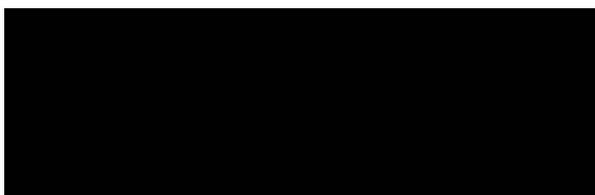




U.S. Citizenship  
and Immigration  
Services



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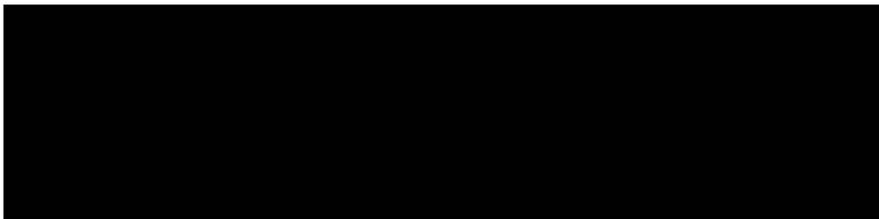
FILE: WAC 05 165 50365 Office: CALIFORNIA SERVICE CENTER Date:

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.

A handwritten signature in cursive script, appearing to read "Robert P. Wiemann".

Robert P. Wiemann, Chief  
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 imports, distributes, and wholesales hair products. It seeks to employ the beneficiary as a sales 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 finding that the proposed position is not a specialty occupation. Counsel submitted a timely appeal.

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 the appeal brief. The AAO reviewed the record in its entirety before issuing its decision.

The petitioner is seeking the beneficiary's services as a sales manager. 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 as follows:

- Provide analytical support to proposed changes in cost/profit standards;
- Provide market analysis and recommendations;
- Evaluate the financial and investment opportunities of different products;
- Develop and devise the petitioner's expansion plan and analyze the financial need to support it;
- Analyze, guide, and support acquisitions of new products;
- Develop long and short-term financial strategies;
- Understand the petitioner's business model and goals in finance, human resources, and operations in order to help optimize efficiency and profit while fulfilling the petitioner's goals;  
(30 percent of the beneficiary's time will be spent on the above duties)
  
- Manage customer relationships and finance arrangements for research and development;
- Review financial transactions and monitor budgeting to ensure efficient and profitable operations and ensure expenditures stay within the budget;
- Provide cost containment strategies to meet financial targets;
- Analyze financial information to forecast business, industry, and economic conditions and trends for financial decisions and recommendations to top management regarding the petitioner's financial condition and future;
- Track potential risks and opportunities and make educated recommendations;
- Work with key clients to understand their uses and needs and integrate them into the petitioner's decision-making scheme.  
(30 percent of the beneficiary's time will be spent on the above duties)
  
- Research and evaluate the sales expansion opportunities and current inventory figures to recommend inventory control timing and the target price to maintain a competitive pricing strategy;
- Review market analysis to determine customer needs, volume potential, price schedules, and discount rates, and develop sales campaigns to accommodate the petitioner's goals;
- Evaluate and analyze the petitioner's cash/liquid assets for expansion needs;
- Identify and diagnose quality control and deficiency issues and provide options for resolutions;
- Maintain operating records and databases involving inventory and performance;
- Monitor new launch quantities and projected impact on field inventory;
- Maintain accurate business records to ensure that proper controls are in place and procedures are followed in recording of transactions;
- Monitor and administer shipment of bulk goods and import transactions;
- Prepare periodic reports on the sales volume and potential sales.

(40 percent of the beneficiary's time will be spent on the above duties)

The petitioner requires a bachelor's degree in economics, finance, accounting, or business administration for the proposed position.

The director denied the petition. He stated that the proposed duties resemble those of sales and marketing managers as described in the 2004-2005 edition of the Department of Labor's *Occupational Outlook Handbook* (the *Handbook*), which the *Handbook* conveys do not require a bachelor's degree in a specific academic discipline. The director found the submitted job postings unpersuasive in establishing the offered position as a specialty occupation. According to the director, the job duties to be performed by the beneficiary are generic in nature and no detail is given as to their uniqueness or complexity. The director stated that the petitioner does not have the organizational complexity to validate a position for a marketing manager: it does not have a marketing division, team, staff, or any marketing specialists for a marketing manager to direct. Absent marketing staff or specialists, sales representatives, and advertising and promotions specialists, the director concluded that the beneficiary would perform such non-specialty occupation duties. The director found that no evidence showed that the petitioner normally requires a degree or the equivalent in a specific specialty for the proposed position. The director stated that the proposed position is no more specialized or complex than any other sales or marketing manager job. The director concluded that the petitioner satisfied none of the criteria at 8 C.F.R. § 214.2(h)(4)(iii)(A).

