



U.S. Citizenship
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FILE: EAC 03 167 50422 Office: VERMONT SERVICE CENTER Date: DEC 28 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:

SELF-REPRESENTED

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, 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 travel agency that seeks to employ the beneficiary as a travel marketing specialist. 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 and because the beneficiary is not qualified to perform the duties of a specialty occupation. On appeal, the petitioner submits a letter.

The AAO will first address the director's conclusion that the position is not 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.

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 a travel marketing specialist. Evidence of the beneficiary's duties includes the I-129 petition, the petitioner's April 7, 2003 letter of support, and the petitioner's response to the director's request for evidence. According to this evidence, the beneficiary would perform duties that entail: coordinating and developing marketing strategies for the petitioner's products, services, and website; accounting related to the sales of other travel agencies and agents; establishing price quotas, discounts, advertising and policies related to the travel agency; training sales agents; and creating new branches of the petitioner's business. The petitioner indicated in its letter of support that a qualified candidate for the job would possess a bachelor's degree in tourism. In its response to the director's request for evidence, the petitioner stated that a qualified candidate would possess a bachelor's degree in marketing.

The director found that the proffered position was not a specialty occupation. 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).

On appeal, the petitioner states that it met the requirements for establishing that the proffered position is a specialty occupation. The petitioner also states that the director mischaracterized the beneficiary as being from India, rather than the Dominican Republic, and that the director described the beneficiary's degree as being in business administration rather than marketing. The petitioner asserts that the director may have confused two separate files, leading to a determination that the beneficiary was not qualified 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 Department of Labor's *Occupational Outlook Handbook (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 director framed her decision on the assumption that the proffered position is a market research analyst, a position that is generally a specialty occupation that requires an individual to possess a master's degree. The director then determined that the duties of the proffered position do "not appear to require the beneficiary to obtain a minimum of a graduate degree or its equivalent."

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 or 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. While the petitioner calls the proffered position a travel marketing specialist, and the director discussed the position in terms of a market research analyst, the AAO finds that the duties of the position are most like those of a marketing manager.

In reaching its own conclusions regarding the nature of the proffered position, the AAO has reviewed the discussion of market or marketing research analysts, as described at pages 173-174 of the *Handbook*. It has taken particular note of the following part of that discussion:

[M]arket research analysts devise methods and procedures for obtaining the data they need. They often design telephone, mail, or Internet surveys to assess consumer preferences. Some surveys are conducted as personal interviews by going door-to-door, leading focus group discussions, or setting up booths in public places such as shopping malls. Trained interviewers, under the market research analyst's direction, usually conduct the surveys.

After compiling the data, market research analysts evaluate them and make recommendations to their client or employer based upon their findings. They provide a company's management with information needed to make decisions on the promotion, distribution, design, and pricing of products or services. The information may also be used to determine the advisability of adding new lines of merchandise, opening new branches, or otherwise diversifying the company's operations. Market research analysts might also develop advertising brochures and commercials, sales plans, and product promotions such as rebates and giveaways.

The AAO finds that it is market research analysts' work in the design, development and supervision of original market research that sets this occupation apart from what might otherwise be characterized as a marketing manager position, employment that also requires the incumbent to conduct market research. Nothing in the proffered position description reflected that the beneficiary would plan, design, implement and analyze survey results. In the absence of such information, the analysis and research responsibilities described by the petitioner appear more closely related to the work of marketing managers, whose work is also focused on the marketing and selling of products and services. As discussed within the occupation of advertising, marketing, promotions, public relations and sales managers at pages 23-24 of the *Handbook*:

The objective of any firm is to market and sell its products or services profitably Advertising, marketing, promotions, public relations, and sales managers coordinate the market research, marketing strategy, sales, advertising, promotion, pricing, product development, and public relations activities.

...

Marketing managers develop the firm's detailed marketing strategy. With the help of subordinates, including product development managers and market research managers, they determine the demand for products and services offered by the firm and its competitors. In addition, they identify potential markets 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. In collaboration with sales, product development, and other managers, they monitor trends that indicate the need for new products and services and oversee product development. Marketing managers work with advertising and promotion managers to promote the firm's products and services and to attract potential users

Having found the duties of the proffered position to be those of a marketing manager, the AAO now turns to the *Handbook* for its discussion of the educational requirements imposed on individuals who seek employment within this profession:

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. Courses in business law, economics, accounting, finance, mathematics, and statistics are advantageous

. . .

Most advertising, marketing, promotions, public relations, and sales management positions are filled by promoting experienced staff or related professional personnel. For example, many managers are former sales representatives, purchasing agents, buyers, or product, advertising, promotions, or public relations specialists

As the *Handbook* indicates no specific degree requirement for employment as a marketing manager, the AAO concludes that the performance of the proffered position's duties does not require the beneficiary to hold a baccalaureate or higher degree in a related field. Accordingly, the AAO finds that the petitioner is unable to establish its proffered position as a specialty occupation under the requirements of the first criterion at 8 C.F.R. § 214.2(h)(4)(iii)(A).

The petitioner did not submit any evidence regarding parallel positions in the petitioner's industry, nor does the record include any evidence from professional associations regarding an industry standard, or documentation to support the complexity or uniqueness of the proffered position. The petitioner has, thus, 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. In response to the director's request for evidence, the petitioner stated:

Enclosed is a list of all key employees and their position [sic]. As indicated, all of our key personnel must have a college degree to be in a management position. Regardless of what other traditional travel agencies consider to the education of their personnel, our policy is that our personnel must have a college degree.

Beyond the petitioner's list, however, the record, however, does not contain any evidence of the petitioner's past hiring practices and therefore, the petitioner has not met its burden of proof in this regard. 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)). In addition, as noted above, the critical element is not the title of the position or 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.

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).

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 director also found that the beneficiary would not be qualified to perform the duties of the proffered position if the job had been determined to be a specialty occupation. The director stated that the beneficiary possessed a bachelor's degree in business administration, which would not qualify her to perform the duties of a market research analyst. However, as noted, the AAO finds that the position is a marketing manager, and not a market research analyst. On appeal, the petitioner submits an educational equivalency evaluation stating that the beneficiary's foreign degree is equivalent to a bachelor's degree in marketing from a United States college or university. The beneficiary does possess a bachelor's degree, and may be qualified to perform the duties of a specialty occupation that requires a degree in marketing. However, such is not the position proffered in this case.

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.