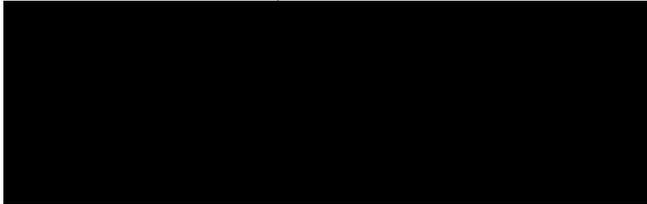


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**U.S. Citizenship
and Immigration
Services**

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Dr

FILE: EAC 03 263 51526 Office: VERMONT SERVICE CENTER Date: DEC 02 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 materials 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 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 a Polish-language newspaper. It seeks to employ the beneficiary as a sales and promotion manager and to classify her 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 grounds that the proffered position is not a specialty occupation and the beneficiary is not qualified 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.

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

In a letter accompanying Form I-129 the petitioner described itself as a Polish-language newspaper published quarterly in New York and distributed to the Polish-American community nationwide. The newspaper reports on political, economic, social, and cultural developments in Poland and the United States. The petitioner states that it wishes to hire the beneficiary on a part-time basis (20 hours/week) as its sales and promotion manager to develop a marketing strategy for the newspaper, to promote it, and to maximize profits. According to the petitioner, the beneficiary is qualified for the position by virtue of her bachelor's degree in business administration, majoring in management and marketing, from the College of Economics in Katowice, Poland, granted on February 18, 2003.

In response to the RFE, the petitioner explained that it is a sole proprietorship that needs the services of a part-time employee to market and promote the newspaper. The petitioner provided a more detailed description of the job duties, which reads as follows:

[The beneficiary] will monitor publications and number of issues, she will be in charge of promotion and advertising in order to attract potential readers. She will have to maintain contact with future distributors to develop readership and maximize profits. In an effort to establish closer contact with the Polish community, promotion programs will include direct mail, telemarketing, catalogs, in-store displays of our newspaper and even special events among the Polish community in the New York area.

In her decision the director determined that the evidence of record failed to establish that the proffered position meets the statutory and regulatory requirements of a specialty occupation. The director also alluded to the petitioner's failure to show how the beneficiary's educational credentials relate to the proffered position, and determined that the evidence of record failed to establish that the beneficiary is qualified to perform services in a specialty occupation.

On appeal the petitioner referred to its previously submitted description of the proffered position and asserted that the small size of the company and the part-time nature of the position does not prevent it from being a specialty occupation. The petitioner also asserted that the beneficiary's education is directly related to the duties and responsibilities of the proffered position, thus qualifying her to perform services in a specialty occupation. Though the petitioner indicated on the appeal form, filed September 28, 2004, that a supporting brief and/or evidence would be submitted within 60 days, no such materials were submitted in the next 60 days or at any time up to the date of this decision.

In determining whether a position meets the statutory and regulatory criteria of a specialty occupation, CIS routinely consults the Department of Labor (DOL)'s (*Handbook*) as an authoritative source of information about the duties and educational requirements of particular occupations. Factors typically considered 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. Sava*, 764 F.Supp. 1095, 1102 (S.D.N.Y. 1989)). 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, Inc. v. Reno, id.*, at 1165-66.

The proffered position fits within the *Handbook*'s broad category of advertising, marketing, promotions, public relations, and sales managers, whose duties are described generally on page 23 of the *Handbook*, 2004-05 edition, as "coordinat[ing] market research, marketing strategy, sales, advertising, promotion, pricing, product development, and public relations activities." The proffered position, as described by the petitioner, combines elements of all of these occupational subcategories. With respect to the educational requirements for such positions, the *Handbook* states as follows:

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.

Id. at 24. As indicated in the *Handbook*, therefore, a baccalaureate or higher degree in a specific specialty is not the normal, industry-wide requirement for entry into an advertising, marketing, promotions, public relations, and/or sales manager position. Many employers give favorable consideration to a broad spectrum of degrees in hiring for such a position. Thus, the sales and promotion manager position at issue in this petition does not meet the first alternative criterion of a specialty occupation, at 8 C.F.R. § 214.2(h)(4)(iii)(A)(1), because a baccalaureate degree in a specific specialty is not the normal minimum requirement to enter into the position.

With regard to the second alternative criterion of a specialty occupation, there is no documentation showing that a degree requirement in a specific specialty is common to the petitioner's industry in parallel positions among similar organizations. 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). Nor has the petitioner demonstrated that the proffered position is so complex or unique that a degree in a specific specialty is required to perform the job. Accordingly, the proffered position does not qualify as a specialty occupation under the second prong of 8 C.F.R. § 214.2(h)(4)(iii)(A)(2).

Since the proffered position is newly created the petitioner has no history of requiring a specialty degree or its equivalent. Accordingly, the position does not meet the third alternative criterion of a specialty occupation at 8 C.F.R. § 214.2(h)(4)(iii)(A)(3).

Finally, the record does not show that the duties of the proffered position are so specialized and complex that they require knowledge usually associated with a baccalaureate or higher degree in a specific specialty. The only specialized knowledge required – which distinguishes the position from other advertising, marketing, promotions, public relations, and sales management positions – is fluency in the Polish language. The *Handbook* indicates that degrees in a wide range of fields are acceptable for a career as a translator. *See id.* at 263. To the extent that the proffered position includes some translation duties, therefore, baccalaureate level knowledge in a specific specialty is not required to perform them. Accordingly, the proffered position does not meet the fourth alternative criterion of a specialty occupation at 8 C.F.R. § 214.2(h)(4)(iii)(A)(4).

For the reasons discussed above, the record does not establish that the proffered position qualifies as a specialty occupation under any of the criteria enumerated at 8 C.F.R. § 214.2(h)(4)(iii)(A). The petitioner

has not established that the beneficiary will be coming temporarily to the United States to perform services in a specialty occupation, as required under section 101(a)(15)(H)(i)(b) of the Act, 8 U.S.C. § 1101(a)(15)(H)(i)(b).

Since the proffered position does not qualify as a specialty occupation, the issue of the beneficiary's qualifications to perform services in a specialty occupation is not relevant to the disposition of this appeal. Accordingly, the AAO need not address in this decision the petitioner's arguments with respect to the beneficiary's qualifications.

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.