On appeal, counsel states that the proposed position has a unique nature that is complex and different from similar jobs in the same industry as the petitioner. Counsel asserts that the sales and marketing manager duties are not incidental, and that the primary duties involve "market analysis and recommendations, evaluating financial and investment opportunities in different products, and analyzing financial information to forecast business conditions." Counsel states that the duties of "developing pricing strategies with the aim of maximizing company sales and profits", "analyzing sales statistics to determine sales potential and inventory requirements," and "producing forecasts and devising company plans of action" require a candidate with the proper education and work experience. Counsel states that many of the beneficiary's duties, such as providing analytical support to proposed changes in cost and profit standards and providing market analysis and recommendations, are comparable to those of a financial analyst. According to counsel, the duties of analyzing financial information to forecast business and track risks and opportunities, making recommendations, reviewing financial transactions, and monitoring the budget are often performed by accountants and budget analysts. Counsel states that financial analysts, accountants, and budget analysts qualify as specialty occupations.

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 2006-2007 edition of the *Handbook*, a resource that the AAO routinely consults, 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 record contains information from the *Dictionary of Occupational Titles (DOT)*. The *DOT* is not a persuasive source of information regarding whether a particular job requires the attainment of a baccalaureate or higher degree in a specific specialty, or its equivalent, as a minimum for entry into the occupation. A Specific Vocational Preparation (SVP) rating is meant to indicate only the total number of years of vocational preparation required for a particular position. It does not describe how those years are 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. Thus, the *DOT's* information is not persuasive in establishing the proposed position as a specialty occupation.

The AAO finds that the proposed duties are a combination of those of a marketing and sales manager and a junior accountant.<sup>1</sup> The *Handbook* describes a marketing manager as follows:

*Marketing managers develop the firm's marketing strategy in detail. With the help of subordinates, including product development managers and market research managers, they estimate 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 to help firms maximize profits and market share while ensuring that the firm's customers are satisfied. In collaboration with sales, product development, and other managers, they monitor trends that*

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<sup>1</sup> The AAO notes that the petitioner indicates that the beneficiary will manage customer relationships and finance arrangements for research and development. There is no supporting evidence in the record reflecting that the petitioner is involved in research and development. Going on record without supporting documentary evidence is not sufficient for the purpose of meeting the burden of proof in these proceedings. *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)). The federal income tax records indicate that the petitioner is a wholesaler, and the Form I-129 petition and May 13, 2005 letter from the petitioner indicates that the petitioner imports, distributes, and wholesales hair products.

indicate the need for new products and services, and they 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 sales manager is depicted in the *Handbook* as follows:

*Sales managers* direct the firm's sales program. They assign sales territories, set goals, and establish training programs for the sales representatives. (See the *Handbook* statement on sales representatives, wholesale and manufacturing.) Sales managers advise the sales representatives on ways to improve their sales performance. In large, multiproduct firms, they oversee regional and local sales managers and their staffs. Sales managers maintain contact with dealers and distributors. They analyze sales statistics gathered by their staffs to determine sales potential and inventory requirements and to monitor customers' preferences. Such information is vital in the development of products and the maximization of profits.

According to the *Handbook*, a bachelor's degree in a specific academic discipline is not required for a managerial position in marketing or sales; it 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. 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. In highly technical industries, such as computer and electronics manufacturing, a bachelor's degree in engineering or science, combined with a master's degree in business administration, is preferred.

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.

