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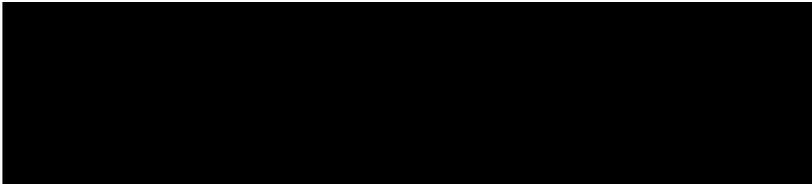
FILE: WAC 03 155 51511 Office: CALIFORNIA SERVICE CENTER Date: **AUG 01 2005**

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.

Robert P. Wiemann

Robert P. Wiemann, Director
Administrative Appeals Office

DISCUSSION: The director of the California Service Center 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 operates three residential facilities. It seeks to hire the beneficiary as a marketing administrator. The director denied the petition based on his determination that the petitioner had failed to establish that its proffered position was a specialty occupation. Additionally, the director determined that the petitioner had not established that the beneficiary was qualified to perform the duties in any specialty occupation.

The record of proceeding before the AAO contains: (1) Form I-129 and supporting documentation; (2) the director's request for evidence; (3) counsel's response to the director's request for evidence; (3) the director's denial letter; and (4) Form I-290B, with counsel's brief and previously submitted documentation. The AAO reviewed the record in its entirety before reaching its decision.

The issue before the AAO is whether the petitioner's proffered position qualifies as a specialty occupation. To meet its burden of proof in this regard, a petitioner must establish that the job it is offering to the beneficiary meets the following statutory and regulatory requirements.

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 one 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:

An 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 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 above criteria 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 petitioner states that it is seeking the beneficiary’s services as a marketing administrator. Evidence of the beneficiary’s duties includes: the Form I-129; a letter of support from the petitioner; and counsel’s January 2, 2004 response to the director’s request for evidence. According to this evidence, the beneficiary would perform duties that entail administering the marketing of board and care facilities by contacting hospitals, doctors, social workers and discharge planners to explain services and facilities offered and solicit business. Preparing advertising, promotional and correspondence and coordinating trade show/conference events to market facilities’ services to private and medical facilities; maintaining marketing database; providing marketing material to staff to educate them on company services and encourage them to market company’s services; assisting in analyzing statistics to develop and implement marketing strategy to increase private-pay resident/patient population. The petitioner indicated the position requires a bachelor’s degree with a major in marketing and one year of experience.

The director requested additional evidence, specifically, a breakdown of the percentage of time to be spent on each duty. In his denial, the director referred to the Department of Labor’s *Occupational Outlook Handbook* (the *Handbook*) and found that the overwhelming number of duties, as described by the petitioner, were most similar to the duties of Advertising, Marketing, Promotions, Public Relations, and Sales Managers – occupations which do not normally require a baccalaureate level of study. The director found that the position did not meet any of the preceding criteria for classification as a specialty occupation.

On appeal, counsel refers to the Department of Labor’s *Dictionary of Occupational Titles* (*DOT*) to support her contention that the proffered position is a specialty occupation. Counsel notes that the position of marketing manager listed in the *DOT* is similar to the proffered position and that the *DOT* indicates that the Job Zone description for level four occupations indicates that these jobs require at least a bachelor’s degree. Counsel also notes that the beneficiary is qualified for the position because his foreign degree has been evaluated to be the equivalent of a bachelor’s degree in marketing from a regionally accredited institution.

The *DOT* is not a persuasive source of information regarding whether a particular job requires the attainment of a baccalaureate or higher degree in a specific specialty, or its equivalent, as a minimum for entry into the

occupation. An SVP rating is meant to indicate only the total number of years of vocational preparation required for a particular position. It does not describe how those years are to be divided among training, formal education, and experience, and it does not specify the particular type of degree, if any, that a position would require. For this reason, the AAO does not rely on the *DOT* information.

Based on the record of proceeding, the AAO has determined that the proffered position is most similar to that of a marketing manager in the *Handbook*. According to the *Handbook*, marketing managers develop the firm's detailed marketing strategy. With the help of subordinates, marketing managers determine the demand for products and services offered by the firm and its competitors. In addition, they identify potential markets. According to the *Handbook*, 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. This is similar to the proffered position in that the duties include, among others, preparing advertising, promotional and correspondence and coordinating trade show/conference events to market facilities' services to private and medical facilities; and providing marketing material to staff to educate them on company services and encourage them to market company's services.

With respect to the educational qualifications required of marketing managers, the *Handbook* states:

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. For marketing, sales and promotions management positions, some employers prefer a bachelor's or master's degree in business administration with an emphasis on marketing.

Consequently, there is insufficient evidence in the record to establish that a baccalaureate or higher degree or its equivalent in a specific specialty is the normal minimum requirement for entry into the marketing manager position.

To establish the second criterion - that a specific degree requirement is common to the industry in parallel positions among similar organizations - counsel relies on submitted internet job postings from various companies: PacifiCare Health Systems, HiTech Navigation and Brown & Toland Physician Services Organization. This evidence fails to establish that a specific baccalaureate degree is common to the industry in parallel positions among similar organizations. The advertised positions are not parallel to the proffered position. For example; Brown & Toland Physician Services Organization requires developing and maintaining major editorial content on a variety of topics for the company's three web sites; and the PacifiCare Health Systems position is with Prescriptions Solutions which manages more than \$1.9 billion annual pharmaceutical purchases. Consequently, the postings fail to establish that there is a specific baccalaureate degree that is a common industry-wide requirement.

Nor is there evidence in the record to establish the third criterion at 8 C.F.R. § 214.2(h)(4)(iii)(A): that the petitioner normally requires a specific degree or its equivalent for the position.

The fourth criterion at 8 C.F.R. § 214.2(h)(4)(iii)(A) requires that the petitioner establish that the nature of the specific duties is so specialized and complex that the knowledge required to perform the duties is usually associated with the attainment of a baccalaureate or higher degree. To the extent they are described in the record, the duties of the position are not so specialized and complex that the knowledge required to perform them is usually associated with the attainment of a baccalaureate or higher degree. The duties parallel those

in the *Handbook* for a marketing manager, an occupation that does not require a specific baccalaureate degree. The petitioner therefore fails to establish the fourth criterion.

Additionally, the director determined that the beneficiary was not qualified to perform the duties of the specialty occupation. However, as discussed above, the proffered position is not a specialty occupation; therefore, the beneficiary's qualifications are not relevant.

Therefore, for the reasons related in the preceding discussion, 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.

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.