr. ██████████ states that strategic planners need to possess specific skill sets including: excellent research skills; strategic vision; communication skills; the ability to perform analytical analysis; and a thorough understanding of the business world. According to Mr. ██████████ strategic planners usually have educational backgrounds in business administration – advertising/marketing or psychology. A second opinion letter provided by ██████████ Director of Human Resources with Goodby, Silverstein & Partners (an advertising agency with over 230 employees that handles advertising for such clients as Hewlett-Packard, South Western Bell, E*Trade, the California Fluid Milk Advisory Board, Foster Farms and Dryers Ice Cream) states that strategic (account) planners in her firm are required to hold bachelor's degrees in management/marketing, psychology or advertising. The duties to be performed by the beneficiary in the petitioner's business environment are so specialized and complex that knowledge required to perform them is usually associated with the attainment of a baccalaureate or higher degree. The proffered position does, therefore, qualify as a specialty occupation as it satisfies the criterion at 8 C.F.R. § 214.2(h)(4)(iii)(A)(4).

The final issue to be considered is whether the beneficiary is qualified to perform the duties of the offered position. The director did not comment on this issue as the petition was denied on another ground. The record is sufficient, however, for the AAO to make that determination. The petitioner presented an evaluation of the beneficiary's foreign education from a credentials evaluation service which indicates that the petitioner's education is equivalent to a bachelor's degree in psychology from an accredited college or university in the United States. The *Handbook* indicates that a wide range of educational backgrounds is suitable for entry into the field of advertising, marketing, promotions and public relations. The beneficiary is thus qualified to perform the services of the occupation.

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 sustained that burden.

ORDER: The appeal is sustained. The petition is approved.