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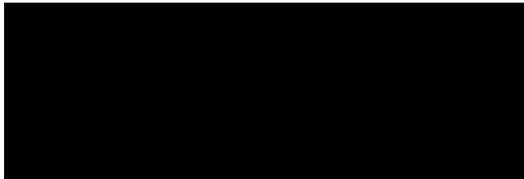
FILE: WAC 04 216 51170 Office: CALIFORNIA SERVICE CENTER Date: **AUG 02 2006**

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.

for Michael T. Kelly
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 dismissed. The petition will be denied.

The petitioner is a retailer of consumer products and general merchandise that seeks to employ the beneficiary as a management analyst. The petitioner endeavors to classify the beneficiary as a nonimmigrant worker in a specialty occupation pursuant to § 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 submits a letter and additional documentation, including a 2003 federal income tax return and invoices.

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.

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 management analyst. Evidence of the beneficiary's duties includes: the I-129 petition; the petitioner's June 11, 2004 letter in support of the petition; and the petitioner's response to the director's request for evidence. According to this evidence, the beneficiary would perform duties that entail: providing consultation and advice to management and staff; obtaining and analyzing the petitioner's existing operations and administrative systems to identify areas that require enhancement or modification; developing marketing strategies; proposing ways to improve or change organizational structure, wage administration, and work schedules; and training and mentoring workers. The petitioner indicated that a qualified candidate for the job would possess a bachelor's degree.

The director found that the proffered position was not a specialty occupation because the job is not a management analyst position; it combines the duties of marketing, sales, promotions, and public relations managers. Citing to the Department of Labor's *Occupational Outlook Handbook (Handbook)*, 2004-2005 edition, the director noted that the minimum requirement for entry into the position was not a baccalaureate degree or its equivalent in a specific specialty. 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, the petitioner states, in part, as follows:

There is an immediate need of a much higher level management to look after the overall welfare, management, administration, operation and growth of the corporation. Our business have [sic] its own central warehouse in [the] Vernon area, where we store [the] bulk of our inventory, and nobody sees after the proper supply and distribution of those [sic] merchandise. We have state of the art POS and Inventory System but nobody reviews and analyzes these data to come up with on time and useful reports to serve as guide on making proper forecasts on our future sales and purchases.

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. Minn. 1999)(quoting *Hird/Blaker Corp. v. Sava*, 712 F. Supp. 1095, 1102 (S.D.N.Y. 1989)).

The AAO routinely consults the *Handbook* for its information about the duties and educational requirements of particular occupations. On appeal, the petitioner states that the beneficiary will review and analyze its inventory data related to supply and distribution to make forecasts on future sales and purchases. The AAO does not concur with the petitioner the proffered position is that of a management analyst, which in private industry generally requires a master's degree in business administration or a related discipline. See the *Handbook*, 2006-2007 edition. It is noted that the beneficiary in this case holds a foreign bachelor's degree in biology. A review of the

Advertising, Marketing, Promotions, Public Relations, and Sales Managers occupational category in the *Handbook*, 2006-2007 edition, confirms that some of the job duties are similar to the responsibilities of a marketing manager. No evidence in the *Handbook* indicates that a baccalaureate or higher degree, or its equivalent, is normally required for a marketing manager job.

The AAO also notes that the proffered duties are so broadly described as to also comport with those of general and operations managers, positions for which the *Handbook* chapter on Top Executives indicates a baccalaureate degree or higher, or the equivalent, in a specific specialty is not a normal requirement.

Regarding parallel positions in the petitioner's industry, the record contains letters from four retail-related businesses. The writers assert that for their professional positions they require a bachelor's degree in a related field. The writers, however, do not provide any evidence in support of their assertions nor do they rely on industry surveys, data or other documentation to reach the conclusion that the position requires a bachelor's degree in a specific specialty. Further, their assertions are not supported by any evidence that would establish the authority of these individuals to speak to industry-wide hiring practices. The AAO may, in its discretion, use as advisory opinions statements submitted as expert testimony. However, where an opinion is not in accord with other information or is in any way questionable, the AAO is not required to accept or may give less weight to that evidence. *Matter of Caron International*, 19 I&N Dec. 791 (Comm. 1988).

The petitioner also submitted Internet job postings for various positions including a quality assurance analyst, a financial analyst, and a store support analyst. This information is not convincing evidence that the proffered position is a specialty occupation in this case, as the petitioner has not established that the proffered position is for a quality assurance analyst, a financial analyst, a store support analyst, or that the proffered position is similar to the advertised positions. In view of the foregoing, the petitioner has not demonstrated that a baccalaureate or higher degree in a specific specialty is the industry standard for the proffered position.

The record also does not include any evidence from firms, individuals, or professional associations regarding an industry standard, or documentation to support the complexity or uniqueness of the proffered position. As indicated in the earlier discussion about the *Handbook's* information, to the extent that it is depicted in the record, the proffered position does not appear unique from or more complex than management positions that do not normally require at least a baccalaureate degree, or the equivalent, in a specific specialty.

The petitioner, therefore, has 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. As the petitioner does not address this issue on appeal, it will not be discussed further. The evidence of record does not establish this criterion.

Finally, the AAO turns to the criterion at 8 C.F.R. § 214.2(h)(4)(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 proposed duties are described at a general level that does not establish specific work that the beneficiary would perform and how actual performance of that work would require the

application of knowledge associated with the attainment of at least a bachelor's degree in a specific specialty. Therefore, the evidence does not establish that the proffered position is a specialty occupation under 8 C.F.R. § 214.2(h)(4)(iii)(A)(4).

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.

Beyond the decision of the director, the petitioner has not established that the beneficiary is qualified to perform the services of a specialty occupation. The record contains a credentials evaluation from an academic evaluator concluding that the beneficiary's foreign biology degree and work experience are equivalent to a U.S. bachelor's degree with a dual major in business management and biology. The record, however, contains no corroborating evidence such as foreign employment letters that contain a comprehensive description of the beneficiary's duties. Thus, the evaluator's conclusions about the equivalency of work experience carry no weight in these proceedings. Further, as discussed above, a review of the *Handbook* finds that, in private industry, management analyst positions generally require a master's degree in business administration or a related discipline is generally required. CIS may, in its discretion, use as advisory opinions statements submitted as expert testimony. However, where an opinion is not in accord with other information or is in any way questionable, CIS is not required to accept or may give less weight to that evidence. *Matter of Caron International*, 19 I&N Dec. 791 (Comm. 1988). For this additional reason, the petition may not be approved.

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.