

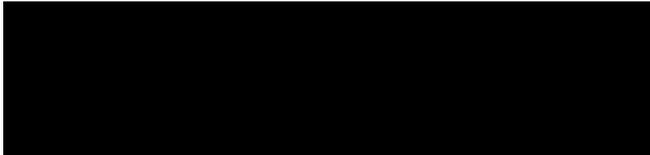
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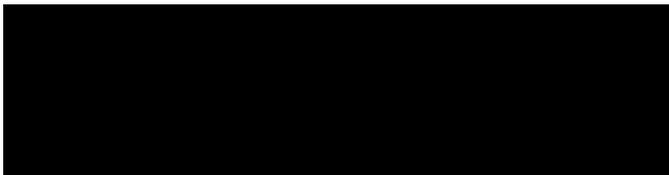


FILE: EAC 03 080 53924 Office: VERMONT SERVICE CENTER Date: NOV 15 2005

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:



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 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 tire lock system inventor and manufacturer that seeks to employ the beneficiary as a marketing manager. 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 on the basis that the petitioner had failed to establish that the proposed position qualifies for classification as a specialty occupation under the criteria set forth at 8 C.F.R. § 214.2(h)(4)(iii)(A).

Section 214(i)(1) of the Immigration and Nationality Act (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.

The term “specialty occupation” is further defined at 8 C.F.R. § 214.2(h)(4)(ii) as:

[A]n occupation which requires theoretical and practical application of a body of highly specialized knowledge in fields of human endeavor including, but not limited to, architecture, engineering, mathematics, physical sciences, social sciences, medicine and health, education, business specialties, accounting, law, theology, and the arts, and which requires the attainment of a bachelor’s degree or higher in a 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 proposed position.

The record of proceeding before the AAO contains (1) the Form I-129 and supporting documentation; (2) the director’s request for evidence (RFE); (3) the petitioner’s RFE response and supporting documentation; (4) the director’s denial letter; and (5) the Form I-290B. The AAO reviewed the record in its entirety before issuing its decision.

The petitioner’s January 10, 2003 letter of support stated that the duties of the proposed position would involve developing and executing marketing strategies and tactics to increase both the national and global sales and profits of the company; monitoring product performance and serving as a primary product advocate both internally and externally so as to build strong marketing partnerships with key client decision-makers; developing product strategy and development requirements in support of the product profile, brand name, packaging, forecasts, and supply coordination; establishing pricing strategies and monitoring budgets and expenses; developing and maintaining a prioritized list of customer and market requirements for products; collaborating with a variety of functional areas including sales, regulatory affairs, manufacturing, and operations to develop and provide solutions that are responsive to customer needs and market opportunities; performing competitive analysis comparing the company’s products with its key competitors, including their product claims, sales results, advertising copy, and promotional expenditures; maintaining communications and contacts to collect and analyze financial, schedule, and sales information for product lines; and managing the day-to-day progress of assigned projects in support of the company’s products.

The director denied the petition, finding that the petitioner had satisfied none of the four criteria set forth at 8 C.F.R. § 214.2(h)(4)(iii)(A), and therefore had not established that the proposed position qualifies for classification as a specialty occupation. On appeal, counsel contends that the director erred in denying the petition, and that the proposed position is in fact a specialty occupation.

In determining whether a proposed 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. The AAO routinely consults the Department of Labor’s *Occupational Outlook Handbook* (the *Handbook*) for its information about the duties and educational requirements of particular occupations.

The *Handbook’s* discussion of the duties of advertising, marketing, promotions, public relations, and sales managers states the following:

Marketing managers develop the firm’s detailed marketing strategy. With the help of subordinates, including *product development managers* and *market research managers*, 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. In collaboration with sales, product development, and other managers, they monitor trends that indicate the need for new products and services and oversee product development. Marketing managers work

with advertising and promotion managers to promote the firm's products and services and to attract potential users.

The *Handbook* states the following with regard to the educational qualifications required for marketing managers:

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. Courses in business law, economics, accounting, finance, mathematics, and statistics are advantageous. . . .

Most advertising, marketing, promotions, public relations, and sales management positions are filled by promoting experienced staff or related professional personnel. For example, many managers are former sales representatives, purchasing agents, buyers, or product, advertising, promotions, or public relations specialists. In small firms, where the number of positions is limited, advancement to a management position usually comes slowly. In large firms, promotion may occur more quickly.

Thus, the proposed position does not qualify for classification as a specialty occupation under 8 C.F.R. § 214.2(h)(4)(iii)(A)(I), which requires a showing that a baccalaureate or higher degree or its equivalent is normally the minimum requirement for entry into the field. The *Handbook* indicates that most marketing manager positions are filled on the basis of experience (most positions "are filled by promoting experienced staff or related professional personnel"). Moreover, the fact that some employers "prefer" a degree or that individuals possessing degrees "should have the best job opportunities" does not rise to the "normally required" standard imposed by the regulation. As such, marketing managers do not qualify as specialty occupations under the first criterion.¹

Moreover, the AAO notes that the petitioner requires a bachelor's degree of business administration for entry into the proffered position, which precludes it from establishing the position as a specialty occupation under 8 C.F.R. § 214.2(h)(4)(iii)(A)(I). The AAO notes that the petitioner submitted an educational evaluation from Trustforte Corporation in its initial submission. The Trustforte evaluator determined that the beneficiary's foreign degree is equivalent to a bachelor's degree in business administration from an accredited institution of higher education in the United States. However, when a range of degrees, e.g., the liberal arts, or a degree of generalized title without further specification, e.g., business administration, can perform a job, the position does not qualify as a specialty occupation. *Matter of Michael Hertz Associates*, 19

¹ The AAO accords no weight to the information submitted from the *Standard Occupational Classification System (SOC)*, as the *SOC* is not a persuasive source of information regarding whether a particular position requires the attainment of a baccalaureate or higher degree in a specific specialty, or its equivalent, as a minimum for entry into the occupation. The *SOC* does not describe how preparation for the position is to be divided among training, formal education, and experience, and it does not specify the particular type of degree, if any, that a position would require.

