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U.S. Citizenship
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FILE: WAC 04 010 50338 Office: CALIFORNIA SERVICE CENTER Date: **AUG 03 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 newspaper publisher that seeks to employ the beneficiary as an advertising manager. The petitioner endeavors to classify the beneficiary 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 is not a specialty occupation. On appeal, counsel submits a brief.

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 an advertising manager. Evidence of the beneficiary's duties includes: the I-129 petition; the petitioner's October 13, 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: developing, implementing and managing the company's advertising strategy to generate the maximum revenue possible for the classified department; designing and implementing policies and decisions affecting prices, terms, conditions of sale, and services to be rendered; developing advertising campaigns and promotions for the company and for the advertisers; gathering information through research and translating the research into concise useable information; serving as primary liaison between the newspaper and the advertiser and/or advertising agency to implement the advertising plan; conferring and coordinating with current and prospective advertisers regarding ad copy, budget, deadlines, special issues and promotions; liaising with the technical departments of the company and coordinating production; discussing the advertising scheme with the technical staff to ensure that clients' needs and requirements are met; reviewing final layout and approving the printing of the ad; reviewing ad contracts and approving advertising work orders; overseeing, supervising and training people involved in marketing and sales; and conducting market research and analyzing data to verify the effectiveness of advertisements. The petitioner stated that a qualified candidate would possess a bachelor's degree in business administration or its equivalent.

The director found that the proffered position was not a specialty occupation. Citing to the Department of Labor's *Occupational Outlook Handbook (Handbook)*, the director noted that the minimum requirement for entry into a position as an advertising or marketing manager 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). The director also stated that there were discrepancies in the petition and supporting documentation regarding the petitioner's income and the wages paid to other workers.

On appeal, counsel states that the petitioner entered information on the Form I-129 regarding its income for a three-year period since that was to be the duration of the beneficiary's visa classification. Counsel also states that the director was incorrect in stating that the petitioner was not paying its other H-1B classification workers at the rate reported in their petitions. Counsel explains that the director did not take into account the number of months the other beneficiaries had worked during the year in question, and that their pro-rated wages were at the rate stated in their petitions. Counsel asserts that the director disregarded the letter from an expert witness stating that the proffered position is a specialty occupation, as well as disregarding letters from two of the petitioner's competitors stating that a bachelor's degree is required for the 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 proffered position is an advertising manager. The 2004-2005 edition of the *Handbook* describes educational requirements for entry into the advertising manager field:

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. A bachelor's degree in sociology, psychology, literature, journalism, or philosophy, among other subjects, is acceptable. However, requirements vary, depending upon the particular job.

As noted above, 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 *Handbook* clearly states that there is no requirement for a degree in a specific specialty for entry into this field. A wide range of areas of study would be appropriate preparation for a position as an advertising manager.

The AAO notes that the petitioner stated that it required a degree in business administration for the position. A petitioner must demonstrate that the proffered position requires a precise and specific course of study that relates directly and closely to the position in question. Since there must be a close corollary between the required specialized studies and the position, the requirement of a degree with a generalized title, such as business administration or liberal arts, without further specification, does not establish the position as a specialty occupation. *Matter of Michael Hertz Associates*, 19 I&N Dec. 558 (Comm. 1988).

The record contains letters from two Filipino newspapers, each asserting that a bachelor's degree is required for a position as an advertising manager. One of the letters states that the company has an advertising manager with a bachelor's degree, with no specialty stated. The second letter states that its advertising manager has a bachelor's degree in mass communications. Not only is this not the degree required by the petitioner, but 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)).

The petitioner also submitted a letter from its expert, a professor of management and information systems at Seattle Pacific University. The letter is both a credentials evaluation for the beneficiary, and a position evaluation of the proffered position. The professor makes a conclusion stating that the duties of the proffered position:

[A]re specialized and require the theoretical and practical application of a body of highly specialized knowledge and duties of a specialty occupation as defined by USCIS requiring the attainment of the equivalent of a Bachelor's Degree in Business Administration or related

degree for companies of all sizes. Achieving a U.S. Bachelor's Degree in Business Administration or a related degree would be considered a common requirement for Advertising Manager for a firm in the newspaper industry.

The professor provides no information regarding how he came to this conclusion. According to the regulations, a recognized authority must state "[h]ow the conclusions were reached; and [t]he basis for the conclusions supported by copies or citations of any research material used." 8 C.F.R. § 214.2(h)(4)(ii). The AAO notes that the professor's conclusions contradict the information in the *Handbook*. 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).

The petitioner 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. The proffered position is a new position and the petitioner is not able to meet this criterion.

Finally, the AAO turns to the criterion at 8 C.F.R. § 214.2(h)(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).

Regarding the conflicting financial information noted by the director, the petitioner has explained the errors, and provided evidence to support some of its claims. The director's remarks on this issue are withdrawn.

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.

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.