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FILE: SRC 04 061 52118 Office: TEXAS SERVICE CENTER

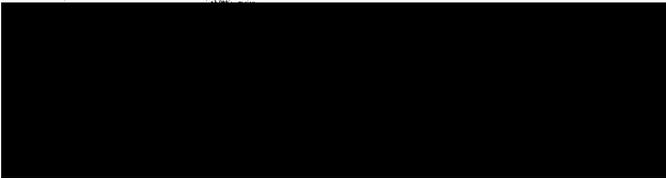
Date: **JUL 06 2005**

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 an insurance company. It seeks to employ the beneficiary as a sales and marketing director and to classify him 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 record failed to establish that the proffered position is 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) Form I-290B, an appeal brief, and supporting materials. The AAO reviewed the record in its entirety before issuing its decision.

In Form I-129 and an accompanying letter the petitioner described itself as a supplemental insurance company, established in 1989, with 35 employees and gross annual income of \$52 million. The petitioner stated that it wished to hire the beneficiary as a marketing and sales director in Florida. The duties of the position were described as follows:

- Manage sales activities, direct and train the sales staff, and do performance evaluations to develop and control sales programs.
- Coordinate sales distribution by establishing sales territories, quotas, and goals.
- Assign sales territories to sales personnel.
- Analyze sales statistics to formulate policy and assist sales representatives in promoting sales.
- Prepare periodic sales reports showing sales volume and potential sales.

According to the petitioner the proffered position requires a baccalaureate degree, and the beneficiary possesses the equivalent thereof by virtue of his high school degree in South Africa and seventeen years of work experience in business and sales management.

In his decision the director cited information in the Department of Labor (DOL)'s *Occupational Outlook Handbook (Handbook)* indicating that a marketing or sales manager position does not require a bachelor's degree in a specific specialty as a normal minimum requirement for entry into the occupation. Though the petitioner asserted that its other marketing and sales managers had baccalaureate degrees, the director noted that no documentary evidence of such degrees had been submitted, or information about their areas of specialty. The petitioner submitted an expert opinion stating that the position required a bachelor's degree, but the director was not persuaded by the evaluation in light of the other evidence of record. The petitioner did not present any documentary evidence that companies similar to the petitioner in the nature of their business activities and the scale of their operations required marketing and sales managers to have a specialty degree, the director stated, nor evidence that the proffered position was so complex or unique that it required a specialty degree. The director concluded that the position did not meet any of the criteria enumerated at 8 C.F.R. § 214.2(h)(4)(iii)(A) to qualify as a specialty occupation.

On appeal counsel asserts that the marketing and sales manager position qualifies as a specialty occupation under three of the four criteria enumerated at 8 C.F.R. § 214.2(h)(4)(iii)(A). The proffered position qualifies under 8 C.F.R. § 214.2(h)(4)(iii)(A)(2), counsel contends, because a baccalaureate or higher degree is common to the petitioner's industry in parallel positions among similar organizations. It also qualifies under 8 C.F.R. § 214.2(h)(4)(iii)(A)(3), counsel declares, because the petitioner normally requires applicants to have a baccalaureate degree or its equivalent for the position. Finally, the proffered position qualifies under 8 C.F.R. § 214.2(h)(4)(iii)(A)(4), counsel maintains, because the duties are so complex that baccalaureate level knowledge is required to perform them.

In determining whether a position meets the statutory and regulatory criteria of a specialty occupation, CIS routinely consults the DOL *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.

Based on the duties of the proffered position, as described by the petitioner, the AAO agrees with the director that the job falls within the occupational category of advertising, marketing, promotions, public relations, and sales managers described in the *Handbook*, 2004-05 edition, at 23-26. The duties of the job most closely resemble those of a marketing manager or a sales manager, which are described as follows:

*Marketing managers* develop the firm’s detailed marketing strategy. With the help of subordinates . . . they determine the demand for products and services offered by the firm and its competitors. In addition, they identify potential markets – for example, business firms, wholesalers, retailers, government, or the general public. 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. . . . [T]hey monitor trends that indicate the need for new products and services and oversee product development.

*Sales managers* direct the firm’s sales program. They assign sales territories, set goals, and establish training programs for the sales representatives. Managers advise the sales representatives on ways to improve their sales performance . . . . They analyze sales statistics gathered by their staffs to determine sales potential and inventory requirements and monitor the preferences of customers.

