

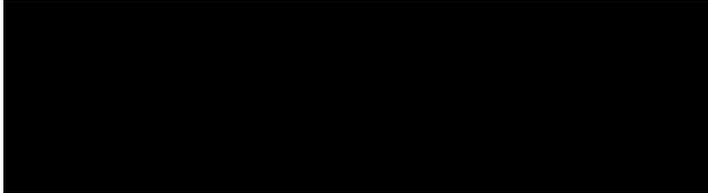
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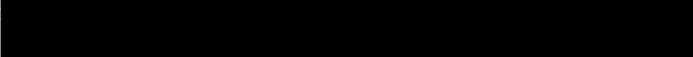
U.S. Citizenship
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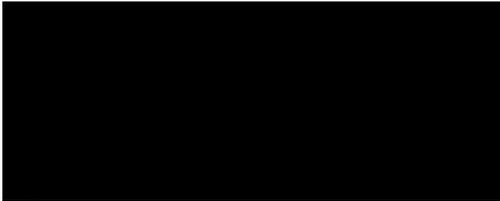


FILE: WAC 04 241 50389 Office: CALIFORNIA SERVICE CENTER Date: **NOV 10 2005**

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 a business insurance brokerage company. It seeks to employ the beneficiary as a marketing manager and to classify her 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 ground that the record failed to establish that the proffered position qualifies as 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 notice of decision; and (5) Form I-290B, an appeal brief, and supporting materials. The AAO reviewed the record in its entirety before issuing its decision.

The petitioner describes itself as a provider of insurance services to the manufacturing and construction industries. The petitioner states that it was established in 1999, has four employees and gross annual income of over \$300,000, and proposes to hire the beneficiary as a marketing manager. The duties of the position, and the percentage of time required by each duty, are described as follows:

- 25%** Formulate, direct, and coordinate marketing activities and policies to promote products and services, working with independent advertising and promotion executives and professionals.
- 25%** Identify, develop, and evaluate marketing strategies, based on knowledge of establishment objectives, market characteristics, and cost and markup factors.
- 20%** Collect data and create in-depth reports for consideration by the company's senior management evaluating the financial aspects of potential new services under development. Provide evaluation and analysis of projected budgets, expenditures, research and development appropriations, and return-on-investment and profit-loss projections.
- 12%** Conduct economic and commercial surveys to identify potential markets for insurance and risk management services. Initiate market research studies and analyze findings.
- 10%** Coordinate and participate in promotional activities working with account executives, real estate and housing developers, lenders, contractors, and others to target clients with specialized needs in the construction industry for specifically designed insurance services.
- 4%** Use sales forecasting and strategic planning to ensure the sale and profitability of products, lines, or services, analyzing business developments and monitoring market trends.
- 2%** Compile company profiles and brochures describing insurance and risk management services offered to the construction and real estate development industries.
- 2%** Direct the design and development of promotional materials, displays, and programs for use at conventions and trade shows for the construction industry to promote specialized insurance services developed and offered by the company.

The petitioner states that the minimum educational requirement for the position is a baccalaureate degree in business administration or a related field. The beneficiary is qualified for the job, the petitioner indicates, by virtue of her degree in administration and international business from the University of Bonaterra, in Mexico, granted on June 28, 2002. According to a report in the record from an education evaluation service, the beneficiary's degree is equivalent to a bachelor's degree in business administration with a major in international business from a U.S. college or university.

In his decision the director referred to the Department of Labor (DOL)'s *Occupational Outlook Handbook (Handbook)*, which indicates that a baccalaureate level of study in a specific field is not the normal minimum requirement for entry into a marketing manager position. The director referred to the internet job postings in the record for marketing manager positions in the insurance industry, but found that the majority did not specify that a bachelor's degree in any specific field was required. The evidence of record, the director determined, did not establish that a degree requirement in a specific specialty was common to the petitioner's industry for parallel positions among similar organizations. Nor did the record show that the marketing manger position is so complex or unique that it could only be performed by an individual with a bachelor's degree in a specific specialty. The petitioner could not establish that it normally requires a specialty degree or its equivalent for the position, the director stated, because the position was newly created. Lastly, the record did not establish that the duties of the proffered position are so specialized and complex that baccalaureate level knowledge is required to perform them. The petitioner did not show that the duties of the job were more specialized and complex than those of any other marketing manager position, for which baccalaureate level knowledge is not normally required. The director concluded that the proffered position does not qualify as a specialty occupation under any of the criteria enumerated at 8 C.F.R. § 214.2(h)(4)(iii)(A).

On appeal counsel asserts that the director misinterpreted the educational requirements of a marketing manager, as described in the DOL *Handbook*. Counsel contends that the evidence of record, supplemented on appeal by two letters from industry representatives, shows that a baccalaureate degree is the industry standard for marketing manager positions. Counsel asserts that the duties of the proffered position are so specialized and 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.

The AAO agrees with the director that the proffered position fits within the *Handbook's* description of a marketing manager:

Marketing managers develop the firm's detailed marketing strategy. . . . [T]hey 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. . . . [T]hey monitor trends that indicate the need for new products and services and oversee product development. Marketing managers work with advertising managers to promote the firm's products and services and to attract potential users.

Handbook, 2004-05 edition, at 23-24. As for the educational requirements for entry into a marketing manager position, the *Handbook* clearly indicates that a baccalaureate or higher degree in a specific specialty is not the normal, industry-wide standard:

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.

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. In highly technical industries, such as computer and electronics manufacturing, a bachelor's degree in engineering or science, combined with a master's degree in business administration, is preferred.

