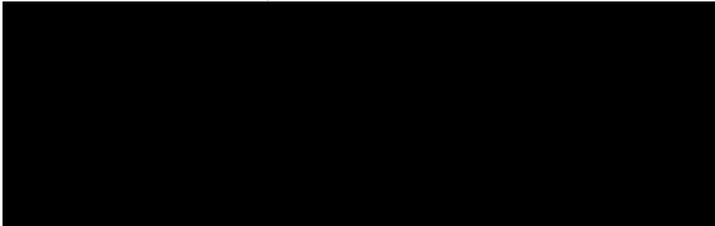




U.S. Citizenship
and Immigration
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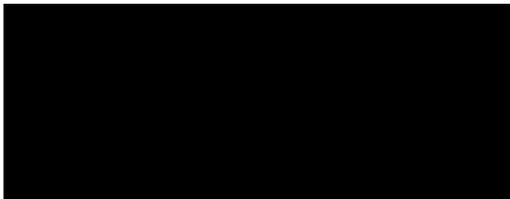
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FILE: WAC 04 066 53448 Office: CALIFORNIA SERVICE CENTER Date: **OCT 26 2005**

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

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 provides personal health and wellness services. It seeks to employ the beneficiary as a copy and newsletter writer. 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 a brief and 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) the petitioner'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 a copy and newsletter writer. Evidence of the beneficiary's duties includes: the Form I-129; the attachments accompanying the Form I-129; the petitioner's support letter; and the petitioner's response to the director's request for evidence. According to this evidence, the beneficiary would perform duties that entail researching, writing, and editing newsletters, promotional articles, and informative materials for promoting products and services. The petitioner's response to the request for evidence elaborated on the proposed duties. In the response, for example, the beneficiary is described as researching data and information regarding the culture and customs of a specific audience using communication techniques; then evaluating the gathered information and data to assess the value and importance that the audience attributes to health and wellness. For the proposed position the petitioner requires a bachelor's degree, or its equivalent, in the liberal arts, English, communication, or a related field.

The director stated that the evidentiary record fails to establish that the petitioner has the necessary size and scope to require the full-time services of a copy/newsletter writer for three years; and that performing incidental specialty occupation duties fail to establish that a position is a specialty occupation. The director found that the proposed duties resemble those of advertising, marketing, promotions, public relations, and sales managers; and that the *Handbook* indicates that those positions do not require a bachelor's degree in a specific specialty. According to the director, the evidence failed to show that the proposed position could not be performed by an experienced person whose educational training fell short of a bachelor's degree.

On appeal, counsel states that the submitted evidence of letters from Kip Morrison and Associates, [REDACTED], Ms. [REDACTED], and [REDACTED] Institute show that the proposed position requires a bachelor's degree, and that the petitioner requires and previously used the services of a copy and newsletter writer. Counsel emphasizes that small businesses require the services of a copy and newsletter writer; counsel discusses the proposed duties, stating that they are complex and specialized and that they differ from those of an advertising, marketing, promotions, public relations, and sales manager.

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 first 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. The AAO routinely consults the *Handbook* for its information about the duties and educational requirements of particular occupations.

The *Handbook* reveals that the proposed duties are a combination of those of a marketing manager and a copywriter. The *Handbook* depicts a marketing manager as follows:

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.

A copywriter is described in the *Handbook* as preparing "advertising copy for use by publication or broadcast media or to promote the sale of goods and services."

The *Handbook* reports that a bachelor's degree *in a specific specialty* is not required for a marketing manager; and the AAO recapitulates here the *Handbook's* text about the educational requirements of writers:

A college degree generally is required for a position as a writer or editor. Although some employers look for a broad liberal arts background, most prefer to hire people with degrees in communications, journalism, or English. For those who specialize in a particular area, such as fashion, business, or legal issues, additional background in the chosen field is expected. Knowledge of a second language is helpful for some positions.

Because the *Handbook* discloses that a baccalaureate degree *in a specific specialty* is not required for a marketing manager and a copywriter, the proposed position, which is similar to these occupations, would also not require a bachelor's degree in a specific specialty.

Based on the above discussion, the petitioner fails to satisfy the first criterion at 8 C.F.R. § 214.2(h)(4)(iii)(A), which is that a baccalaureate or higher degree or its equivalent in a specific specialty is the normal minimum requirement for entry into the particular position.

