

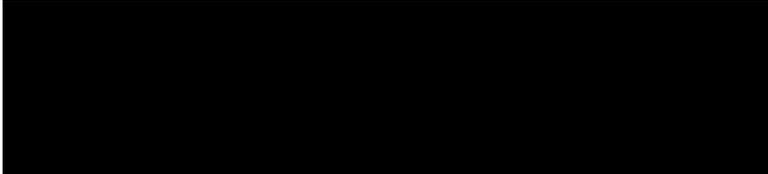
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U.S. Citizenship
and Immigration
Services

D2



FILE: LIN 05 222 51358 Office: NEBRASKA SERVICE CENTER Date: AUG 10 2007

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

Robert P. Wiemann, Chief
Administrative Appeals Office

DISCUSSION: The Director, Nebraska Service Center, denied the nonimmigrant visa petition and the petitioner filed an appeal. The matter is now before the Administrative Appeals Office (AAO). The appeal will be dismissed. The petition will be denied.

The petitioner is a jewelry wholesaler. It seeks to employ the beneficiary as a marketing manager. Accordingly, it 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).

On March 10, 2006 the director denied the petition determining that the record did not establish that the beneficiary is qualified to perform services in a specialty occupation and that the proffered position is not a specialty occupation. On appeal, counsel for the petitioner asserts that the beneficiary has the equivalent of an undergraduate degree in business administration and a strong marketing educational background that includes both coursework and an internship and that the petitioner would accept only an individual with a business administration degree with an emphasis or strong showing of marketing coursework.

The record of proceeding before the AAO contains: (1) the Form I-129 filed July 20, 2005 and supporting documentation; (2) the director's October 13, 2005 request for further evidence (RFE); (3) counsel's January 4, 2006 response to the director's RFE; (4) the director's March 10, 2006 denial decision; and (5) the Form I-290B, counsel's brief, and documentation in support of the appeal. The AAO reviewed the record in its entirety before rendering its decision.

Section 214(i)(2) of the Act, 8 U.S.C. § 1184(i)(2), states that an alien applying for classification as an H-1B nonimmigrant worker must possess:

- (A) full state licensure to practice in the occupation, if such licensure is required to practice in the occupation,
- (B) completion of the degree described in paragraph (1)(B) for the occupation, or
- (C)
 - (i) experience in the specialty equivalent to the completion of such degree, and
 - (ii) recognition of expertise in the specialty through progressively responsible positions relating to the specialty.

Pursuant to 8 C.F.R. § 214.2(h)(4)(iii)(C), to qualify to perform services in a specialty occupation, the alien must meet one of the following criteria:

- (1) Hold a United States baccalaureate or higher degree required by the specialty occupation from an accredited college or university;
- (2) Hold a foreign degree determined to be equivalent to a United States baccalaureate or higher degree required by the specialty occupation from an accredited college or university;
- (3) Hold an unrestricted State license, registration or certification which authorizes him or

her to fully practice the specialty occupation and be immediately engaged in that specialty in the state of intended employment; or

- (4) Have education, specialized training, and/or progressively responsible experience that is equivalent to completion of a United States baccalaureate or higher degree in the specialty occupation, and have recognition of expertise in the specialty through progressively responsible positions directly related to the specialty.

At the time of filing the petition, the petitioner indicated that it wished to hire the beneficiary as a marketing manager. The petitioner stated that the incumbent must have at a minimum a bachelor's degree in marketing or a related field. The petitioner claimed that the beneficiary was qualified to perform the duties of the position as he had earned a bachelor's degree in international studies with a minor in business from Grand Canyon University in Phoenix, Arizona and that his education qualified him for the petitioner's position of marketing manager.

On October 13, 2005, the director observed that to qualify for a specialty occupation position, the position must require a specific course of study that relates directly to the position and that a marketing manager position that allowed a wide range of educational backgrounds for employment in the position would not qualify. The director requested a copy of the beneficiary's transcripts that pertained to coursework in marketing. The director noted that if the beneficiary's transcript did not include several courses in marketing, the director required evidence that the beneficiary had education, specialized training, and/or progressively responsible experience that is equivalent to completion of a United States baccalaureate or higher degree in the specialty occupation of marketing, as well as recognition of expertise in that specialty through progressively responsible positions related to the specialty.

