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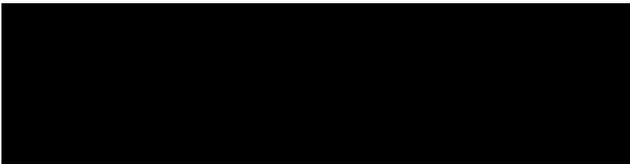
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U.S. Department of Homeland Security  
20 Mass. Ave. N.W., Room A3042  
Washington, DC 20529



U.S. Citizenship  
and Immigration  
Services

*D2*



FILE: WAC 03 051 50450

CALIFORNIA SERVICE CENTER

Date: **JAN 20 2005**

IN RE:

Petitioner:

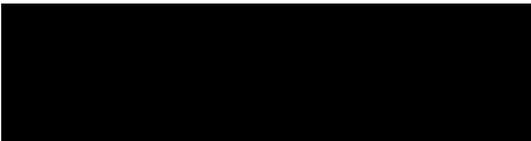
Beneficiary:



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.

A handwritten signature in black ink, appearing to read "Robert P. Wiemann".

Robert P. Wiemann, Director  
Administrative Appeals Office

**DISCUSSION:** The 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 is a commercial food distributor starting in business in 1979 and has about 400 employees. The petitioner seeks to employ the beneficiary as a marketing coordinator and has petitioned 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 based upon the beneficiary's lack of qualifications to perform the proffered position. On appeal, counsel states in his brief that the beneficiary is indeed qualified for the 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. The AAO reviewed the record in its entirety before issuing its decision.

The petitioner is seeking to enlist the beneficiary's services as a marketing coordinator. Evidence of the position's duties includes: the I-129 petition; the petitioner's November 18, 2002 letter in support of the petition; the petitioner's response to the director's request for evidence with evidence; and supplementary documentation on appeal. According to this evidence, the beneficiary would perform the following duties:

- Helping create statistical models for ad campaigns;
- Using various software for reports and surveys;
- Preparing graphic layouts and designs;
- Preparing customer satisfaction surveys;
- Conducting market research;
- Assisting in analysis of market segments and demographics; and,
- Writing/editing news releases and weekly ads.

The petitioner indicated that the "usual minimum requirement" a qualified candidate for the job would possess would be a bachelor's degree in business administration, marketing or equivalent job experience in marketing, advertising and economic forecasting.

The director, by contrast, found that the proffered position was a specialty occupation with a minimum entry requirement of a "graduate education" and that the position was comparable to that of market research analyst, for which the director found a master's or other graduate degree to be a minimum entry requirement. Because the beneficiary had only a bachelor's degree in business administration with a concentration on economics, the director found she did not qualify for the position and accordingly denied the petition.

On appeal, counsel has supplied an additional work-education equivalency evaluation that concludes the beneficiary's 22 years of professional work experience, when coupled with her foreign bachelor's degree in business administration, are the equivalent of the master's degree in business administration.

The AAO finds, however, that the work-education equivalency evaluation report fails to meet the standards set for converting work experience into college course credits for purposes of establishing a beneficiary's qualifications beyond the bachelor's level. Thus, the petitioner seeks to qualify the beneficiary by establishing that the beneficiary meets the requirements of 8 C.F.R. § 214.2(h)(4)(iii)(D)(1). In support of this assertion, the petitioner submitted an educational/experiential evaluation of [REDACTED] with [REDACTED] evaluators with Global Education Group, Inc. [REDACTED] states that the beneficiary's prior education, training, and 22 years work experience are equivalent to a master's degree in business administration from an accredited university in the United States.

This evaluation, however, is insufficient to establish the beneficiary's educational equivalency of her work experience toward the required master's degree. Pursuant to 8 C.F.R. § 214.2(h)(4)(iii)(D)(1), an evaluation from an official who has authority to grant college-level credit for training and/or experience in the specialty at an accredited college or university which has a program for granting such credit, may, based on an individual's training and/or work experience, determine that the individual has education, specialized training, and/or progressively responsible experience that is equivalent to completion of a United States baccalaureate or higher degree in the specialty occupation, and has recognition of expertise in the specialty through progressively responsible positions directly related to the specialty.

In this instance, the record does not establish that the evaluator is "an official who has authority to grant college-level credit for training and/or experience in the specialty at an accredited college or university which has a program for granting such credit, based on an individual's training and/or work experience." To comply with this regulatory criterion, the record must establish that the evaluation is from an individual employed by a university that has a program for granting the requisite credit in the particular specialty. The record must also contain a statement from the university that the evaluator has authority, at that university, to grant the requisite credit in the subject specialty. The record does not establish that the evaluator satisfies either of these criteria. The evaluation is, therefore, of little evidentiary value in establishing the beneficiary's credentials beyond the equivalent of a U. S. bachelor's degree in business and economics.