The petitioner submits a letter from Sargon Dental Institute to establish the first alternative prong at 8 C.F.R. § 214.2(h)(4)(iii)(A)(2) - that a specific degree requirement is common to the industry in parallel positions among similar organizations. The letter from Sargon Dental Institute asserts that the institute hires people with baccalaureate degrees as copywriters or medical writers. The AAO observes that the letter does not state that the baccalaureate degree must be in a specific specialty, though. The letter is therefore insufficient to show that a specific degree requirement is common to the industry in parallel positions among similar organizations.

To establish the second alternative prong at 8 C.F.R. § 214.2(h)(4)(iii)(A)(2) the petitioner must show that the proposed position is so complex or unique that it can be performed only by an individual with a degree in a specific specialty. No evidence shows that the proposed position is complex or unique, requiring a bachelor's degree in a specific specialty such as communication or English. Although the petitioner's January 2, 2004 letter states that the beneficiary will target the Asian community, no evidence depicts this market as so complex or unique as to require a baccalaureate degree in a specific specialty such as communication. The press releases contained in the record discuss skincare products and services; they do not convey information indicating that the writer of the press releases must have a degree in, or some knowledge about, a specialized field such as engineering, business, or one of the sciences. Thus, the submitted evidence fails to establish that the proposed position is so complex or unique that it can be performed only by an individual with a degree in a specific specialty.

To establish the regulation at 8 C.F.R. § 214.2(h)(4)(iii)(A)(3) the petitioner must show that it normally requires a degree or its equivalent for the position. The petitioner points to letters from Kip Morrison and Associates, [REDACTED] and [REDACTED] to show that the proposed position requires a bachelor's degree. [REDACTED] letter conveys that she holds a bachelor's degree in international studies and volunteered as a copy and newsletter writer for the petitioner. [REDACTED] indicates in her letter that the petitioner is a client of Kip Morrison and Associates, and that the employee that provides copy and newsletter services promoting the petitioner holds a bachelor's degree in English. The AAO notes that the record reflects that the beneficiary holds the educational equivalent to a bachelor's degree in international studies.

The AAO finds that the evidence is not persuasive in establishing that the petitioner normally requires a degree or its equivalent for the position. CIS must examine the ultimate employment of the alien, and determine whether the position qualifies as a specialty occupation. *Cf. Defensor v. Meissner*, 201 F. 3d 384 (5th Cir. 2000). The critical element is not the title of the position or an employer's self-imposed standards, but whether the position actually requires the theoretical and practical application of a body of highly specialized knowledge, and the attainment of a baccalaureate or higher degree in the specific specialty as the minimum for entry into the occupation as required by the Act.¹ To interpret the regulations any other way would lead to absurd results: if CIS were limited to reviewing a petitioner's self-imposed requirements, then any alien

¹ The court in *Defensor v. Meissner* observed that the four criteria at 8 C.F.R. 214.2(h)(4)(iii)(A) present certain ambiguities when compared to the statutory definition, and "might also be read as merely an additional requirement that a position must meet, in addition to the statutory and regulatory definition." *See id.* at 387.

with a bachelor's degree could be brought into the United States to perform a menial, non-professional, or an otherwise non-specialty occupation, so long as the employer required all such employees to have baccalaureate or higher degrees. *See id.* at 388. As discussed earlier in this decision, the proposed position is similar to a copywriter and marketing manager, which are occupations that the *Handbook* reveals do not require a bachelor's degree in a specific specialty. Furthermore, the petitioner accepts a wide range of baccalaureate degrees: from a degree in the liberal arts, to a degree in English, international studies, or communication; thus, the petitioner does not require a bachelor's degree in a specific specialty that is directly related to the proposed position.

To satisfy the regulation at 8 C.F.R. § 214.2(h)(4)(iii)(A)(4), the petitioner must establish that the nature of the specific duties is so specialized and complex that the knowledge required to perform them is usually associated with the attainment of a baccalaureate or higher degree. In this decision the AAO has already conveyed that the proposed duties resemble those of a marketing manager and a copywriter, which are occupations that do not require a bachelor's degree in a specific specialty. Furthermore, the AAO has found that even though the beneficiary will target the Asian community, no evidence shows that this market is so specialized and complex as to require the knowledge associated with the attainment of a baccalaureate degree in a specific specialty such as English, communication, or international studies. The AAO has also concluded that the submitted press releases about skincare services and products do not depict that the writer of the press releases must have knowledge about a specialized field such as engineering, business, or one of the sciences in order to prepare the press releases. Thus, the petitioner fails to establish this last criterion at 8 C.F.R. § 214.2(h)(4)(iii)(A)(4).

As related in the discussion above, the petitioner has failed to establish that the proffered position is a specialty occupation. Accordingly, the AAO shall not disturb the director's denial of the petition on this ground.

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.