In a January 4, 2006 response, counsel referenced the beneficiary's degree and transcripts and a letter confirming the beneficiary's 12-week internship in a marketing position. Counsel also referenced several job announcements submitted with the petition, some of which listed a bachelor's degree in business administration or a related degree as sufficient to perform the duties of a marketing manager. Counsel asserted the beneficiary's transcript showed he had taken nine courses or 27 credit hours in a business curriculum and more than 42 credit hours of courses related to business administration.

On March 10, 2006, the director denied the petition, noting counsel's reference to certain documents attached to the response, but observing that the record did not include copies of the beneficiary's degree, transcripts, or letter confirming the beneficiary's internship. The director determined that the record did not establish that the beneficiary held a degree directly related to a marketing manager position. The director determined further that the petitioner's response that a business administration degree is a related field for the position and would be acceptable to the petitioner confirmed that the position was not a specialty occupation.

On appeal, counsel for the petitioner asserts that he included all the attachments to the January 4, 2006 response, including copies of the beneficiary's degree, transcript, and letter confirming the beneficiary's internship and that a complete response is being resubmitted with the appeal. Counsel again asserts that the beneficiary has sufficient coursework in business administration to establish that his degree is in business administration. Counsel also contends that the beneficiary's internships were part of his education and that

the Form I-20 authorizing the internships indicated the internships were for the beneficiary to gain experience in sales, purchasing, and marketing which relate to his degree work. Counsel claims that the petitioner desires a candidate with a business administration degree with a strong emphasis in marketing coursework.

Counsel's assertions are not persuasive. Upon review of the beneficiary's transcript, the transcript shows the beneficiary took one marketing course. The Form I-20 recognizes the beneficiary's internship was to gain experience in several areas including sales, purchasing, and marketing, all areas that would relate to degree work in a general business field. The petitioner has not provided evidence that the beneficiary's coursework in international studies and in business administration directly relate to a specific discipline, such as marketing, as required of a specialty occupation. As the director observed, the petitioner must demonstrate that the proffered position requires a precise and specific course of study that relates directly and closely to the position in question, in this instance a marketing position. Since there must be a close corollary between the required specialized studies and the position, the requirement of a degree with a generalized title, such as business administration or liberal arts, without further specification, does not establish the position as a specialty occupation. *See Matter of Michael Hertz Associates*, 19 I&N Dec. 558 (Comm. 1988). The petitioner must demonstrate that the academic courses pursued and the knowledge gained is a realistic prerequisite to a particular occupation in the field. The beneficiary's coursework must indicate that he or she obtained knowledge of the particular occupation in which he or she will be employed. *Matter of Ling*, 13 I&N Dec. 35 (Reg. Comm. 1968). In this matter the beneficiary's transcript lists only one course in marketing, and the AAO does not find that one course is a realistic prerequisite to perform specialty occupation duties in a particular field.

The AAO acknowledges the beneficiary's internship at [REDACTED] and has reviewed the September 14, 2004 letter confirming the beneficiary's work as an intern. The AAO notes that the beneficiary's intern supervisor indicated that the beneficiary worked in the marketing division performing market research, product analysis, product pricing, making product and sales presentations, creating flyers/brochures for promotions, and merchandise branding, among other things. However, the record does not provide an understanding of the level of the beneficiary's responsibilities and does not relate these specific responsibilities to a corresponding college-course equivalent in the marketing field. The record does not substantiate that the beneficiary's generally described duties as an intern required more than basic skills. The record does not establish that the beneficiary's internship required the theoretical and practical application of the specialized knowledge acquired through a four-year course of study with a major in a specific discipline. Going on record without supporting documentary evidence is not sufficient for purposes 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)).

Upon review of the evidence in the record regarding the proffered position, the AAO finds that the record is insufficient to conclude that the beneficiary's bachelor's degree in international studies, his coursework in business administration, and his internships involving generally-described and simple marketing duties qualify the beneficiary to perform the duties of a specialty occupation in marketing.

The next issue in this matter is whether the petitioner has established the proffered position is 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:

An 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 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 above criteria to mean not just any baccalaureate or higher degree, but one in a specific specialty that is directly related to the proffered position.

