U.S. Department of Homeland Security
20 Mass, Rm. A3042, 425 I Street, N.W.
Washington, DC 20536

Identifying data deleted to prevent clearly unwarranted invasion of personal privacy

U.S. Citizenship and Immigration Services

PUBLIC COPY

[redacted]

DEC MAY 06 2004

FILE: WAC 02 175 52575 Office: CALIFORNIA SERVICE CENTER Date:

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]

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.

Mari Johnson

for Robert P. Wiemann, Director
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 a company that resells repossessed cars. It seeks to employ the beneficiary as a marketing support specialist. 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. On appeal, the petitioner states that based on the documentation previously submitted, the position is a specialty occupation.

Section 214(i)(l) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1184 (i)(l), 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) Form I-129 and supporting documentation; (2)) the petitioner's letter of support dated February 21, 2002; (3) the director's request for additional evidence; (4) counsel's letter, dated August 9, 2002, that responds to the director's request; (5) the director's denial letter; and (6) 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 marketing support specialist. Evidence of the beneficiary's duties includes: the I-129 petition; the director's request for further evidence; and the

petitioner's letters in support of the petition and in response to the director's request for further evidence. According to the initial petition, the beneficiary would perform duties that entail: implementing effectively marketing and communication plans for the petitioner; and contributing to the development, coordination and implementation of the petitioner's corporate marketing plan. The petitioner expanded on these duties in its letter of support and stated that it wanted to centralize and standardize its administrative and operational systems and procedures. It stated that the beneficiary would be responsible for creating and maintaining a marketing support database that will assist in the acquisition and forecasting of new business. The petitioner also specified other areas of marketing support that the beneficiary would perform. For example, the petitioner stated that the beneficiary would ensure that publicity materials were sent out on time and according to specifications.

In the petitioner's response to the director's request for further evidence, the petitioner stated that the petitioner would take part in the creative development and implementation of seasonal advertising and promotional using an in-house designer and working with out-sourced vendors. The petitioner also stated that the beneficiary would work under the general supervision of the marketing director and would work closely with the petitioner's market research analyst. The petitioner indicated that the position required a minimum of a baccalaureate degree or its equivalent.

The director found that the proffered position was not a specialty occupation. The director acknowledged that the position of market research analyst requires a baccalaureate or higher degree; however, the director did not find the proffered position analogous to a market research analyst. The director found further that the petitioner failed to establish any of the criteria found at 8 C.F.R. § 214.2(h)(4)(iii)(A).

On appeal, counsel states that the petitioner met three of the four criteria outlined in 8 C.F.R. § 214.2(h)(4)(iii)(A).

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 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 often considered by CIS when determining these criteria include: whether 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.Min. 1999)(quoting *Hird/Blaker Corp. v. Slattery*, 764 F. Supp. 872, 1102 (S.D.N.Y. 1991)).

The AAO routinely consults the *Handbook* for its information about the duties and educational requirements of particular occupations. The proffered position appears to be an amalgam job that involves market research, marketing and advertising assistance, and work duties in assisting in long-term strategy planning with other staff. According to the *Handbook*, only the position of market research analyst, which is not fully representative of the position, requires a baccalaureate degree in marketing. The *Handbook* does not indicate that jobs such as marketing support specialist qualify as specialty occupations, as a range of academic degrees are sufficient for entry into these positions. Without more persuasive evidence, the petitioner has not established that the proffered position in fact is a specialty occupation.

Regarding parallel positions in the petitioner's industry, the petitioner submitted two letters from companies also engaged in the car sales industry. Both letters contain the same text with regard to the letter writers' academic requirements for marketing research specialist positions. However, neither letter mentions any specific marketing positions or employees in either company. In addition, the letterwriters did not provide any further documentation to further substantiate their assertions. Simply going on record without supporting documentary evidence is not sufficient for the purpose of meeting the burden of proof in these proceedings. *See Matter of Treasure Craft of California*, 14 I&N Dec. 190 (Reg. Comm.1972). The petitioner also submitted seven job vacancy announcements in the original petition. These announcements range from an internet mortgage bank to an affiliate of Canon copiers. This documentation is viewed as problematic. First, not all the vacancy announcements require a baccalaureate degree in a specific specialty. Second, some vacancy announcements indicate that such a degree is only preferred, while other job announcements state that a degree is required, without specifying any specific specialty. Finally, some companies do not appear to be similar to the petitioner in terms of business focus, and volume of business. The record also does not include any evidence from professional associations regarding an industry standard, or documentation to support the complexity or uniqueness of the proffered position. The petitioner has, thus, not established the criteria set forth at 8 C.F.R. § 214.2(h)(4)(iii)(A)(*1*) or (*2*).

The AAO now turns to the criterion at 8 C.F.R. § 214.2(h)(4)(iii)(A)(*3*) – the employer normally requires a degree or its equivalent for the position. In its response to the director's request for further evidence, the petitioner submitted a letter dated December 6, 2002, that stated it was the petitioner's hiring policy to require a bachelor's degree or its equivalent in marketing, business or finance. On appeal, the petitioner states that it has never employed a marketing support specialist. Therefore the petitioner cannot meet this criterion.

Finally, the AAO turns to the criterion at 8 C.F.R. § 214.2(h)(iii)(A)(*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. To the extent that they are depicted in the record, the duties do not appear so specialized and complex as to require the highly specialized knowledge associated with a baccalaureate or higher degree, or its equivalent, in a specific specialty. The duties of the proffered position appear to be subordinate to the duties of a marketing director and a market research analyst within the petitioner's staff structure. Some of the duties outlined involve getting promotional mailings out on time, while others involve the development of a customer database. Nevertheless, the record is devoid of any information as to the percentage of time the beneficiary would spend in either of these distinct job duties. Without more persuasive evidence, the petitioner has not established the fourth criterion of 8 C.F.R. § 214.2(h)(4)(iii)(A).

As related in the discussion above, the petitioner has failed to establish that the proffered position is a specialty occupation. 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.

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