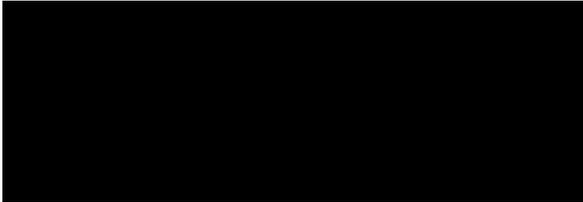


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FILE: WAC 04 041 52465 Office: CALIFORNIA SERVICE CENTER Date: NOV 02 2005

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:  
[Redacted]

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 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 sustained. The petition will be approved.

The petitioner is a honey farming business and health product distributor that seeks to employ the beneficiary as a marketing art director. 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. On appeal, counsel submits a brief.

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 denial letter; and (3) 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 marketing art director. Evidence of the beneficiary's duties includes the I-129 petition and the petitioner's November 12, 2003 letter in support of the petition. According to this evidence, the beneficiary would perform duties that entail: coordinating work with staff, outside professional consultants and ad agencies as needed, and reporting findings and making recommendations directly to the president; directing the development of advertising campaigns using all ad media required, including mass communications (radio/TV), print website and direct marketing; analyzing data and recommending marketing, distribution, advertising and sales policies, both nationally and internationally; developing marketing strategy, based on knowledge of establishment policy, nature or market, and cost and markup factors; coordinating marketing activities to promote the petitioner's products through local public television stations, newspapers, radio stations, etc.; coordinating promotional activities and shows to market products; advising the petitioner on local, national and international factors affecting the buying and selling of products; assigning and directing staff members to develop design concepts into art layouts or preparing layouts for printing; reviewing and approving art and copy materials developed by staff; formulating basic layout design or presentation approach, and conceiving material details, such as style and size of type, photographs, graphics, and arrangement; reviewing illustrative material and conferring with client concerning objectives, budget, background information and presentation approaches, styles and techniques; conferring with creative, art, copy writing or production staff to discuss requirements, outline presentation concepts, and coordinate creative activities; and presenting final advertising to president for approval. The petitioner indicated that a qualified candidate for the job would possess a bachelor's degree in fine arts, graphic design or a related field.

The director found that the proffered position was not a specialty occupation. Citing to the Department of Labor's *Occupational Outlook Handbook (Handbook)*, 2004-2005 edition, the director noted that the minimum requirement for entry into a position as an advertising, marketing, promotions, public relations and sales manager not a baccalaureate degree or its equivalent in a specific specialty. 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, counsel states that the proffered position is a combination of a marketing manager and art director and that the *Handbook* indicates that a bachelor's degree is normally required for such positions. Counsel also states that the standards and guidelines established by the National Association of Schools of Art and Design support the petitioner's assertion that a degree in graphic design is required for the position. Counsel also states that an expert opinion from a university professor establishes that a bachelor's degree is required for the position.

Upon review of the record, the petitioner has established one of the four criteria outlined in 8 C.F.R. § 214.2(h)(4)(iii)(A). Therefore, the proffered position is 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 *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 AAO routinely consults the *Handbook* for its information about the duties and educational requirements of particular occupations.

The proffered position is a combination of a marketing manager and an art director. The 2004-2005 edition of the *Handbook* describes educational requirements for entry into the marketing manager field:

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.

The *Handbook* clearly states that there is no requirement for a degree in a specific specialty for entry into a position as a marketing manager.

The *Handbook* entry for art directors is discussed under artists and other workers. The educational requirements for entry into the field also indicate that there is no requirement for a bachelor's degree in a specific specialty for entry into the field.

On appeal, counsel submits one Internet job listing for a marketing assistant, which states that the ideal candidate will have a bachelor's degree in marketing, business or English. Neither the company nor the position is equivalent to the proffered position. Counsel also submits a letter from an art professor at Seattle Pacific University, stating that he believes the proffered position is a specialty occupation. His opinion was largely based on a review of the *Handbook*, which, as discussed above, the AAO finds does not support counsel's contention that the proffered position is a specialty occupation. The record does not 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. The record 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. *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 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, some of the duties of the position include those of a graphic designer, which the *Handbook* indicates could not be performed without the training and education that are included in a bachelor's degree in graphic design. Therefore, the evidence establishes that the proffered position is a specialty occupation under 8 C.F.R. § 214.2(h)(4)(iii)(A)(4).

The beneficiary has the equivalent to a bachelor's degree in fine arts and a master's degree in advertising from a U.S. university, indicating that he is qualified for this specialty occupation.

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 sustained that burden. Accordingly, the appeal will be sustained and the petition will be approved.

**ORDER:** The appeal is sustained. The petition is approved.