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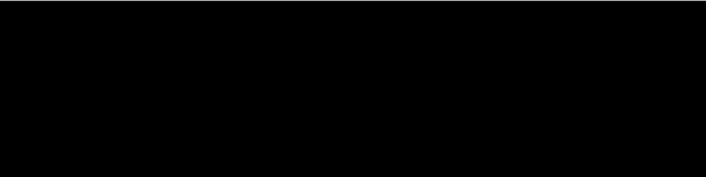
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U.S. Citizenship
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FILE: SRC 06 100 50548 Office: TEXAS SERVICE CENTER Date: **JUL 31 2007**

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 franchiser of retail sign stores. It seeks to employ the beneficiary in a position entitled market research analyst/franchise development, and endeavors to classify him 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 does not qualify as a specialty occupation, and because the beneficiary does not qualify as a specialty occupation. On appeal, counsel submits a brief contending that the offered position qualifies as a specialty occupation and that the beneficiary is qualified to perform the duties of a specialty occupation.

The first issue to be discussed in this proceeding is whether the proffered position qualifies as a specialty occupation.

Section 101(a)(15)(H)(i)(b) of the Act, 8 U.S.C. § 1101(a)(15)(H)(i)(b), provides, in part, for the classification of qualified nonimmigrant aliens who are coming temporarily to the United States to perform services in 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.

The term "specialty occupation" is further defined at 8 C.F.R. § 214.2(h)(4)(ii) as:

[A]n occupation which requires theoretical and practical application of a body of highly specialized knowledge in fields of human endeavor including, but not limited to, architecture, engineering, mathematics, physical sciences, social sciences, medicine and health, education, business specialties, accounting, law, theology, and the arts, and which requires the attainment of a bachelor's degree or higher in a 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 are 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.

To determine whether a particular job qualifies as a specialty occupation, CIS does not simply rely on a position’s title. The specific duties of the proffered position, combined with the nature of the petitioning entity’s business operations, are factors to be considered. CIS must examine the ultimate employment of the alien, and determine whether the position qualifies as a specialty occupation. *Cf. Defensor v. Meissner*, 201 F.3d 384 (5th Cir. 2000). The critical element is not the title of the position nor an employer’s self-imposed standards, but whether the position actually requires the theoretical and practical application of a body of highly specialized knowledge, and the attainment of a baccalaureate or higher degree in the specific specialty as the minimum for entry into the occupation, as required by the Act.

The record of proceeding before the AAO contains: (1) the 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) the Form I-290B with counsel’s brief. The AAO reviewed the record in its entirety before issuing its decision.

The petitioner is seeking the beneficiary’s services in a position entitled market research analyst/franchise development. Evidence of the beneficiary’s duties includes the Form I-129 petition with attachment and the petitioner’s response to the director’s request for evidence. According to this evidence the beneficiary would:

- Support franchise international expansion by providing guidance and training to corporate staff on foreign customs and business protocols;
- Implement and devise ways to circumvent any cultural issues which may arise with the increasing amount of international travel taking place by home office domestic employees;
- Travel internationally to train local master franchisors on the Sign*A*Rama corporate culture and advise on how to modify suitability to local customs and traditions;
- Provide training and marketing support to franchise owners, implementing new campaigns and ensuring corporate brand consistency;

- Work directly with regional vice presidents around the world, providing sales leads and supporting expansion around the world;
- Resolve all communication, trust and respect issues with franchisees, providing motivation and support;
- Develop a database of old and new customer profiles, maintaining up-to-date awareness of corporate activities and industry trends, ensuring quality and consistency of company messages and image;
- Complete post project analysis, reviewing and communicating status reports of results;
- Support new franchisees in starting and developing new stores;
- Coordinate with media outlets to have Sign*A*Rama spotlighted locally and regionally around the world; and
- Assist the director of marketing in providing qualitative information to improve low performing territories and determine region and territory potential.

The petitioner requires a minimum of a bachelor's degree in a business related field for entry into the proffered position.

To determine whether the duties described are those of 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 is the normal minimum requirement for entry into the particular position; and 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 Department of Labor's *Occupational Outlook Handbook (Handbook)* reports that the industry requires a degree; whether an industry 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)).

As the petitioner has characterized its position as that of a market research analyst, the AAO first turns to the *Handbook's* description of market and survey researchers, the occupational title that is most closely related to the proffered position. The *Handbook*, 2006 – 07 edition, at page 175, describes the occupation of market or marketing research analysts as follows:

Market, or marketing, research analysts are concerned with the potential sales of a product or service. Gathering statistical data on competitors and examining prices, sales, and methods of marketing and distribution, they analyze data on past sales to predict future sales. Market research analysts devise methods and procedures for obtaining the data they need. Often, they design telephone, mail or Internet surveys to assess consumer preferences. They

conduct some surveys as personal interviews, going door-to-door, leading focus group discussions, or setting up booths in public places such as shopping malls. Trained interviewers usually conduct the surveys under the market research analyst's direction.

