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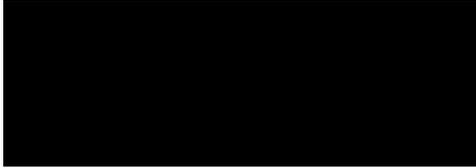
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U.S. Department of Homeland Security
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U.S. Citizenship
and Immigration
Services

D1



FILE: WAC 03 084 51775 Office: CALIFORNIA SERVICE CENTER Date: JAN 05 2005

IN RE: Petitioner: [Redacted]
Beneficiary: [Redacted]

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 materials have been returned to the office that originally decided your case. Any further inquiry must be made to that office.

Robert P. Wiemann, Director
Administrative Appeals Office

DISCUSSION: The service center director denied the nonimmigrant visa petition. The matter is now on appeal before the Administrative Appeals Office (AAO). The appeal will be dismissed. The petition will be denied.

The petitioner is a computer parts wholesaler founded in November 2002. It seeks to employ the beneficiary as a marketing analyst and to classify her 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 on the grounds that the applicant did not have the minimum educational degree, specialized training, or employment experience to qualify to perform the services of the subject specialty occupation.

Section 214(i)(2) of the Act, 8 U.S.C. § 1184(i)(2), provides that an alien applying for classification as an H-1B nonimmigrant worker must possess full state licensure to practice in the occupation, if such licensure is required to practice in the occupation, and completion of the degree in the specialty that the occupation requires. If the alien does not possess the required degree, the petitioner must demonstrate that the alien has experience in the specialty equivalent to the completion of such degree, and recognition of expertise in the specialty through progressively responsible positions relating to the specialty.

As provided in 8 C.F.R. § 214.2(h)(4)(iii)(C), to qualify to perform services in a specialty occupation the alien must meet one of the following criteria:

- (1) Hold a United States baccalaureate or higher degree required by the specialty occupation from an accredited college or university;
- (2) Hold a foreign degree determined to be equivalent to a United States baccalaureate or higher degree required by the specialty occupation from an accredited college or university;
- (3) Hold an unrestricted State license, registration or certification which authorizes him or her to fully practice the specialty occupation and be immediately engaged in that specialty in the state of intended employment; or
- (4) Have education, specialized training, and/or progressively responsible experience that is equivalent to completion of a United States baccalaureate or higher degree in the specialty occupation, and have recognition of expertise in the specialty through progressively responsible positions directly related to the specialty.

The record of proceeding before the AAO contains: (1) Form I-129 and supporting documentation; (2) the director's request for additional evidence (RFE); (3) the petitioner's response to the RFE; (4) the director's decision; (5) the petitioner's appeal, Form I-290B; and (6) the petitioner's appeal brief 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 marketing analyst. Evidence of the beneficiary's prospective duties includes the Form I-129 petition filed in January 2003, the petitioner's letter in support

of the petition, and the petitioner's response to the director's RFE. According to this evidence the beneficiary would be responsible for (1) providing marketing consulting services, directing purchase orders, performing market research to expand the client base and maintain existing clients, conduct and analyze research in wholesale and retail models and market trends in the industry utilizing the employee's professional knowledge of economic analysis; (2) analyzing sales and financial data, implementing promotional strategies, managing inventory, utilizing knowledge of business administration to solve organizational, operational, and distribution problems, applying statistics and financial research to recommend improvement of the business operation, utilizing the employee's professional knowledge of finance and accounting; (3) forecasting trends and preparing reports on business trends and market conditions affecting the company's products and services, utilizing the employee's professional knowledge of marketing and economic analysis; and (4) assisting administrative staff to develop and implement improved procedures and practices, making suggestions to management under the supervision and direction of the president, utilizing the employee's professional knowledge of business administration.

The petitioner indicated that the marketing analyst position is newly created. Heretofore the duties of the position had been performed by the petitioner's president/CEO. The petitioner asserted that a qualified candidate for the job must have at least a bachelor's degree with coursework in fields such as business administration, management, accounting, finance, marketing, or economic analysis. The beneficiary graduated in June 2001 from Chengchi University in Taiwan with a bachelor's degree in business administration (B.B.A.), assertedly equivalent to a B.B.A. degree from a U.S. university. The record indicates that the beneficiary has been employed by the petitioner's parent company in Taiwan as its "OEM (original equipment manufacturer) specialist" since September 2001.

In his decision the director determined that the job duties of the marketing analyst position proffered by the applicant closely paralleled those of a management analyst as described in the Department of Labor's *Occupational Outlook Handbook (Handbook)*, 2002-2003 edition. Citizenship and Immigration Services (CIS) routinely consults the *Handbook* as an authoritative source of information about the duties and educational requirements of particular occupations. The director noted that, according to the *Handbook*, the educational requirement for an entry-level management analyst position in the private sector is generally a master's degree in business administration or in a related discipline. Since the beneficiary only has a bachelor's degree in business administration, the director concluded that she does not qualify to perform the services of a management analyst, as contemplated in 8 C.F.R. § 214.2(h)(4)(iii)(C)(2). The director also declared that the beneficiary failed to establish that her training and experience has earned her recognition in the specialty occupation of management analyst, within the meaning of 8 C.F.R. § 214.2(h)(4)(iii)(C)(4).

