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U.S. Department of Homeland Security

Citizenship and Immigration Services

ADMINISTRATIVE APPEALS OFFICE
CIS, AAO, 20 MASS. 3/F
425 Eye Street N.W.
Washington, D.C. 20536

[redacted]

File: EAC 02 122 51568 Office: VERMONT SERVICE CENTER Date: JAN 05 2004

IN RE: Petitioner: [redacted]
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:

[redacted]

INSTRUCTIONS:
This is the decision 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.

If you believe the law was inappropriately applied or the analysis used in reaching the decision was inconsistent with the information provided or with precedent decisions, you may file a motion to reconsider. Such a motion must state the reasons for reconsideration and be supported by any pertinent precedent decisions. Any motion to reconsider must be filed within 30 days of the decision that the motion seeks to reconsider, as required under 8 C.F.R. § 103.5(a)(1)(i).

If you have new or additional information which you wish to have considered, you may file a motion to reopen. Such a motion must state the new facts to be proved at the reopened proceeding and be supported by affidavits or other documentary evidence. Any motion to reopen must be filed within 30 days of the decision that the motion seeks to reopen, except that failure to file before this period expires may be excused in the discretion of Citizenship and Immigration Services (CIS) where it is demonstrated that the delay was reasonable and beyond the control of the applicant or petitioner. *Id.*

Any motion must be filed with the office that originally decided your case along with a fee of $110 as required under 8 C.F.R. § 103.7.

Robert P. Wiemann, Director
Administrative Appeals Office

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

The petitioner is a distributor of imported/exported goods. It is a new company and expects to employ 10 individuals, and projects a gross annual income of approximately $1,000,000. The petitioner seeks to employ the beneficiary as a marketing analyst for a period three years. The director determined that the proffered position did not qualify as a specialty occupation.

On appeal, counsel submits a brief and asserts that the proffered position qualifies as a specialty occupation.

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), 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.

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

Section 214(i)(1) of the Immigration and Nationality Act (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 field 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 is so specialized and complex that knowledge required to perform the duties is usually associated with the attainment of a baccalaureate or higher degree.

When determining whether a particular job qualifies as a specialty occupation, the AAO considers the specific duties of the offered position, combined with the nature of the petitioning entity's business operations. The duties of the proffered position were detailed as follows, with the filing of the I-129 petition:

> At this time we seek to employ [the beneficiary] in the professional capacity of a Marketing Analyst. [The beneficiary] will maintain overall responsibility for developing and implementing complete and integrated marketing strategies to ensure increasing sales, profitability, and market share. [The beneficiary's] responsibilities will include:
>
> - Researching and analyzing market conditions nationally and internationally, concentrating in the Asian market;
> - Working in conjunction with customers to develop effective labeling and packaging layouts that will market their products effectively;
> - Training clients in the use of the marketing research prepared to properly develop their product in the U.S. market;
> - Evaluate [sic] company operations and establish media campaigns to obtain more customers;

- To educate manufacturers on the benefits of improving their profitability in the U.S. market so that they can effectively compete in the Asian markets;

- To target new areas for expansion; [and]

- To keep in contact with our previous customers to assist them with any future distributing needs.

The beneficiary's proposed duties were further discussed in the petitioner's business plan submitted with the initiating petition:

> [The beneficiary] will be instrumental in coordinating efforts between the U[.]S[.] sales force and the Chinese clients. She will be responsible for developing effective labeling and packaging layouts with our customers and implementing the plans with the Chinese suppliers. This will include high lever [sic] customer visits, sales discussions, and trips to China to oversee production. She will also act as liaison with the Chinese clients to train them in the use of the sales and accounting data which we will be supplying. [The beneficiary] is uniquely able to fulfill these functions because her prior Chinese employer provided a similar service to Korea, Russia, and Japan, so she understands the business, speaks both languages, and knows many of the current clients. She is versed in sales, so she can effectively communicate with the Chinese about new operational and packaging techniques. She also handles import and export documentation, something which is foreign to the other members of this new company. She will answer both to the Chairman in issues of fulfillment and logistics, and to sales. Her unique expertise in both areas makes her invaluable. We do not have the luxury of finding and training another person. Product is on its way now.