The AAO routinely consults the *Handbook* for information about the duties and educational requirements of particular occupations. The duties of the proffered position, though somewhat vaguely described, are varied and include duties normally performed by advertising, marketing, promotions, public relations, and sales managers, as well as some additional management responsibilities. The duties described are not those typically performed by market research analysts as stated by the petitioner. While this position requires some market research, it is not a market research analyst position performing pure market research to be used in making corporate business decisions. The market research to be performed is the type normally performed by marketing managers and similar personnel in establishing marketing/promotional, advertising and sales campaigns. The beneficiary would use the research in implementing marketing, sales and promotional campaigns.

The *Handbook* notes that a wide range of educational backgrounds is suitable for entry into advertising, marketing, promotions, public relations, and sales manager positions, but that many employers prefer related experience plus a broad liberal arts background. Bachelor's degrees in sociology, psychology, literature, journalism, philosophy, or other subjects are suitable. Requirements will vary, however, depending on the duties of a particular position. For example, some employers prefer a bachelor's or master's degree in business administration with an emphasis in marketing, for marketing, sales, and promotion management positions. In highly technical industries such as computer and electronics manufacturing a degree in engineering or science combined with a business degree may be preferred. In public relations management positions some employers prefer a bachelor's or master's degree in public relations or journalism. The *Handbook* notes that most advertising, marketing, promotions, public relations, and sales management positions are filled by promoting experienced staff or related professional or technical personnel. Many managers are former sales representatives, purchasing agents, or promotions specialists. A baccalaureate or higher degree in a specific specialty or its equivalent is not, therefore, the minimum requirement for entry into the position. A degree in a wide range of disciplines will suffice. The petitioner has failed to establish the criterion at 8 C.F.R. § 214.2(h)(4)(iii)(A)(I).

The *Handbook* further notes that the formal education and experience of general/operations managers, and other management personnel, varies as widely as the nature of their responsibilities. Many have a bachelor's or higher degree in business administration or liberal arts, while others obtain their positions by promotion from lower level management positions. Thus, it is possible to obtain a position as a general or operations manager without a college degree by promotion from within the organization based upon performance alone. It is apparent from the *Handbook* that a baccalaureate or higher degree, in a specific specialty, is not the minimum requirement for entry into these management positions. Positions requiring a college degree are filled from a wide range of educational disciplines. A degree in a specific specialty, however, is not required. The petitioner has failed to establish the first criterion of 8 C.F.R. § 214.2(h)(4)(iii)(A) with respect to the management/operational responsibilities of the position.

The petitioner has also failed to establish that a degree requirement, in a specific specialty, is common to the industry in parallel positions among similar organizations, or in the alternative that the duties of the offered

position are so complex or unique that they can be performed only by an individual with a baccalaureate level education in a specific specialty. The petitioner offers no evidence to establish that a degree in a specific specialty is common to the industry in parallel positions among similar organizations, except to refer to the *Handbook's* discussion of the education and training requirements for market and survey researchers (market research analysts). As noted above, the duties of the proffered position are not those of a market research analyst and the petitioner's reference to the educational requirements of that position in the *Handbook* will not establish the first prong of the criterion at 8 C.F.R. § 214.2(h)(4)(iii)(A)(2). Further, the record does not establish that the duties of the offered position are so complex or unique that they can only be performed by an individual with at least a bachelor's degree in a specific educational discipline. As described by the petitioner, the duties are only generally described and fall within those noted for advertising, marketing, promotions, public relations, and sales managers, with some additional management responsibilities. The record does not establish that the duties to be performed require a body of highly specialized knowledge that can only be obtained by a bachelor's degree in a specific area of study. The duties include general management responsibilities as well as marketing, sales and public relations duties that are regularly performed by individuals having a wide range of education and training. The record does not establish that the duties to be performed require a specialized course of study in a specific field. The petitioner has failed to establish the referenced criterion at 8 C.F.R. § 214.2(h)(4)(iii)(A)(2).

The petitioner has not established that it normally requires a degree in a specific educational discipline for entry into the offered position, and offers no evidence in this regard. The petitioner has failed to establish the criterion at 8 C.F.R. § 214.2(h)(4)(iii)(A)(3).

Finally, the duties to be performed by the beneficiary are not so specialized or complex that knowledge required to perform them is usually associated with the attainment of a baccalaureate or higher degree in a specific specialty. The evidence of record does not develop the proposed duties with sufficient specificity to demonstrate the requisite usual association with at least a bachelor's degree in a specific specialty. The extent to which they are described in the record does not elevate the duties above those of the *Handbook* positions earlier discussed, for which the *Handbook* indicates no usual association with a baccalaureate or higher degree in a specific specialty. The duties of the position are those routinely performed by individuals with education and training in a wide range of educational disciplines. The petitioner has failed to establish the referenced criterion at 8 C.F.R. §§ 214.2(h)(4)(iii)(A)(4).

The petitioner has failed to establish that the offered position meets any of the criteria listed at 8 C.F.R. § 214.2(h)(4)(iii)(A). 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 and the appeal shall accordingly be dismissed.

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