The AAO finds that the beneficiary's duties of "market analysis and recommendations," "evaluating financial and investment opportunities in different products," "analyzing financial information to forecast business

conditions,” and providing analytical support to proposed changes in cost and profit standards are encompassed within the duties of marketing managers as the *Handbook* indicates that marketing managers are involved with pricing strategy and maximizing profits and market share, identifying potential markets, and monitoring trends. His duties of “developing pricing strategies with the aim of maximizing company sales and profits,” “analyzing sales statistics to determine sales potential and inventory requirements,” and “producing forecasts and devising company plans of action” are performed by marketing managers and sales managers. Sales managers analyze sales statistics, determine sales potential and inventory requirements, and monitor customers’ preferences. Market managers are concerned with pricing strategies and profits. Thus, the AAO finds that many of the proposed duties pertain to those of marketing and sales managers.

Counsel claims that the duties of analyzing financial information to forecast business and track risks and opportunities, making recommendations, reviewing financial transactions, and monitoring the budget are often performed by accountants and budget analysts.

The *Handbook* conveys that specific job duties of accountants vary widely among the four major fields of accounting: public, management, government, and internal. The AAO finds that the closest category to the position that is offered here is the management accountant. In the *Handbook*, management accountants — also called cost, managerial, industrial, corporate, or private accountants — record and analyze the financial information of the companies for which they work. Other responsibilities include budgeting, performance evaluation, and cost and asset management. Usually, management accountants are part of executive teams involved in strategic planning or new-product development. They analyze and interpret the financial information that corporate executives need to make sound business decisions. They also prepare financial reports for nonmanagement groups, including stockholders, creditors, regulatory agencies, and tax authorities. Within accounting departments, they may work in various areas, including financial analysis, planning and budgeting, and cost accounting.

The AAO finds that the submitted evidence provides no basis to determine that the offered position is one that normally would require a bachelor’s degree or the equivalent in a discipline such as accounting. The record contains wage records, federal income tax records, a balance sheet and income statement, photographs, a client list, an organizational chart, a product brochure, and other documents. The record reflects that the petitioner has six employees and earns \$1,918,547 per year. The fact that a position involves accounting principles is insufficient to establish it as a specialty occupation, for not all positions applying accounting principles require the application of a bachelor’s degree level of knowledge in accounting or a related specialty. For instance, the *Handbook’s* subsection “Sources of Additional Information” refers the reader to the Internet site for the Accreditation Council for Accountancy and Taxation (ACAT), the professional organization that provides the credentials Accredited Business Accountant®/Accredited Business Advisors® (ABA).<sup>2</sup> That Internet site reveals that a degree in accounting or a related specialty is not required for ABA

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<sup>2</sup> At its Internet site (<http://www.nsaacct.org/acat.asp>), the National Society of Accountants describes ACAT as follows:

The Accreditation Council for Accountancy and Taxation (ACAT) is an independent

accreditation. Eligibility for the eight-hour comprehensive examination for the ABA credential requires three years of “verifiable experience in accounting, taxation, financial services, or other field requiring a practical and theoretical knowledge of the subject matter covered on the ACAT Comprehensive Examination.”<sup>3</sup> “Up to two” of the required years of work experience “may be satisfied through college credit.”

The *Handbook* states that junior accountants have 2 year degrees. It states:

Many graduates of junior colleges or business or correspondence schools, as well as bookkeepers and accounting clerks who meet the education and experience requirements set by their employers, can obtain junior accounting positions and advance to positions with more responsibilities by demonstrating their accounting skills on the job.

Furthermore, the *Handbook* also states that financial clerks have at least a high school diploma, and for bookkeepers and accounting clerks, employers often require an associate’s degree in business or accounting.<sup>4</sup>

Counsel asserts the some of the duties require the services of a budget analyst. However, the petitioner failed to submit prior copies of the petitioner’s budget. The AAO therefore cannot determine whether the duties relating to the budget, such as monitoring the budget, are those that normally would require a bachelor’s degree or the equivalent in a discipline such as accounting. Simply going on record without supporting documentary evidence is not sufficient for the purpose of meeting the burden of proof in these proceedings. *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)).

In conclusion, the AAO finds that the offered position is not a specialty occupation under 8 C.F.R. § 214.2(h)(4)(iii)(A)(I): a baccalaureate or higher degree or its equivalent in a specific specialty is the normal minimum requirement for entry into the particular position.

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accrediting and monitoring organization affiliated with the National Society of Accountants. ACAT accredits professionals in independent practice who have demonstrated measurable knowledge of the principles, practices, and ethical standards of accounting, taxation, information technology and related financial services.