In a June 16, 2005 letter appended to the petition, the petitioner indicated:

As a Marketing Manager, [the beneficiary], will manage the development and execution of marketing plans and strategies to maximize awareness, positively influence sales, educate partners and promote our jewelry to clients. The Marketing Manager will generate market awareness and product demand utilizing a variety of marketing mechanisms including but not limited to direct mail/e-mail campaigns, telemarketing, training, trade shows, advertising, and special promotions. The Marketing Manager will interact with direct field marketing, channel sales and marketing personnel. The Marketing Manager will create and update

internet/intranet content, create presentations for trade shows, seminars, conferences, etc. The Marketing Manager will assist in determining appropriate marketing methodology and media/marketing vehicle and/or the intended message/audience.

The petitioner also submitted seven job advertisements for positions of marketing manager or marketing/sales manager. One of the seven advertisements provided a detailed job description and indicated that the successful applicant would have a bachelor's degree in marketing; one job advertisement indicated a four-year college degree with an emphasis on marketing was preferred; one advertisement indicated that a bachelor's degree in business/marketing or engineering would be required; and one job advertisement also with a detailed job description indicated that a bachelor's degree in business/marketing, communications, public relations, sports management or related field would be required. The remaining three job advertisements indicated only that a nonspecific bachelor's degree would be preferred or required.

In response to the director's RFE, counsel in this matter indicated that a review of the job description of the proffered position indicated that a business administration background would be sufficient to perform the duties of the position.

On March 10, 2006, the director denied the petition, determining in part, that the petitioner's acceptance of a nonspecific degree in business administration as sufficient to perform the duties of the position undercut the petitioner's claim that the proffered position is a specialty occupation. Although the AAO agrees that counsel's indication that a business administration background would be sufficient to perform the duties of the position suggests the proffered position is not a specialty occupation, the AAO will review the duties of the position and the remaining record to assist in making this determination.

The AAO turns first to an analysis of the duties of the proffered position and the occupation that includes the described duties. To determine whether a particular job qualifies as a specialty occupation, CIS does not simply rely on a position's title. The specific duties of the proffered position, combined with the nature of the petitioning entity's business operations, are factors to be considered. 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 nor 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.

The occupation described in this matter most closely aligns with that of a marketing manager as discussed within the occupation of advertising, marketing, promotions, public relations and sales managers in the Department of Labor's *Occupational Outlook Handbook (Handbook)* which states:

The objective of any firm is to market and sell its products or services profitably. . . . Advertising, marketing, promotions, public relations, and sales managers coordinate the market research, marketing strategy, sales, advertising, promotion, pricing, product development, and public relations activities.

* * *

Marketing managers develop the firm's detailed marketing strategy. 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 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 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

The petitioner in this matter provides a broad overview of the duties of the position. The petitioner's job description includes duties such as generating market awareness, influencing sales, educating partners, promoting the petitioner's jewelry, by utilizing a variety of advertising campaigns and assisting in a determination of the appropriate marketing methodology. These are the duties of a marketing manager as generally described in the *Handbook*. In addition, developing promotional concepts and generally developing and managing a marketing strategy are duties associated with the marketing and promotion of the petitioner's products, also duties performed by a marketing manager.

However, in order to establish that the duties are the duties of a specialty occupation, the petitioner must describe the specific duties and responsibilities to be performed by a beneficiary in relation to its particular business interests. General statements regarding the proposed duties that are similar in effect to portions of the *Handbook's* recitation of duties of a marketing manager do not assist in identifying the beneficiary's daily duties and moreover do not reveal how the duties incorporate the theoretical and practical application of a body of highly specialized knowledge. A generalized description outlining a range of duties that may be performed within an occupation cannot be relied upon to demonstrate the duties attached to specific employment. Making general conclusory statements regarding a position, rather than defining the activities associated with the position, is insufficient. The petitioner must describe and provide evidence of the duties of the position rather than providing an overview of a particular occupation. Again, going on record without supporting documentary evidence is not sufficient for purposes of meeting the burden of proof in these proceedings. *Matter of Soffici*, 22 I&N Dec. at 165.

