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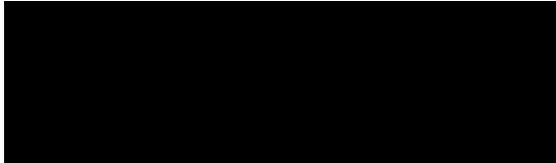
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FILE: LIN 03 200 51362 Office: NEBRASKA SERVICE CENTER Date: JUN 01 2006

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:



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.

A handwritten signature in black ink, appearing to read "Robert P. Wiemann".

Robert P. Wiemann, Chief
Administrative Appeals Office

DISCUSSION: The service center 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 start-up company intending to engage in e-commerce project development. It seeks to employ the beneficiary as an e-commerce research analyst. The petitioner 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 does not qualify as a specialty occupation. On appeal counsel submits a brief stating that the offered position qualifies as a specialty occupation.

The issue to be discussed in this proceeding is whether the proffered position qualifies as a specialty occupation.

Section 101(a)(15)(H)(i)(b) of the Act, 8 U.S.C. § 1101(a)(15)(H)(i)(b), provides, in part, for the classification of qualified nonimmigrant aliens who are coming temporarily to the United States to perform services in 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.

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 are 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) the 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) the Form I-290B with counsel’s brief. The AAO reviewed the record in its entirety before issuing its decision.

The petitioner is seeking the beneficiary’s services as an e-commerce research analyst. Evidence of the beneficiary’s duties includes the Form I-129 petition with attachment and the petitioner’s response to the director’s request for evidence. According to this evidence the beneficiary would:

- Research market conditions and analyze sales potential for the petitioner’s e-commerce services and products;
- Research and analyze information on market prices, sales trends, and marketing patterns of competitors, charting product or service trends in the e-commerce market;
- Design Internet-based surveys to gather data on demographics, psychographics, and buying habits and develop buyer/user profiles;
- Use the data obtained from research to develop an Internet-based marketing campaign for the petitioner’s e-commerce projects, targeting specific consumers based on the analysis of survey data.

The petitioner requires a technically advanced marketing degree, such as Internet Marketing or e-commerce for entry into the proffered position.

Upon review of the record, the petitioner has failed to establish that the proffered position qualifies as a specialty occupation. The AAO routinely consults the U.S. Department of Labor’s *Occupational Outlook Handbook (Handbook)* for information about the duties and educational requirements of particular occupations. The duties of the proffered position are presented in such general terms, however, that it is impossible to determine precisely what tasks the beneficiary would perform on a daily basis, or the complexity of the tasks to be performed. For example, the petitioner indicates that the beneficiary would: research and analyze information on market prices, sales trends, and marketing patterns of competitors, charting product or service trends in the e-commerce market; design Internet-based surveys to gather data on

demographics, psychographics, and buying habits and develop buyer/user profiles; and use data gathered to develop an Internet-based marketing campaign for the petitioner's projects. The record does not indicate the nature and extent of any market research to be conducted, nor state specifically how that research will be conducted except to say that Internet surveys would be performed. Although the petitioner states that Internet surveys would be conducted to gather data on demographics, psychographics, and buying habits and develop buyer/user profiles, it does not indicate who would be targeted for such surveys or how the beneficiary would identify anyone to be surveyed. The record is silent as to the nature and extent of any marketing campaign to be developed for any of the petitioner's projects, or to whom any marketing campaign would be directed. The generalized job description provided by the petitioner attempts to define the range of duties that may be performed by the beneficiary within the occupation offered, but cannot be relied upon by a petitioner when discussing the duties attached to specific employment. In order to meet its burden of proof in these proceedings, the petitioner must identify specifically the precise tasks to be performed by the beneficiary so that an analysis of the duties to be performed may be conducted to determine the complexity of the duties and whether the performance of those duties requires the theoretical and practical application of a body of highly specialized knowledge. This, the petitioner has failed to do. As such, it is impossible to determine whether: a baccalaureate or higher degree is normally the minimum requirement for entry into the offered position; a degree requirement is common to the industry in parallel positions among similar organizations; the duties of the offered position are so complex or unique that they can be performed only by an individual with a degree in a specific specialty; or that the knowledge required to perform the duties is usually associated with the attainment of a baccalaureate or higher degree in a specific specialty. The petitioner has failed to establish that the offered position meets the requirements of 8 C.F.R. §§ 214.2(h)(4)(iii)(A)(1), (2), or (4).

The petitioner does not assert that it normally requires a degree in a specific specialty for the offered position as the position is new with the company. The beneficiary would be the first employee hired by the petitioner. The petitioner has not established the criterion at 8 C.F.R. § 214.2(h)(4)(iii)(A)(3).

As previously stated, Section 101(a)(15)(H)(i)(b) of the Act, 8 U.S.C. § 1101(a)(15)(H)(i)(b), provides, in part, for the classification of qualified nonimmigrant aliens who are coming temporarily to the United States to perform services in a specialty occupation. The petitioner provided evidence that it has an employer identification number, that it has applied for a line of credit with a bank, that it has submitted an application with the U.S. Patent and Trademark Office for use of a trade name, and that it has applied for an assumed business name in the State of Illinois. The record does not establish, however, that the petitioner has actually obtained bank financing to conduct business, has completed the publication requirements for using its proposed business name as required by Illinois law, or that it is actually legally able to conduct business operations as stated. As such, the petitioner has not established that the beneficiary would be coming to the United States to work in a specialty occupation. Simply going on the record without supporting documentary evidence is not sufficient for the purpose of meeting the burden of proof in these proceedings. *See Matter of Soffici*, 22 I&N Dec. 158, 165 (Comm. 1998) (citing *Matter of Treasure Craft of California*, 14 I&N 190 (Reg. Comm. 1972)). For these additional reasons, the petition may not be approved.

The proffered position does not meet any of the requirements of 8 C.F.R. § 214.2(h)(4)(iii)(A), nor has the petitioner established that the beneficiary would be coming to the United States to work in a specialty occupation. Accordingly, the director's denial of the Form I-129 petition shall not be disturbed.

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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 failed to sustain that burden and the appeal shall accordingly be dismissed.

ORDER: The appeal is dismissed. The petition is denied.