<sup>3</sup> The ACAT Internet site (<http://www.acatcredentials.org/index.html>) states that the examination tests “proficiency in financial accounting, reporting, statement preparation, taxation, business consulting services, business law, and ethics.”

<sup>4</sup> The website from Skyline College, a community college located in San Mateo, California, ([www.skylinecollege.net](http://www.skylinecollege.net)) reflects that an associate’s degree in business or accounting would involve learning the fundamentals about financial accounting principles and concepts, balance sheets, income statements, cash flow statements, the GAAP, forecasting, budgeting, cost accounting, break even analysis, developing and operating a computerized accounting system using tools such as QuickBooks, QuickBooks Pro, or Peachtree, which is an integrated commercial accounting software package that is used to review, differentiate, and interpret accounting concepts and data in a multitude of business situations.

To establish the first alternative prong at 8 C.F.R. § 214.2(h)(4)(iii)(A)(2), the petitioner must show that a specific degree requirement is common to the industry in parallel positions among similar organizations. Although the director's denial letter stated that the petitioner submitted two job listings to establish this criterion, the AAO notes that the record contains no such job listings. The petitioner therefore fails to establish the first alternative prong at 8 C.F.R. § 214.2(h)(4)(iii)(A)(2).

The second alternative prong at 8 C.F.R. § 214.2(h)(4)(iii)(A)(2) requires that the petitioner show that the proffered position is so complex or unique that it can be performed only by an individual with a baccalaureate degree in a specific specialty. Counsel states that the proposed duties have a unique nature and are complex, and sufficiently different from similar jobs in the same industry as the petitioner. Counsel points to the duties of providing market analysis and making recommendations; evaluating the financial and investment opportunities of different products; analyzing financial information to forecast business conditions; developing pricing strategies with the aim of maximizing company sales and profits; analyzing sales statistics to determine sales potential and inventory requirements; producing forecasts and devising action plans; providing analytical support to proposed changes in cost and profit standards; analyzing financial information to forecast business and track risks and opportunities; reviewing financial transactions; and monitoring the budget as specialty occupation duties.

The AAO has found such duties to resemble those of marketing and sales managers and a junior accountant. For example, the *Handbook* portrays a marketing manager as developing the firm's marketing strategy; estimating the demand for products and services offered by the firm and its competitors; identifying potential markets; developing "pricing strategy to help firms maximize profits and market share while ensuring that the firm's customers are satisfied"; and monitoring trends that indicate the need for new products and services. Similarly, the beneficiary will perform market analysis and make recommendations; evaluate the financial and investment opportunities of different products; analyze financial information to forecast business and track risks and opportunities; and develop pricing strategies with the aim of maximizing company sales and profits. According to the *Handbook*, a sales manager directs the firm's sales program, maintains contact with dealers and distributors, and analyzes sales statistics to determine sales potential and inventory requirements and to monitor customers' preferences. Likewise, the beneficiary will analyze sales statistics to determine sales potential and inventory requirements; produce forecasts and devise action plans; and provide analytical support to proposed changes in cost and profit standards. The duties to analyze financial information and monitor the budget could be performed by a junior accountant as described in the *Handbook*. The AAO notes that the submitted organizational chart from the petitioner reflects that the petitioner already employs an accounting manager. Consequently, based on the evidence in the record, the petitioner fails to establish the second alternative prong at 8 C.F.R. § 214.2(h)(4)(iii)(A)(2).

No evidence in the record establishes the criterion at 8 C.F.R. § 214.2(h)(4)(iii)(A)(3), which is that the petitioner demonstrate that it normally requires a degree or its equivalent for the position.

The criterion at 8 C.F.R. § 214.2(h)(4)(iii)(A)(4) requires that the petitioner establish that the nature of the specific duties is so specialized and complex that the knowledge required to perform such duties is usually associated with the attainment of a baccalaureate or higher degree in a specific specialty. The proposed duties

are a combination of those of a marketing and sales manager and a junior accountant, which are occupations that the *Handbook* indicates do not require a bachelor's degree in a specific academic discipline. The evidence of wage records, federal income tax records, a balance sheet and income statement, photographs, a client list, an organizational chart, a product brochure, and other documents are insufficient to establish that the nature of the specific duties is so specialized and complex that the knowledge required to perform such duties is usually associated with the attainment of a baccalaureate degree in a specific specialty. As such, the petitioner fails to establish the 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