Nonetheless, the AAO accepts the educational equivalency evaluation of record indicating that the beneficiary has the educational equivalent of a bachelor's degree in business administration with a major in economics.

In his decision, the director found a graduate-level education an entry requirement for the proffered position, citing the *Handbook*. The director found the position comparable to that of a private-sector economist or market research analyst. However, the AAO disagrees with the director's finding that the job duties describe those of a market research analyst, and thus it will withdraw the director's determination that the beneficiary is unqualified for the position. Instead, the AAO finds that the beneficiary possesses the necessary qualifications for the proffered job of marketing manager.

The director found that the position was a market research analyst and by implication that the position is a specialty occupation. The AAO finds that the proffered position is not a specialty occupation, and therefore, it will allow the director's denial of the petition to stand.

From its examination of the job duties of the proffered position, the AAO has determined that the proffered position most closely matches those described under the *Handbook* entry for advertising, marketing, promotions, public relations and sales managers. The *Handbook* states that the job of marketing manager entails:

- Developing detailed marketing strategies;
- Determining through subordinates the demand for the products and services of both the firm and its competitors;
- Identifying potential markets;
- Developing pricing strategy; and
- Collaborating with the rest of the firm's marketing team.

As to the entry requirements for becoming a marketing manager, the *Handbook* states that many employers prefer to hire those with experience in occupations related to marketing manager duties in addition to having a broad liberal arts educational background.

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.

Upon review of the record, therefore, the AAO finds that the petitioner has established none of the four criteria outlined in 8 C.F.R. § 214.2(h)(4)(iii)(A), nor has it shown that the position is one for which the industry commonly requires a bachelor's or higher degree "in a specific specialty that is directly related to the proffered position." Therefore, the proffered position is not a specialty occupation.

The AAO first considers the criteria at 8 C.F.R. §§ 214.2(h)(4)(iii)(A)(1) and (2): a baccalaureate or higher degree or its equivalent in a specific specialty is the normal minimum requirement for entry into the particular position; a specific 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 in a specific specialty. 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. Slattery*, 764 F. Supp. 872, 1102 (S.D.N.Y. 1991)).

As previously mentioned, 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. In the November 18, 2002 letter, the petitioner stated:

As with any Marketing position at the coordinator level, the usual minimum requirement for performance of the job duties is a bachelor's degree in business administration, marketing, economics and/or a number of years of years experience in marketing, advertising and economic forecasting. Computer skills.

The petitioner claims that it needs a professional with a background in business administration. A petitioner's acceptance of a degree in business administration without further specification does not sufficiently particularize the knowledge required for the position. The court in case of *Matter of Michael Hertz Associates*, 19 I&N Dec. 558, 560 (Comm. 1988) stated:

A petitioner must establish that the position realistically requires knowledge, both theoretical and applied, which is almost exclusively obtained through studies at an institution of higher learning. The depth of knowledge and length of studies required are best typified by a degree granted by such institution at the baccalaureate level. It must be demonstrated that the position requires a precise and specific course of study, which 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 of generalized title, such as business administration or liberal arts, without further specification, does not establish eligibility.

Thus, *Matter of Michael Hertz Associates* mentions that a petitioner's mere requirement of a degree of generalized title, such as business administration, without further specification, does not establish that a

position has a specialized area of study. Here, the petitioner merely stated that it requires a bachelor's degree in business administration, a degree of generalized title, without indicating a specialization in the field. Thus, it fails to establish the first criterion at 8 C.F.R. § 214.2(h)(4)(iii)(A).

The second criterion at 8 C.F.R. § 214.2(h)(4)(iii)(A) requires that the petitioner show that its degree requirement is common to the industry in parallel positions among similar organizations or, in the alternative, that the position is so complex or unique that it can be performed only by an individual with a degree in a specific specialty. As previously discussed, the record reveals that the petitioner does not require a bachelor's degree in a specific specialty. Accordingly, the petitioner will not be able to establish that it has a degree requirement that is common to the industry or that its position is so complex or unique that only an individual with a degree in a specific specialty can perform it. With the submitted Internet job postings, only two of the eight postings require a bachelor's degree in a specific specialty. Thus, this evidence fails to establish an industry-wide requirement of a specific baccalaureate degree for a marketing manager position.

The third criterion requires that the employer establish that it normally requires a degree or its equivalent for the position. As discussed, because the record discloses that the petitioner does not require a bachelor's degree in a specific specialty, it fails to establish the third criterion at 8 C.F.R. § 214.2(h)(4)(iii)(A).

The fourth criterion requires that the petitioner show 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 in a specific specialty. The record evinces that the petitioner has not established this criterion because the knowledge required to perform the duties of the position is not associated with the attainment of a baccalaureate or higher degree in a specific specialty. Again, the petitioner does not require that a candidate possess a bachelor's degree in a specific specialty to perform the duties of the offered position.

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.