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U.S. Department of Homeland Security
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Washington, DC 20529

U.S. Citizenship and Immigration Services

[redacted]

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FILE: WAC 03 210 54653 Office: CALIFORNIA SERVICE CENTER Date: JAN 18 2005

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 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.

for Michael T. Kelly
Robert P. Wiemann, Director
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 an insurance and investment firm that seeks to employ the beneficiary as a marketing 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. On appeal, counsel submits a brief and additional evidence.

Section 214(i)(l) of 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 director's request for additional evidence; (3) the petitioner's response to the director's request; (4) the

director's denial letter; and (5) 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 manager. Evidence of the beneficiary's duties includes: the Form I-129; the attachments accompanying the Form I-129; the company support letter; and the petitioner's response to the director's request for evidence. According to this evidence, the beneficiary would perform duties that entail researching and developing a marketing campaign about the financial, investment, and insurance needs of Russian and Georgian communities; developing and drafting marketing collateral in the Russian and Georgian languages; translating for Russian and Georgian communities financial research and analysis; developing content and marketing collateral for seminars; analyzing the financial needs of Russian and Georgian clients and developing a strategy for them; researching businesses and organizations owned, managed, and staffed by Russian and Georgian speaking individuals and developing and implementing a marketing strategy about their insurance, investment, and financial needs; and participating as a board member with particular organizations. The petitioner stated that a candidate must possess a bachelor's degree in business administration or marketing.

The director determined that the proffered position was not a specialty occupation. According to the director, the duties of the proffered position are a combination of those performed by translators and marketing managers, and that the Department of Labor's (DOL) *Occupational Outlook Handbook* (the *Handbook*) discloses that these occupations do not require a baccalaureate degree in a specific specialty. The director found that the submitted evidence did not indicate that the petitioner normally requires candidates to possess a bachelor's or higher degree in the field or that the position had a complexity or level of authority beyond what is normally encountered in the occupational field. Finally, the director stated that the submitted job announcements did not represent companies similar to the petitioner, and that the proffered position differed from the positions in the job announcements.

On appeal, counsel states that the proffered position is a specialty occupation. Counsel states that the proffered position's duties are performed by a marketing manager, and that the *Handbook* states that it is the norm for employers to prefer a bachelor's or masters degree in business administration with an emphasis on marketing for a marketing manager; they do not prefer liberal arts degrees. Counsel contends that it is the norm in any industry to require marketing managers who draft marketing materials to have a bachelor's degree and industry experience, and emphasizes that because less than 10 percent of the beneficiary's time will be devoted to translation duties, the duties of the proffered position are those of a marketing manager. Counsel states that the duties of drafting marketing material, analyzing the market place, developing marketing strategies, and determining the demand of products and services demonstrate that the nature of the proposed duties is so specialized and complex that the knowledge required to perform the duties is usually associated with the attainment of a baccalaureate or higher degree. Counsel submits excerpts from Robert Half International to support this statement. According to counsel, the petitioner will always require a bachelor's degree in business administration for the proffered position. Finally, counsel claims that the terms "norm," "normally," and "generally," as used in the regulations and by CIS are not absolutes; these terms indicate "a common thread of belief, a generally accepted practice, the commonplace, or an expected state."

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 in a specific specialty is the normal minimum requirement for entry into the particular position; a specific 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 in a specific specialty. 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)).

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 routinely consults the *Handbook* for its information about the duties and educational requirements of particular occupations.

The *Handbook* reveals that the director properly concluded that the beneficiary's duties are aligned with a marketing and sales manager and a translator. The *Handbook* reports that employers find a wide range of educational backgrounds suitable for entry into marketing manager jobs, but many prefer those with experience in related occupations plus a broad liberal arts background. For marketing and sales management positions, the *Handbook* indicates that some employers prefer a bachelor's or master's degree in business administration with an emphasis in marketing. Because the *Handbook* reports that only some employers prefer, but do not require, a bachelor's degree in a specific specialty, the petitioner fails to establish that a baccalaureate or higher degree or its equivalent is normally the minimum requirement for entry into the particular position, marketing manager.

Counsel claims that the terms "norm," "normally," and "generally," as used in the regulations and by CIS are not absolutes; these terms indicate "a common thread of belief, a generally accepted practice, the commonplace, or an expected state." As already stated, section 214(i)(l) of the Act, 8 U.S.C. § 1184(i)(l), states that a specialty occupation must *require* the theoretical and practical application of a body of highly specialized knowledge, and the attainment of a bachelor's or higher degree in the specific specialty (or its equivalent) as a minimum for entry into the occupation. Given that the *Handbook* indicates that only some employers prefer - but do not require - a bachelor's degree in a specific specialty, the petitioner cannot establish that the proffered position requires the attainment of a bachelor's or higher degree in the specific specialty (or its equivalent) as a minimum for entry into the occupation.

The AAO notes that the *Handbook* relays that a translator is not required to possess a bachelor's degree. Consequently, the 10 percent of beneficiary's time devoted to translation will not qualify the proffered position as a specialty occupation.

There is no evidence in the record that would establish the second criterion - that a specific degree requirement is common to the industry in parallel positions among similar organizations. The director correctly pointed out that the job announcements are from organizations that are dissimilar in nature to the petitioner, a small insurance and investment firm. For instance, Lindquist LLP is a certified public accounting firm; Wells Fargo is a bank; ADP provides computerized transaction processing, data communications, and information services; Spectra is a market research consulting company; and Wind River is a technology company. On appeal, counsel submitted a job posting from The Creative Group. This posting, however, does not indicate that a candidate must possess a bachelor's or master's degree in business administration with an emphasis in marketing. Collectively, the postings cannot establish that a specific degree requirement is common to the industry in parallel positions among similar organizations.

There is no evidence in the record that would show that the proffered position is so complex or unique that it can be performed only by an individual with a degree in a specific specialty. Again, the *Handbook* reveals that the duties of the proffered position would be performed by a marketing manager, an occupation which does not require a specific baccalaureate degree. Similarly, the *Handbook* discloses that the beneficiary's duties that relate to a translator would not require a bachelor's degree.

Nor is there evidence in the record to establish the third criterion at 8 C.F.R. § 214.2(h)(4)(iii)(A): that the petitioner has a past practice of normally requiring a degree in a specific specialty or its equivalent for the position.

The petitioner fails to establish that the nature of the specific duties is so specialized and complex that the knowledge required to perform the duties is usually associated with the attainment of a baccalaureate or higher degree in a specific specialty. 8 C.F.R. § 214.2(h)(4)(iii)(A)(*4*). Once again, the *Handbook* reveals that the duties of the proffered position are performed by a marketing manager, an occupation which does not require a specific baccalaureate degree. Similarly, the *Handbook* reveals that the beneficiary's duties that relate to a translator would not require a bachelor's degree.

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.