

**identifying data deleted to
prevent clearly unwarranted
invasion of personal privacy**



**U.S. Citizenship
and Immigration
Services**

PUBLIC COPY



D 2

FILE: WAC 04 038 50370 Office: CALIFORNIA SERVICE CENTER Date: OCT 31 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 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 business of operating restaurants and seeks to employ the beneficiary as an events 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 events specialist. Evidence of the beneficiary's duties includes: the Form I-129; the attachments accompanying the Form I-129; the November 14, 2003 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 handling the petitioner's events, banquets, catering and productions and entertainment shows; (1) planning, orchestrating, and handling all logistics for events, productions, shows and banquets; conducting research and recommending shows and events to increase company visibility in the community, including researching and procuring talents, working with banquet staff, and providing marketing and public relations support (30% of time); (2) tapping new markets for shows and events and creating and implementing successful marketing plans and strategies; conducting sales calls and searching out new leads and completing follow up contact (20% of time); (3) creating, developing and preparing design presentation for client review; assisting customers with event and shows conception, budget analysis, development and coordination through implementation and final reconciliation (20% of time); managing onsite events including identifying cross functional opportunities; providing coordination and integration of events and shows (15% of time); and (5) preparing accurate and comprehensive banquet event orders with the ability to multi-task several different responsibilities with accuracy and professionalism (15% of time). The petitioner indicated that the proffered position requires a bachelor's degree.

The director requested additional information about the proffered position. The director requested evidence that the proffered position meets one of the above listed criteria.

The director determined that the proffered position was not a specialty occupation. The director found that the petitioner failed to establish that there is a bona fide position. The director found that the petitioner did not establish that the proffered position meets one of the above listed criteria.

On appeal, counsel asserts that the petitioner has established that there is a bona fide offer of employment. Counsel explains that the petitioner operates three restaurants. Counsel assert that as part of its marketing strategy, the petitioner is in the business of producing special events, concerts and entertainment shows. Counsel contends that the petitioner has a unique and special need for the services of an events specialist with all the special events, concerts, and shows that it is involved in. The petitioner submits a contract between itself and Comic Lab, copies of posters of concerts it has participated in and newspaper articles about the petitioner as evidence of an offer of employment.

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 Department of Labor's *Occupational Outlook Handbook (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 and a promotions manager as defined 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 developing pricing strategies, balancing firm objectives and customer satisfaction; formulating and coordinating marketing activities and policies to promote products and services working with advertising and promotional managers; identifying, developing and evaluating marketing strategy, based on knowledge of establishment objectives, market characteristics, and cost and markup factors. The *Handbook* reveals that promotion managers may direct programs involving special events.

With respect to the educational qualifications required of marketing managers and promotion 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.

The petitioner has not provided evidence to establish the second criterion - that a specific degree requirement is common to the industry in parallel positions among similar organizations. The petitioner submitted one letter from a restaurant owner which indicated that it was in the same business and required that its event planner have a bachelor's degree. One letter is insufficient to establish that a specific degree requirement is common to the industry in parallel positions among similar organizations. Nor can the petitioner establish that the particular position is so complex or unique that it can be performed only by an individual with a degree.

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 in a specific specialty. The duties parallel those in the *Handbook* for a marketing and promotions manager, an occupation that does not require a specific baccalaureate degree. Contrary to counsel's assertions, the AAO has considered the duties of the beneficiary in relation to the petitioner's business of operating a restaurant with special events. The petitioner submitted a contract with a comedy group and other advertisements about previous special events. This information does not demonstrate that the duties of the proffered position are more specialized or complex than what is normally encountered in the occupational field of marketing and promotions. The petitioner has not established that the duties to be performed for its business are so complex as to require a degree in a specific specialty. 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.