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U.S. Citizenship  
and Immigration  
Services

D1



FILE: WAC 03 219 54016 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:



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 an advertising agency. It seeks to employ the beneficiary as an account executive and 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 on the ground that the proffered position is not a specialty occupation. On appeal the petitioner asserts that the subject position requires a bachelor's degree, at the minimum, and therefore qualifies as 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.

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 (RFE); (3) the petitioner's response to the RFE; (4) the director's notice of decision; and (5) Form I-290B and an appeal brief. The AAO reviewed the record in its entirety before issuing its decision.

In its petition and in response to the director's RFE the petitioner stated that the duties of the account executive will be to (1) plan, coordinate, and direct advertising campaigns for clients, (2) confer with clients to determine advertising requirements and budgetary limitations utilizing knowledge of products or services to be advertised, media capabilities and audience characteristics, (3) confer with agency artists, copywriters, photographers, and other media production specialists to select preferred media and estimate costs, and (4) submit proposed programs and estimated budgets to clients for approval. The petitioner stated that the minimum educational requirement for the position is a bachelor's degree in advertising, marketing or psychology. The beneficiary was awarded a bachelor of arts with a major in psychology from the University of California at Los Angeles (UCLA) in June 2002. The petitioner also submitted the petitioner's organizational chart, resumes from two other employees with bachelor's degrees in psychology, internet job announcements for other account executive positions, as well as a letter from a university professor attesting that a baccalaureate degree is a minimum requirement for the position of account executive.

The director found that the duties of the proffered position fall under the category of advertising, marketing, promotions, public relations, and sales managers, as described in the Department of Labor's *Occupational Outlook Handbook (Handbook)*, but that none of these occupations, as indicated in the *Handbook*, required a bachelor's degree in a specific specialty. In fact, the *Handbook* noted that many such positions are filled by promoting experienced staff. The director also found that the duties and responsibility level of the proffered position did not indicate complexity or authority beyond that normally encountered in the occupational field, and that the evidence failed to show the job could not be performed by an experienced individual without a baccalaureate degree. For all of these reasons, the director concluded that the proffered position was not a specialty occupation.

In determining whether a position meets the statutory and regulatory criteria of a specialty occupation, CIS routinely consults the *Handbook* as an authoritative source of information about the duties and educational requirements of particular occupations. Factors typically considered by CIS are 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.

On appeal the petitioner asserts that a baccalaureate degree is normally the minimum requirement for entry into the proffered position, thereby satisfying the first alternative criterion to qualify as a specialty occupation set forth at 8 C.F.R. § 214.2(h)(4)(iii)(A)(1). The petitioner contends that the director did not take into account the letter previously submitted by Professor [REDACTED] a professor of marketing in the College of Business Administration at California State University, Long Beach, dated September 3, 2003. In that letter [REDACTED] stated that, based on his review of the job duties, the account executive position would "require bachelor's degree training." According to the professor, "[i]t would be difficult for someone without a bachelor's degree to adequately perform the various duties required of an Account Executive since the job responsibilities require familiarity with advertising and marketing principles, experience in social research, and a high level of writing and speaking skills."

Referring specifically to the beneficiary's educational degree, Prof. Witkowski declared that "[p]sychology is an appropriate major for this type of work because managing advertising depends upon knowledge of social science concepts providing insight into consumers and how they respond to communications." To satisfy the first regulatory criterion of a specialty occupation, however, an entry-level position must require a bachelor's degree *in the specific specialty*. See section 214(i)(1) of the Act, 8 U.S.C. § 1184(i)(1). The beneficiary's degree is in psychology, not in the specific specialty – advertising or marketing – of the proffered position. Nowhere in his letter did Prof. Witkowski indicate that a bachelor's degree specifically in advertising, marketing, or a similar business field was required for the account executive position. Accordingly, the professor's letter does not establish that the proffered position meets the first alternative criterion of a specialty occupation at 8 C.F.R. § 214.2(h)(4)(iii)(A)(1).

The petitioner maintains that any applicant for its account executive position would be required to have at least a baccalaureate degree because "the current economic climate allows employers like ourselves to require not only a bachelor's degree but . . . other credentials such as progressive work experience as well as specialized technical knowledge." This argument also fails to acknowledge that, in accordance with the statutory definition, a bachelor's degree in the specific specialty is required, not just any bachelor's degree, to qualify the subject position as a specialty occupation under 8 C.F.R. § 214.2(h)(4)(iii)(A)(1).

The petitioner asserts on appeal that the director ignored the resumes from two of its employees showing that the petitioner normally requires a bachelor's degree for the proffered position, thereby satisfying the alternative criterion at 8 C.F.R. § 214.2(h)(4)(iii)(A)(3) to qualify as a specialty occupation. One resume (with job application) is from ██████████ a graduate of UCLA with a baccalaureate degree in economics and psychology, who was hired by the petitioner as Vice President, Director of Account Services, in November 2002. This position is senior to that of an account executive, as shown on the petitioner's organizational chart, and therefore not a persuasive indicator of the minimum educational requirement for an account executive position. Moreover ██████████ degree is in economics and psychology, not in the specific specialty – advertising or marketing – of the position he was offered. The other resume, from ██████████ is actually missing from the record. But ██████████ job application is in the record indicating that he has a bachelor's degree in social psychology from UCLA and was hired by the petitioner as an account executive (or account manager) in June 2003. Like the degrees of ██████████ and the beneficiary ██████████ was not in the specific specialty – advertising or marketing – of the proffered position. Thus, the degrees of ██████████ not demonstrate that the petitioner normally requires a bachelor's degree in the specific specialty of marketing or advertising for entry into one of its account executive positions, as required for the proffered position to qualify as a specialty occupation under 8 C.F.R. § 214.2(h)(4)(iii)(A)(3).

Nor has the petitioner established that a degree in a specific specialty is common to the advertising industry in parallel positions among similar companies. The internet job announcements in the record all refer to a variety of baccalaureate options for such positions. Thus, the proffered position does not qualify as a specialty occupation under the first prong of 8 C.F.R. § 214.2(h)(4)(iii)(A)(2).

Lastly, the petitioner has not established that the account executive position is so complex or unique, or the duties so specialized and complex, that a baccalaureate degree in the specific specialty or equivalent knowledge is required for an individual to perform the services of the job, which could qualify the position as a specialty occupation under the second prong of 8 C.F.R. § 214.2(h)(4)(iii)(A)(2) or under 8 C.F.R. § 214.2(h)(4)(iii)(A)(4).

Thus, the proffered position fails to meet any of the regulatory criteria to qualify as a specialty occupation under 8 C.F.R. § 214.2(h)(4)(iii)(A).

The statute requires that the beneficiary be coming temporarily to the United States to perform services in a specialty occupation. *See* section 101(a)(15)(H)(i)(b) of the Act, 8 U.S.C. § 1101 (a)(15)(H)(i)(b), and 8 C.F.R. § 214.2(h)(1)(ii)(B). The petitioner has not established that the beneficiary will be performing services in 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.