Subsequent to the filing of the I-129 petition, the director requested additional evidence. Specifically, the petitioner was asked to provide evidence that: a baccalaureate degree in a specific field of study is a standard minimum requirement for the proffered position in the industry; the petitioner historically requires its marketing analyst to hold a baccalaureate degree; the duties of the offered position are so complex that they require an individual with a bachelor's degree in a specific specialty; and the petitioner is a viable business.

In response to the director's request, the petitioner provided an advisory opinion from Dr. George J. Petrello, a forensic economist/forensic education consultant and management professor in the Internet MBA Program at the University of Maryland University College in College Park, MD. Dr. Petrello opined that the duties of the proffered position were primarily business-related tasks in the field of management with a specialty in marketing analysis requiring a baccalaureate level education in economics, marketing, management or a related field. Dr. Petrello further researched various employment data bases nationally and determined that a degree requirement for the offered position is standard in the industry among similar organizations.

In denying the I-129 petition, the director states that the duties of the offered position are not so complex as to require the services of an individual with a bachelor's degree in a related specialty. On appeal, counsel asserts that the offered position is that of a marketing analyst, and that the position qualifies as a specialty occupation.

The job description provided by the petitioner is very general in nature. It is, therefore, impossible to ascertain what duties the beneficiary would actually perform on a daily basis. For example: there is no clarifying information regarding the tasks that the beneficiary would perform in analyzing national and international market trends concentrating in the Asian market; the type of training that would be provided in the use of marketing research; the duties that would be performed in educating manufacturers on the benefits of improving their profitability in the U.S. market; and the tasks that the beneficiary would perform in targeting new areas for expansion. Without a more definitive description of the actual duties to be performed, it is not possible to determine that the performance of the duties requires the theoretical and practical application of a body of highly specialized knowledge. As such, the May 16, 2002, opinion of Dr. George Petrello is given little weight.

The petitioner did indicate that the beneficiary would be responsible for developing labeling and package layouts for the marketing of products. This would require the beneficiary to travel to China, meet with customers and oversee production. The beneficiary would also act as liaison with Chinese clients to train them in the use of sales and accounting data. The nature of the sales/accounting data and level of training required is unspecified. These duties do not appear to be so unique or complex, however, as to require the services of someone with a bachelor's degree in a specific specialty. They are managerial in nature requiring general marketing expertise. A bachelor's degree in a specific specialty is not a prerequisite for entry into the field of management or marketing. U.S. Department of Labor, *Occupational Outlook Handbook, (Handbook)*, 2002-03 edition, at 28

and 87. The petitioner has, accordingly, failed to establish the first criterion of 8 C.F.R. § 214.2(h)(4)(iii)(A).

The petitioner also failed to establish that a degree requirement is common to the industry in parallel positions among similar organizations, or that the position is so complex or unique that it can be performed only by an individual with a degree. The petitioner provided job advertisements for market research analysts. The duties associated with those positions, however, were not sufficiently similar to the proffered position to qualify as parallel positions, nor could it be determined that the advertising employers were similar to the petitioner's organization. Furthermore, the record does not establish that the petitioner normally requires a degree or its equivalent for the proffered position (the petitioner is a new company), or that the nature of the duties of the proffered position is so specialized and complex that knowledge required to perform the duties is usually associated with the attainment of a baccalaureate or higher degree, or its equivalent.

The petitioner has failed to establish that any of the four factors enumerated above are present in this proceeding. It is, therefore, concluded that the petitioner has not demonstrated that the offered position is a specialty occupation within the meaning of the regulations.

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.