Id. at 24. Thus, the marketing manager 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 position. While the *Handbook* indicates that some employers may prefer a baccalaureate or higher degree in business administration with an emphasis on marketing, it is not an industry standard. Moreover, the petitioner's line of business is not a highly technical industry for which a degree in engineering or science may be required of a marketing manager.

Counsel argues on appeal that the *Handbook* language above confirms that a marketing manager is a specialty occupation because the requirement of a four-year degree is standard, with the degree preference varying among employers according to the individual job. Counsel's argument is at odds with the statute, which defines a specialty occupation as one that "requires attainment of a bachelor's or higher degree *in the specific specialty*." Section 214(i)(1) of the Act, 8 U.S.C. § 1184(i)(1) (emphasis added).

With regard to the second alternative criterion of a specialty occupation, at 8 C.F.R. § 214.2(h)(4)(iii)(A)(2), the record includes nine internet job announcements for marketing manager positions in the insurance industry. Six of the nine require a bachelor's degree without identifying a specific specialty. Only one of the nine – which states that a bachelor's degree in marketing or a related field is required – indicates that the bachelor's degree must be in a specific specialty. The other two state that a master's degree in business is "preferred," but do not state that such a degree is required. The internet job announcements, therefore, do not establish that a degree requirement in a specific specialty is common to the petitioner's industry in parallel positions in similar organizations, 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).

In support of the appeal counsel has submitted a letter from the vice president of another insurance brokerage company, [REDACTED], who states that "college level, industry-specific studies and/or at least eight years in the field are our minimum qualifications." Mr. [REDACTED] does not identify the specific position to which he is referring, and his statement is vague about whether his company requires a baccalaureate or higher degree in a specific specialty, or a baccalaureate degree of any kind, for the

position. The AAO notes that the alternative requirement of eight years of work experience in the field is not equivalent to a baccalaureate degree in a specific specialty, applying the three-for-one ratio of work experience for college-level education described in the regulation at 8 C.F.R. § 214.2(h)(4)(iii)(D)(5). Furthermore, counsel refers to Mr. [REDACTED] company as one of the largest wholesale insurance brokerage companies in the United States, which would distinguish it from the petitioner with its far smaller scale of operations (four employees, \$300,000+ gross annual income). The AAO determines that the opinion letter from Mr. [REDACTED] is not persuasive evidence that a baccalaureate or higher degree in a specific specialty, or its equivalent, is a common requirement in the insurance industry for marketing managers in organizations similar to the petitioner, 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).

Counsel also submits a letter from the petitioner's president, Claude Stephenson, stating that he has more than 40 years of experience in the insurance industry and that it is common in the industry to require a marketing manager to hold, at the minimum, "the equivalent of a baccalaureate degree in business administration." Mr. [REDACTED] statement does not accord with the internet job announcements in the record from other insurance companies, most of which do not require that applicants for their marketing manager positions have a bachelor's degree in business administration or its equivalent. Moreover, a bachelor's degree in business administration as the minimum educational standard for a marketing manager in the insurance industry would not qualify the position as a specialty occupation. As discussed in *Matter of Michael Hertz Associates*, 19 I&N Dec. 558, 560 (Comm. 1988), a degree of such generalized title as business administration, without a specific course of study closely related to the proffered position, does not establish that the employer normally requires a baccalaureate or higher degree in a specific specialty, or its equivalent, for the position. The AAO determines that the letter from the petitioner's president is not persuasive evidence that a baccalaureate or higher degree in a specific specialty, or its equivalent, is a common requirement for marketing managers in organizations similar to the petitioner in the insurance 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 has the petitioner demonstrated that the proffered position is so complex or unique that a degree in a specific specialty is required to perform the job. Accordingly, the proffered position does not qualify as a specialty occupation under the second prong of 8 C.F.R. § 214.2 (h)(4)(iii)(A)(2).

Since the proffered position is newly created the petitioner has no history of requiring its marketing manager to have a specialty degree or its equivalent. Accordingly, the position does not qualify as a specialty occupation under the third alternative criterion at 8 C.F.R. § 214.2(h)(4)(iii)(A)(3).

Finally, the record does not show that the duties of the proffered position are so specialized and complex that they require baccalaureate level knowledge in a specific specialty, as required to meet the fourth alternative criterion of a specialty occupation at 8 C.F.R. § 214.2(h)(4)(iii)(A)(4). Counsel asserts on appeal that the job "requires the exercise of business judgment and critical thinking," and describes the duties of the marketing manager as follows:

The position requires a person capable of developing marketing priorities, coordinating activities with both account executives, housing industry executives, builders, developers and insurance industry underwriters. She will work with product development teams to develop and promote new insurance products, develop internet and on-line sources of

information about current and new products and maintain information about services offered.

The position also requires a person with the skill and ability to make decisions in marketing complex products based on abstract concepts. The job duties will include the need to understand insurance products and the housing industry plus the needs of real estate development business, risks of loss and profit and loss scenarios.

The foregoing duties do not appear to be more specialized and complex than those of any other marketing manager in the insurance industry, for whom baccalaureate level knowledge in a specific specialty is not normally required for entry into a particular position. Accordingly, the proffered position does not qualify as a specialty occupation under 8 C.F.R. § 214.2(h)(4)(iii)(A)(4).

For the reasons discussed above, the record does not establish that the marketing manager position meets any of the criteria enumerated in 8 C.F.R. § 214.2(h)(4)(iii)(A) to qualify as a specialty occupation. 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.