I&N Dec. 558 (Comm. 1988). To prove that a job requires the theoretical and practical application of a body of specialized knowledge as required by Section 214(i)(1) of the Act, a petitioner must establish that the position requires the attainment of a bachelor's or higher degree in a specialized field of study. As noted previously, CIS interprets the degree requirement at 8 C.F.R. § 214.2(h)(4)(iii)(A)(1) to require a degree in a specific specialty that is directly related to the proposed position.

Nor does the proposed position qualify as a specialty occupation under either prong of 8 C.F.R. § 214.2(h)(4)(iii)(A)(2). The first prong of this regulation requires a showing that a specific degree requirement is common to the industry in parallel positions among similar organizations.

The AAO has reviewed the job postings submitted by counsel. Counsel, however, has failed to consider the specific requirements at 8 C.F.R. § 214.2(h)(4)(iii)(A)(2) for establishing a baccalaureate or higher degree as an industry norm. To meet the burden of proof imposed by the regulatory language, a petitioner must establish that its degree requirement exists in parallel positions among similar organizations. The petitioner must also establish that the degree requirement be in a related specialty.

There is no evidence in the record to establish that any of the job postings are from companies similar in size and scope of operations to the petitioner, a tire lock systems manufacturer with five employees. The unnamed company advertising its vacancy through Brooke Chase Associates is a manufacturer of building material products. eEYE is a software company. The first unnamed company advertising its vacancy through Monster.com directly is a telecommunications company. Proflowers.com is the "largest direct from the grower flower company." No information is submitted regarding the second unnamed company advertising its vacancy through Monster.com directly. No information is submitted regarding Americas Enterprise. Amrep, Inc. is a specialty chemical manufacturer. No information is submitted regarding the unnamed company advertising its vacancy through the Wilmington Group. Engelhard is a surface and materials science company. No information regarding Household, Inc. was submitted. No information is submitted regarding the third unnamed company advertising its vacancy through Monster.com directly, other than to state that it is a chemical company. No information regarding Spectra-Physics was submitted. Raritan provides keyboard, video, and mouse remote management solutions. General Electric is a large, multinational conglomerate. Cendant is a global provider of consumer and business services. American Ref-Fuel operates in the waste-to-energy industry. Peterson's is a publishing company. Hartz Mountain is a manufacturer and marketer of pet products. Masterfoods USA manufactures foodstuffs. The fourth unnamed company advertising its vacancy through Monster.com directly is a creator and manufacturer of specialty chemicals, flavors, and perfumery products.

The AAO is also unable to verify whether these positions are in fact parallel to the proffered position in terms of their basic qualification requirements. For example, General Electric requires a degree in engineering/science. Engelhard, Peterson's, Household, Inc., and the unnamed company recruiting through the Wilmington Group do not require a degree in a specific field. As noted previously, CIS interprets the term "degree" to mean not just any in any field, but one in a specific specialty that is directly related to the proposed position.

Accordingly, the proposed position does not qualify as a specialty occupation under the first prong of 8 C.F.R. § 214.2(h)(4)(iii)(A)(2).

The second prong of 8 C.F.R. § 214.2(h)(4)(iii)(A)(2) requires the petitioner to prove that the duties of the proposed position are so complex or unique that only an individual with a degree can perform them. The nature of the duties of the proposed position as set forth in the petition does not support such a finding, as

they are similar to those of marketing managers as discussed in the *Handbook*, which do not require a degree. The record contains no documentation to support a finding that the proposed position is more complex or unique than marketing manager positions at other, similar organizations.

Therefore, the petitioner has not established that the proposed position qualifies as a specialty occupation under either prong of 8 C.F.R. § 214.2(h)(4)(iii)(A)(2).

Nor does the proposed position qualify as a specialty occupation under 8 C.F.R. § 214.2(h)(4)(iii)(A)(3), which requires a showing that the petitioner normally requires a degree or its equivalent for the proposed position. To determine a petitioner's ability to meet this criterion, the AAO normally reviews the petitioner's past employment practices, as well as the histories, including names and dates of employment, of those employees with degrees who previously held the position, and copies of those employees' diplomas. No evidence has been submitted, nor has the petitioner contended, that the position qualifies as a specialty occupation under this criterion.

Counsel concedes that the petitioner has never hired anyone to fulfill the duties of the proposed position, which would preclude approval of the petition under this criterion. The AAO does note that counsel asserts that the owner of the petitioning entity has been performing the duties to be performed by the beneficiary. However, no evidence is presented regarding the owner's educational background.

Finally, the AAO turns to the criterion at 8 C.F.R. § 214.2(h)(4)(iii)(A)(4), which requires a demonstration 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.

To the extent that they are depicted in the record, the duties of the proposed position do not appear so specialized and complex as to require the highly specialized knowledge associated with a baccalaureate or higher degree, or its equivalent, in a specific specialty. Again, there is no information in the record to support a finding that the proposed position is more complex or unique than similar marketing manager positions in other, similar organizations. Therefore, the evidence does not establish that the proposed position is a specialty occupation under 8 C.F.R. § 214.2(h)(4)(iii)(A)(4).

The petitioner has failed to establish that the position qualifies for classification as a specialty occupation under any of the four criteria set forth at 8 C.F.R. §§ 214.2(h)(4)(iii)(A)(1), (2), (3), and (4). Accordingly, the AAO will 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.