The *Handbook* discusses the educational requirements imposed on individuals who seek employment as marketing managers 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

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

As the *Handbook* indicates no specific degree requirement for employment as a marketing manager, the AAO concludes that the performance of the proffered position's duties does not require the beneficiary to hold a baccalaureate or higher degree in a specific discipline. The AAO acknowledges the *Handbook's* statement that some employers prefer a bachelor's or master's degree in business administration with an emphasis on marketing, however employer preference is not synonymous with the normally required language of the first criterion. Further, as referenced above, when an individual with a degree of generalized title can perform the duties of a position or when the position solicits individuals with a range of degrees, the position does not qualify as a specialty occupation. See *Matter of Michael Hertz Associates*, 19 I&N Dec. at 558. The AAO finds that the petitioner has not established the proffered position as a specialty occupation under the requirements of the criterion at 8 C.F.R. § 214.2(h)(4)(iii)(A)(1).

To establish its proffered position as a specialty occupation under the second criterion, a petitioner must prove that a specific degree requirement is common to the industry in parallel positions among similar organizations, or that the proffered position is so complex or unique that only an individual with a degree in the specific specialty can perform the duties of the position.

In reaching its decision, the AAO has reviewed the seven job announcements submitted and notes that the advertisers do not appear to be similar to the petitioner in size, number of employees, or type of business. The advertisers range from a financial company, a university, a cancer treatment center, and a sports organization to a manufacturer of a machinery, software, and control systems for sawmills. There is nothing in the advertisements that suggest these organizations are similar to the petitioner's ten-person jewelry concern. In addition, the record does not contain substantive evidence that the positions advertised are parallel to the proffered position. The listings provided either lack meaningful descriptions of the positions advertised or rely on duties unlike the general duties listed by the petitioner. The record in this matter is insufficient to establish that a degree requirement is an industry standard or is otherwise common to the petitioner's jewelry business. The petitioner has not established the first prong of the criterion at 8 C.F.R. § 214.2(h)(4)(iii)(A)(2).

In the alternative, the petitioner may show that the proffered position is so complex or unique that only an individual with a degree can perform the work associated with the position. In the instant petition, the petitioner has submitted insufficient documentation to distinguish the proffered position from similar but non-degreed employment. The AAO finds that the record does not describe nor has counsel provided evidence that the proposed duties exceed the scope of a typical marketing manager. The AAO is not persuaded that the nature of the specific duties of the proposed position is more unique and complex than that of a typical marketing manager, a position that does not normally require a bachelor's or higher degree in a specific discipline. The record does not establish the second prong of the referenced criterion at 8 C.F.R. § 214.2(h)(4)(iii)(A)(2).

The AAO notes that counsel does not contend that the petitioner has satisfied the criterion at 8 C.F.R. § 214.2(h)(4)(iii)(A)(3), which allows for consideration of the petitioner's normal hiring practices for a particular position. The record offers no evidence of the petitioner's past hiring practices for the proffered position; thus the petitioner has not established that it normally requires a degree or its equivalent for the proffered position. The petitioner has not established the criterion at 8 C.F.R. § 214.2(h)(4)(iii)(A)(3).

The fourth criterion at 8 C.F.R. § 214.2(h)(4)(iii)(A) requires a petitioner to establish that the nature of its position's 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. Upon review of the duties of the proffered position, the AAO finds that the position is closely aligned to that of a marketing manager. It does not find these duties, as described by the petitioner, to reflect a higher degree of knowledge and skill than would normally be required of non-degreed marketing managers whose business responsibilities require them to market and promote their industries' products. That the beneficiary may be required to also perform some advertising or sales tasks as well as marketing the petitioner's products does not elevate the position to a specialty occupation. The job duties of the position do not reflect a level of specialization and complexity that is usually associated with at least a bachelor's degree or its equivalent in a specific field. The AAO, therefore, finds that the petitioner has not established that the proffered position is a specialty occupation under the requirements at 8 C.F.R. § 214.2(h)(4)(iii)(A)(4).

Upon review of the totality of the evidence submitted in support of the petition, the petitioner has failed to establish that the proffered position requires a bachelor's degree, or its equivalent, in a specific discipline. Accordingly, the petitioner has not demonstrated that the proffered position is a specialty occupation within the meaning of the regulations.

The petition will be denied and the appeal dismissed for the above stated reasons, with each considered as an independent and alternative basis for the decision. 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. Accordingly, the petition will be denied.

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