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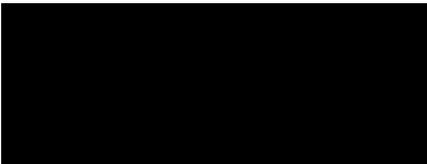
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FILE: WAC 03 268 50512 Office: CALIFORNIA SERVICE CENTER Date: JUL 25 2005

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:



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.

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 localization and translation services provider that assists companies in expanding their global business. It seeks to employ the beneficiary as a vice president of sales. 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 and the beneficiary is not qualified to perform a specialty occupation. On appeal, counsel submits a brief.

The AAO will first address the director's conclusion that the position is not a specialty occupation.

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 vice president of sales. Evidence of the beneficiary's duties includes: the I-129 petition; the petitioner's September 20, 2003 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: directing North American sales and account management for partners; developing strategies, methods, and tools to enable team selling and support processes for new business opportunities and existing partner-revenue generation; hiring and training partner team; providing tools and direction for solution selling; performing business planning, including identifying target markets, developing business model and strategy, value propositions, and sales messaging; gathering competitive market data, developing customized and flexible sales processes, making assessments, preparing weekly reports, and forecasting; negotiating, closing, and contracting new business; "responsible for selling through and revenue generation within the client base individually and in support of account manager"; and promoting the partner strategy and mission internally to foster a cooperative selling environment between field sales, sales management, and partners. The petitioner indicated that a qualified candidate for the job would possess a Bachelor of Science degree plus one year of work experience in sales, or an equivalent thereof.

The director found that the proffered position, which is similar to a sales manager, was not a specialty occupation. Citing to the Department of Labor's *Occupational Outlook Handbook (Handbook)*, 2002-2003 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, counsel states, in part, that the proffered position is clearly that of a vice president of sales, and is not just a sales manager position. Counsel states further that the beneficiary has performed very similar job duties in the L-1 category for another petitioner. Counsel also states that the record contains evidence that the petitioner normally requires a baccalaureate degree for the proffered position.

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. The AAO does not concur with counsel that the proffered position is a specialty occupation. Information on the petition that was signed by the petitioner's president on September 20, 2003, indicates that the petitioner currently has 16 employees and a gross annual income of \$2,406,004. While the petitioner's federal tax returns for the years 1999, 2000, and 2001 do reflect a gross annual income in excess of \$2 million, there is no evidence in the record that the petitioner has 16 employees. In fact, the petitioner's

quarterly federal tax return and “quarter wage summary” for the quarter that ended on September 30, 2003, reflects only one employee, [REDACTED]. It is further noted that although the petitioner’s organizational chart, which was submitted on appeal, reflects that Thomas Shapiro is the petitioner’s vice president of strategic business development, the petitioner’s newsletters indicate that Thomas Shapiro is the petitioner’s vice president of sales and marketing. Thus, the petitioner’s organizational hierarchy is unclear. The record contains no explanation for these inconsistencies. It is incumbent upon the petitioner to resolve any inconsistencies in the record by independent objective evidence. Any attempt to explain or reconcile such inconsistencies will not suffice unless the petitioner submits competent objective evidence pointing to where the truth lies. *Matter of Ho*, 19 I&N Dec. 582, 591-92 (BIA 1988). Doubt cast on any aspect of the petitioner’s proof may, of course, lead to a reevaluation of the reliability and sufficiency of the remaining evidence offered in support of the visa petition. *Matter of Ho*, 19 I&N Dec. 582, 591 (BIA 1988). A review of the Advertising, Marketing, Promotions, Public Relations, and Sales Managers job descriptions in the *Handbook*, 2004-2005 edition, at pages 23-24, confirms the accuracy of the director’s assessment to the effect that, the job duties parallel those responsibilities of a sales manager. No evidence in the *Handbook* indicates that a baccalaureate or higher degree, or its equivalent, is required for a sales manager job.

Counsel’s statement that the beneficiary has performed similar job duties under the L-1 classification for a different petitioner is noted. The record of proceeding, however, does not contain a copy of such visa petition or evidence that it relates to the instant H-1 petition. It must be emphasized that each petition filing is a separate proceeding with a separate record. *See* 8 C.F.R. § 103.8(d). In making a determination of statutory eligibility, CIS is limited to the information contained in that individual record of proceeding. *See* 8 C.F.R. § 103.2(b)(16)(ii). A review of the record in its entirety finds that the director properly reviewed the record before him.

The record does not include evidence regarding parallel positions in the petitioner’s industry. 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, 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. On appeal, counsel states that the petitioner’s Internet advertisements and information at its company site both indicate the requirement of a bachelor’s degree. Counsel states further that the petitioner’s organizational chart shows that the petitioner’s “VP, Senior Project Manager, CEO, and COO” all have a minimum of a baccalaureate degree. The record contains an Internet job posting for the petitioner for a “business development manager” position. The posting, however, does not specify the requirement of a baccalaureate degree. It is also noted that the petitioner’s “Position Available Notice” specifies only the requirement of a Bachelor of Science degree. Furthermore, the record does not contain any evidence of the petitioner’s past hiring practices and, therefore, the petitioner has not met its burden of proof in this regard. Going on record without supporting documentary evidence is not sufficient for purposes of meeting the burden of proof in these proceedings. *Matter of Soffici*, 22 I&N Dec. 158, 165 (Comm. 1998) (citing *Matter of Treasure Craft of California*, 14 I&N Dec. 190 (Reg. Comm. 1972)).

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. 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.

The director also found that the beneficiary was not qualified to perform the duties of the proffered position because the petitioner had not provided evidence that the credentials evaluator had the authority to grant college-level credit in the particular specialty. On appeal, counsel submits a letter from the dean of an accredited U.S. university, who states, in part, that the evaluator of record has the authority within the School of Business to grant credit by examination and waive courses with the business school. In this case, the beneficiary holds a Bachelor of Science degree in Applied Computing from an Irish institution. The record contains an evaluation indicating, in part, that the beneficiary's foreign degree and related work experience are equivalent to a bachelor's degree in business administration with a specialization in marketing. As such, the petitioner has demonstrated that the beneficiary is qualified to perform the duties of the proffered position. The petition may not be approved, however, because the proffered position is not 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.