*Handbook*, at 23-24. As for the educational requirements of marketing manager and sales manager positions, the *Handbook* states the following:

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.

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.

. . . . For all these specialties, courses in management and completion of an internship while in school are highly recommended.

*Id.*, at 24-25. As the *Handbook* clearly indicates, a baccalaureate or higher degree in a specific specialty is not the normal, industry-wide requirement for entry into a marketing manager or sales manager position. Many employers give favorable consideration to a broad spectrum of degrees in hiring a marketing or sales manager. Thus, the proffered position 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 particular position.

As for the second alternative criterion of a specialty occupation, at 8 C.F.R. § 214.2(h)(4)(iii)(A)(2), counsel refers to the opinion letter by a professor at Seattle University's School of Business, previously in the record, as evidence that a degree requirement in a specific specialty is common to the industry in parallel positions among similar organizations. According to the professor, sales manager positions like the proffered position normally require a bachelor's degree in business administration with a specialization in marketing or management. This opinion letter was already considered by the director, and its conclusion conflicts with the information in the *Handbook* about the educational requirements for sales and marketing managers, previously discussed. Moreover, the letter did not evaluate whether the insurance industry, as distinct from other industries, requires sales managers to have specialty degrees. CIS may, in its discretion, use as advisory opinions statements from universities, professional organizations, or other sources submitted in evidence as expert testimony. When an opinion is not accord with other information or is in any way questionable, however, CIS is not required to accept or may give less weight to that evidence. See *Matter of Caron International, Inc.*, 19 I&N Dec. 791, 795 (Comm. 1988). The AAO agrees with the director that the opinion letter is not persuasive evidence that a baccalaureate or higher degree in a specific specialty, or its equivalent, is a common requirement for sales and marketing managers in the petitioner's industry, as required for the proffered position to qualify as a specialty occupation under the first prong of 8 C.F.R. § 214.2(h)(4)(iii)(A)(2). Nor does the record establish that the proffered position is so complex or unique that it can only be performed by an individual with a baccalaureate or higher degree in computer science or a related specialty, as required to qualify as a specialty occupation under the second prong of 8 C.F.R. § 214.2(h)(4)(iii)(A)(2).

With regard to the third alternative criterion of a specialty occupation, at 8 C.F.R. § 214.2(h)(4)(iii)(A)(3), counsel refers to a letter submitted on appeal by the petitioner's southeast regional director of sales and recruiting which declares that the company has over 100 managers in positions similar to the proffered marketing and sales director position, 95% of whom have baccalaureate or higher degrees. The letter does not explain how a company that claimed in its petition to have just 35 employees could have over 100 managers. In any event, the letter identifies only four managers by name, asserts that two of them have bachelor's degrees (without indicating a specialty area) and that two of them have master's degrees, and provides no information whatsoever about the other managers and the types of baccalaureate degrees they have. No documentation has been provided to substantiate that the petitioner has any other marketing and sales managers in its employ or that a baccalaureate or higher degree in a specific specialty is normally required by the petitioner for such positions. Simply going on record without supporting documentation does not satisfy the petitioner's burden of proof. See *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)).

Finally, the record does not show that the duties of the proffered position are so specialized and complex that they require knowledge at the level of a baccalaureate or higher degree in a specific specialty. Though counsel refers again to the opinion letter from the Seattle University professor, nothing in the professor's analysis of the proffered position distinguishes it from an ordinary marketing and sales manager position, which the *Handbook* indicates does not require baccalaureate level knowledge in a specific specialty. Counsel also cites the DOL's *Dictionary of Occupation Titles (DOT)*, which assigns the occupation of sales manager an SVP ("specific vocational preparation") of level 8. According to counsel that means the occupation requires a bachelor's degree or equivalent knowledge. The *DOT*,

however, is not a persuasive source of information about whether a particular job requires a baccalaureate or higher degree in a specific specialty, or equivalent knowledge, 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 specify 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 particular position would require. Thus, the *DOT* does not establish that baccalaureate level knowledge in a specific specialty is required for entry into a sales manager position. 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 position proffered by the petitioner does not qualify as a specialty occupation under any of the criteria set forth in 8 C.F.R. § 214.2(h)(4)(iii)(A). Thus, 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).

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.