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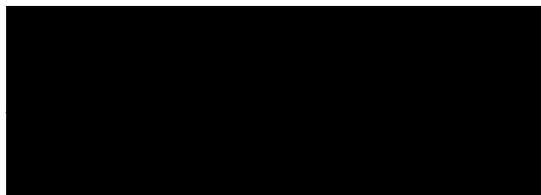
JUN 01 2005

FILE: [Redacted] Office: CALIFORNIA SERVICE CENTER Date:

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 director of 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 engaged in the selling of cosmetics, hair-care products, medications, quasi-medications, sport-related goods, health foods, and health goods and seeks to employ the beneficiary as an international business operations specialist. The petitioner, therefore, 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 additional evidence.

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) counsel'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 international business operations specialist. Evidence of the beneficiary's duties includes: the Form I-129; the attachments accompanying the Form I-129; the company support letter; and counsel's response to the director's request for evidence. According to this evidence, the beneficiary would perform duties that entail analyzing, recommending, and implementing international business strategies; engaging in market research projects; planning, directing and engaging in the international transportation operations and sales for the companies' products; assisting higher level executives with coordinating marketing, business development and public relations services. The petitioner indicated that the minimum requirement for performance of the job duties is a bachelor's degree in international business or a related field.

The director requested additional information about the proffered position. Counsel for the petitioner responded and indicated that a more detailed job description of the position included the following specialty international marketing and research functions: conducting market research to identify the best markets for products world wide; determining client needs and researching various consumer preferences; preparing market analysis reports and forecasting marketing trends; planning, directing, and engaging in transportation, operations, and sales internationally; analyzing strategies, distribution channels, and promotion efforts; coordinating current international activities; formulating and implementing marketing and business development plans for the firm's products.

The director determined that the proffered position was not a specialty occupation. The director found that the duties of the position as described by the petitioner, are primarily those of a marketing manager. The director noted that the Department of Labor's *Occupational Outlook Handbook (Handbook)* indicated that the positions of advertising, marketing, promotions, public relations, and sales managers are occupations that do not require a baccalaureate level of education in a specific specialty as a normal, industry wide minimum for entry into the occupation. The director stated that the evidence submitted is insufficient to establish that the position being offered requires attainment of a baccalaureate or higher degree or its equivalent and is normally the minimum requirement for entry into the particular position; the degree requirement is common to the industry in parallel positions among similar organizations; or that the position is so complex or unique that it can be performed only by an individual with a degree; or that the employer normally requires a degree or its equivalent for the position; or that 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.

On appeal, counsel states that the director considered evidence not submitted by the petitioner (nursing home job listing on page 3 of the decision); did not consider the comments of the expert opinion letter; narrowly interpreted the *Handbook*; ignored the U.S Department of Labor data from OES; ignored government data from *Infonet*. Counsel further contends that additional data from employers groups and classified ads should be considered since the director relied on the *Handbook* that was made available to the public after the petitioner submitted its evidence.

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 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 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)).

In determining whether a position qualifies as a specialty occupation, CIS looks beyond the title of the position and determines, from a review of the duties of the position and any supporting evidence, whether the position actually requires the theoretical and practical application of a body of highly specialized knowledge, and the attainment of a baccalaureate degree in a specific specialty as the minimum for entry into the occupation as required by the Act.

Based on the record of proceeding, the AAO has determined that the proffered position is most similar to that of a marketing manager in the *Handbook*. According to the *Handbook*, marketing managers develop the firm's detailed marketing strategy. With the help of subordinates, marketing managers determine the demand for products and services offered by the firm and its competitors. In addition, they identify potential markets. According to the *Handbook*, 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. This is similar to the proffered position in that the duties include maintaining regular, ongoing contact with referral sources through personal visits, telephone calls, brochures, and any other means which significantly attract potential employers and clients; developing and implementing events and functions to attract prospective employers/clients and/or referral sources; and ensuring that the petitioner remains competitive by continuously reviewing costs, quality of services and integrity of billing.

With respect to the educational qualifications required of marketing managers, the *Handbook* states:

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.

Consequently, there is insufficient evidence in the record to establish that a baccalaureate or higher degree or its equivalent in a specific specialty is the normal minimum requirement for entry into the marketing manager position.

To establish the second criterion - that a specific degree requirement is common to the industry in parallel positions among similar organizations - counsel submits internet job postings on appeal from a wide variety of companies which include a food and beverage company, utility company, telemarketing company, and a management and technology consulting company.

This evidence fails to establish that a specific baccalaureate degree is common to the industry in parallel positions among similar organizations. One deficiency in the postings is that the companies are either

obviously dissimilar to the petitioner or their nature is undisclosed. For example, Booz Allen Hamilton provides management and technology consulting services; Vision Power Systems provides utility distribution. Moreover, most of the advertised job descriptions are patently dissimilar to the proffered position. For instance, Vision Power Systems' posting for an executive/marketing administrator will be involved with contracts and billings, power purchase agreements; Booz Allen Hamilton's marketing administrator is in the job field of information security engineering. Consequently, the postings fail to establish that there is a specific baccalaureate degree that is a common industry-wide requirement.

Nor is there evidence in the record to establish the third criterion at 8 C.F.R. § 214.2(h)(4)(iii)(A): that the petitioner normally requires a specific degree or its equivalent for the position.

The fourth criterion at 8 C.F.R. § 214.2(h)(4)(iii)(A) requires that the petitioner establish 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. To the extent they are described in the record, the duties of the position are not so specialized and complex that the knowledge required to perform them is usually associated with the attainment of a baccalaureate or higher degree. Counsel submitted a letter from Educated Choices, LLC which indicates that it is an education and employment research consulting firm. This letter indicates that it is the authors' opinion that the proffered position meets the criteria for specialty occupation and finds that the position is highly similar to the advertising, marketing and public relations manager in the *Handbook*. The authors contend that educational preparation for this position includes at least a bachelor's degree in a quantitative and behavioral science area that develops high-level skills in analytical thinking. The petitioner did not submit any documents that the authors used to support their conclusion. The AAO may, in its discretion, use as advisory opinion statements submitted as expert testimony. However, where an opinion is not in accord with other information or is in any way questionable, the AAO is not required to accept or may give less weight to that evidence. *Matter of Caron International*, 19 I&N Dec. 791 (Comm. 1988). As discussed above, the petitioner has not submitted sufficient evidence to demonstrate that this position involves duties so complex or specialized that only an individual with a degree in a specific specialty could perform them. The duties parallel those in the *Handbook* for a marketing manager, an occupation that does not require a specific baccalaureate degree. The petitioner therefore fails to establish the fourth criterion.

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.