On appeal counsel asserts that the petitioner's marketing analyst position could also be categorized as an administration or business management position, and that the director should not have relied exclusively on the *Handbook* and the occupational group code indicated by the petitioner in its Labor Condition Application (LCA) in deciding that the proffered position is essentially that of a management analyst. According to counsel, the *Handbook* does not specify that a master's degree is the minimum educational qualification for the position proffered by the petitioner, but indicates that a bachelor's degree could also be sufficient. In addition, counsel asserts that the beneficiary's B.B.A. degree together with her "working experience as the OEM analyst from September [2001] to the present" qualifies the beneficiary to perform services in a specialty occupation, as contemplated in 8 C.F.R. § 214.2(h)(4)(iii)(C)(4).

As previously noted, the *Handbook* indicates that a bachelor's degree is generally insufficient educational background for entry into a management analyst position in the private sector. While stating that most government agencies hire individuals with a bachelor's degree and no pertinent work experience for entry-level management analyst positions, the *Handbook* also states that "[m]ost employers in private industry generally seek individuals with a master's degree in business administration or a related discipline." *Handbook*, 2004-05 edition, p. 89 (emphasis added.) However, the AAO shares counsel's view, implicit in the appeal, that the proffered position is not actually that of a management analyst. According to the *Handbook* management analysts are generally employed by management consulting firms, not by the companies for whom they perform consulting services. In other words, management analysts are generally not in-house positions, but rather outside contractors. The position proffered to the beneficiary is an in-house position, and thus does not fit the *Handbook* description of a management analyst.

The marketing analyst position at issue in this case fits within the *Handbook's* broad category of advertising, marketing, promotions, public relations, and sales managers, whose duties are broadly described on page 23 of the *Handbook*, 2004-05 edition, as "coordinat[ing] market research, marketing strategy, sales, advertising, promotion, pricing, product development, and public relations activities." Unlike management analysts, the various managers identified above are in-house positions. While the duties of the marketing analyst position proffered by the petitioner encompass various managerial elements, they most closely accord with the *Handbook's* description of a marketing manager. As summarized in the *Handbook*, on page 23:

[m]arketing managers develop the firm's detailed marketing strategy. With the help of subordinates . . . they determine the demand for products and services offered by the firm and its competitors. In addition, they identify potential markets Marketing managers develop pricing strategy with an eye towards maximizing the firm's share of the market and its profits while ensuring that the firm's customers are satisfied. In collaboration with sales, product development, and other managers, they monitor trends that indicate the need for new products and services and oversee product development. Marketing managers work with advertising and promotion managers to promote the firm's products and services and to attract potential users.

Since the above described duties closely accord with the duties of the proffered position in this case, the AAO concludes that the proffered position is akin to that of a marketing manager. As a degree in a wide range of disciplines is acceptable to perform the duties of an entry level marketing manager, the beneficiary is qualified to perform the duties of the position. The petition may not be approved, however, as the position is not 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.

As provided in 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.

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.

In determining whether a position qualifies as a specialty occupation, in accordance with the statutory and regulatory criteria set forth in section 214(i)(1) of the Act and 8 C.F.R. § 214.2(h)(4)(iii)(A), CIS typically considers whether the *Handbook* indicates a degree is required by the industry; 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.Minn. 1999) (quoting *Hird/Blaker Corp. v. Slattery*, 764 F.Supp. 872, 1102 (S.D.N.Y. 1991)). CIS also analyzes the specific duties and complexity of the position at issue, with the *Handbook's* occupational descriptions as a reference, as well as the petitioner's past hiring practices for the position. See *Shanti, id.*, at 1165-66.

As the *Handbook* clearly indicates, a baccalaureate or higher degree in a specific specialty is not required for an entry-level marketing manager position. "A wide range of educational backgrounds is suitable for entry into advertising, marketing, promotions, public relations, and sales managerial jobs, but many employers prefer those with experience in related occupations plus a broad liberal arts background. A bachelor's degree in sociology, psychology, literature, journalism, or philosophy, among other subjects, is acceptable." *Handbook*, 2004-05 edition, p. 24. Thus, a marketing manager does not meet the definition of a specialty occupation in section 214(i)(1) of the Act because it does not require a body of "highly specialized knowledge" and a baccalaureate or higher degree in a specific specialty.

Since the proffered position is akin to that of a marketing manager it does not qualify as a specialty occupation under the criterion of 8 C.F.R. § 214.2(h)(4)(iii)(C)(1) because a baccalaureate degree is not required to enter the particular position. The petitioner has not demonstrated that a degree requirement is

common to the industry in parallel positions among similar organizations. Based on the job description provided by the petitioner, the AAO also finds that the position is not so complex or unique, and the duties thereof are not so specialized and complex, that knowledge at a baccalaureate level in the specific specialty of marketing is necessary to perform the job, as required to qualify the position as a specialty occupation under the alternative criteria of 8 C.F.R. § 214.2(h)(4)(iii)(C)(2) and (4). Since the position is newly created the petitioner has no history of requiring a degree or its equivalent for the position, as required to qualify it as a specialty occupation under the criterion of 8 C.F.R. § 214.2(h)(4)(iii)(C)(3).

For the reasons discussed above, the record fails to establish that the position proffered by the petitioner meets the statutory definition or any of the regulatory criteria of a "specialty occupation."

The petitioner bears the burden of proof in these proceedings. *See* section 291 of the Act, 8 U.S.C. § 1361. The petitioner has not sustained that burden. Accordingly, the AAO will not disturb the director's decision denying the petition.

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