

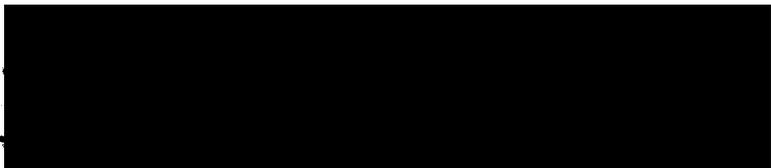
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**U.S. Citizenship  
and Immigration  
Services**

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FILE: LIN 04 263 52717 Office: NEBRASKA SERVICE CENTER Date: JAN 27 2006

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 materials have been returned to the office that originally decided your case. Any further inquiry must be made to that office.

A handwritten signature in cursive script, appearing to read "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 producer and distributor of specialized enamel solutions. It seeks to employ the beneficiary as an OEM account professional 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 director's 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 manufacturer of component parts for cooking ranges, gas furnaces, barbecue grills, ice merchandisers, and telephone booths, whose primary customers are "original equipment manufacturers" (OEMs) of appliances. The petitioner states that it was established in 1916, has 67 employees and gross annual income in excess of \$10 million, and is organized in three departments: fabrication (metal stampings, welding, and assembly); enamel (porcelain coating services on steel and cast iron substrates); and ICE MAID Ice Merchandisers and related ice equipment and supplies. The petitioner proposes to employ the beneficiary as an OEM accounts professional to manage and coordinate its OEM accounts, among other tasks. According to the petitioner, the educational requirement for the job is a master's degree in the field of business or in the field of marketing and sales. The record indicates that the beneficiary earned a bachelor of science in business administration, majoring in international business, from Southern Illinois University in May 2002, and a master of business administration from the same university in December 2003.

In response to the RFE the petitioner listed the duties of the proffered position, and the percentage of time required by each duty, as follows:

- 25% Manage the identification of, and be involved in marketing to, prospective customers. Work with existing customers and industry resources to determine possible development opportunities and coordinate pursuit of those opportunities. Research new markets and create strategies for entering those markets.
- 15% Manage and coordinate critical OEM accounts. Maintain and grow the existing OEM customers.
- 3% Coordinate customer satisfaction survey process.
- 10% Utilize sophisticated market research skills to track price changes and marketing trends throughout the OEM industry. Calculate and implement market appropriate price increases or decreases and evaluate new surcharges issued by suppliers.
- 15% Manage and direct the OEM sales estimator. Evaluate the price quotes prepared by the estimators and determine the ultimate price.
- 20% Mediate issues that arise between customers and the engineering staff. Maintain ongoing communication with customers to address design distribution issues from the beginning of the manufacturing process until delivery of the product.
- 15% Maintain all customer files and current revision levels of drawings on all existing parts. Serve as a member of the design team.
- 10% Coordinate compliance measures to ensure the company meets the ISO 9001-2000 policies, procedures and work instructions.
- 1% Conduct internal audits monthly and evaluate results with the quality manager.

In his decision the director found that the proffered position was not described in the Department of Labor (DOL)'s *Occupational Outlook Handbook (Handbook)*. The record did not show that a baccalaureate or higher degree in a specific specialty was required to perform the job, the director declared, and noted that the three individuals identified by the petitioner as previous occupants of the proffered position held degrees in a variety of disciplines. The director found that the nature of the proffered position and its specific duties are not so complex, unique, or specialized that they require a degree in a specific specialty or equivalent knowledge to perform. Nor was there any evidence in the record that such a degree requirement is common to the industry in parallel positions among similar organizations. The director concluded that the proffered position did 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 proffered position encompasses both marketing and engineering functions and therefore requires at least a bachelor's degree in business/marketing or engineering/mechanical engineering. Counsel asserts that the position qualifies as a specialty occupation under all four criteria enumerated at 8 C.F.R. § 214.2(h)(4)(iii)(A). Counsel states that the petitioner has always required a specialty degree for the position, referring to the petitioner's previously submitted names and degrees of prior occupants of the position, and cites a couple of newly submitted internet job announcements for OEM account managers requiring a bachelor's degree in engineering and/or marketing as evidence of an industry-wide requirement of a specialty degree. Counsel also submits an additional description of the proffered position, which augments the description of each previously listed job duty, as evidence that the duties of the position are so specialized and complex that their performance requires baccalaureate or higher level knowledge.

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.

Based on the petitioner's description of the duties of the OEM account professional, the AAO determines that the proffered position accords with the *Handbook's* description of a marketing manager. That occupation – which is a sub-category of the *Handbook's* broad occupational category of advertising, marketing, promotions, public relations, and sales managers – is described as follows:

*Marketing managers* develop the firm's detailed marketing strategy. With the help of subordinates . . . [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. 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 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 the occupation, the *Handbook* states, in pertinent part, as follows:

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 . . . management positions, some employers prefer a bachelor's or master's degree in business administration with an emphasis on marketing . . . .

Most . . . marketing . . . management positions are filled by promoting experienced staff or related professional personnel. For example, many managers are former sales representative, purchasing agents, buyers, or product . . . specialists.

*Id.* at 24-25. Thus, a marketing manager 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 such a 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. A wide variety of degrees can be suitable for a marketing manager, and many positions are filled by promoting sales representatives, purchasing agents, buyers, or product specialists, none of which, according to the *Handbook*, are positions requiring a baccalaureate or higher degree in a specific specialty. The AAO determines, therefore, that the proffered position does not qualify as a specialty occupation under 8 C.F.R. § 214.2(h)(4)(iii)(A)(1).

With regard to the second alternative criterion of a specialty occupation, two internet job announcements have been submitted on appeal from companies seeking to hire OEM account managers, one of which requires a bachelor of science in engineering and the other a bachelor of science in marketing or engineering. Neither of the advertising companies is in the same line of business as the petitioner, however, and neither job posting provides any information about the advertising company's size and scale of operations relative to the petitioner. The record contains a third internet job posting (submitted with the response to the RFE) for an OEM account manager requiring a degree in engineering or business, but it does not identify the advertising company or its line of business, and provides no information about the company's size and scale of operations relative to the petitioner. Thus, the internet job postings do not establish that a baccalaureate or higher degree in a specific specialty is a common requirement of the petitioner's industry in parallel positions among similar organizations. Accordingly, the proffered position does not qualify as a specialty occupation under the first prong of 8 C.F.R. § 214.2(h)(4)(iii)(A)(2). Nor does the petitioner's description of the position, or other evidence in the record, demonstrate 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).

As for the third alternative criterion of a specialty occupation, the petitioner asserts that it has always required a specialty degree for the proffered position and has submitted the names of three individuals who, it states, formerly served as its OEM account professional. According to the petitioner, one of its prior employees held a bachelor of science in marketing, the second held a bachelor of science in engineering, and the third held a bachelor of science in mechanical engineering. There is no documentation in the record, however, showing that any of those three individuals actually worked for the petitioner and in what capacity. Nor is there any documentary evidence of the educational degrees the petitioner states were earned by those individuals. Simply going on record without supporting documentation does not satisfy the petitioner's burden of proof. *See 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)). 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). Performing the duties of the proffered position requires marketing knowledge, as well as knowledge of the petitioner's industry and product line. All of this knowledge can be learned on the job, and is not usually associated with the attainment of a baccalaureate or higher degree in a specific specialty.

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