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U.S. Department of Homeland Security
U.S. Citizenship and Immigration Services
Office of Administrative Appeals MS 2090
Washington, DC 20529-2090



U.S. Citizenship
and Immigration
Services

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[Redacted]

FILE: [Redacted] Office: CALIFORNIA SERVICE CENTER Date: **DEC 03 2010**

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:

Enclosed please find the decision of the Administrative Appeals Office in your case. All of the documents related to this matter have been returned to the office that originally decided your case. Please be advised that any further inquiry that you might have concerning your case must be made to that office.

If you believe the law was inappropriately applied by us in reaching our decision, or you have additional information that you wish to have considered, you may file a motion to reconsider or a motion to reopen. The specific requirements for filing such a request can be found at 8 C.F.R. § 103.5. All motions must be submitted to the office that originally decided your case by filing a Form I-290B, Notice of Appeal or Motion, with a fee of \$630. Please be aware that 8 C.F.R. § 103.5(a)(1)(i) requires that any motion must be filed within 30 days of the decision that the motion seeks to reconsider or reopen.

Thank you,

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Perry Rhew
Chief, Administrative Appeals Office

DISCUSSION: The director of the California 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 a credit union service organization that focuses on core credit card processing and prepaid card programs. It seeks to employ the beneficiary as a business development coordinator 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 based on his determination that the proffered position was not a specialty occupation.

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; (3) the director's denial letter; and (4) Form I-290B, with counsel's appeal brief and supporting documentation. The AAO reviewed the record in its entirety before reaching its decision.

The issue before the AAO is whether the petitioner's proffered position qualifies as a specialty occupation. To meet its burden of proof in this regard, a petitioner must establish that the job it is offering to the beneficiary meets the following statutory and regulatory requirements.

Section 214(i)(1) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1184(i)(1) defines the term "specialty occupation" as one 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 also 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.

As a threshold issue, it is noted that 8 C.F.R. § 214.2(h)(4)(iii)(A) must logically be read together with section 214(i)(1) of the Act, 8 U.S.C. § 1184(i)(1), and 8 C.F.R. § 214.2(h)(4)(ii). In other words, this regulatory language must be construed in harmony with the thrust of the related provisions and with the statute as a whole. *See K Mart Corp. v. Cartier Inc.*, 486 U.S. 281, 291 (1988) (holding that construction of language which takes into account the design of the statute as a whole is preferred); *see also COIT Independence Joint Venture v. Federal Sav. and Loan Ins. Corp.*, 489 U.S. 561 (1989); *Matter of W-F-*, 21 I&N Dec. 503 (BIA 1996). As such, the criteria stated in 8 C.F.R. § 214.2(h)(4)(iii)(A) should logically be read as being necessary but not necessarily sufficient to meet the statutory and regulatory definition of specialty occupation. To otherwise interpret this section as stating the necessary *and* sufficient conditions for meeting the definition of specialty occupation would result in particular positions meeting a condition under 8 C.F.R. § 214.2(h)(4)(iii)(A) but not the statutory or regulatory definition. *See Defensor v. Meissner*, 201 F.3d 384, 387 (5th Cir. 2000). To avoid this illogical and absurd result, 8 C.F.R. § 214.2(h)(4)(iii)(A) must therefore be read as stating additional requirements that a position must meet, supplementing the statutory and regulatory definitions of specialty occupation.

Consonant with section 214(i)(1) of the Act and the regulation at 8 C.F.R. § 214.2(h)(4)(ii), USCIS consistently 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. Applying this standard, USCIS regularly approves H-1B petitions for qualified aliens who are to be employed as engineers, computer scientists, certified public accountants, college professors, and other such professions. These occupations all require a baccalaureate degree in the specific specialty as a minimum for entry into the occupation and fairly represent the types of professions that Congress contemplated when it created the H-1B visa category.

In a letter of support dated March 31, 2009, the petitioner described the proffered position as follows:

[The beneficiary] will serve as a Business Development Coordinator and will manage the company's trade show appearances, research marketing opportunities, conduct accurate cost accounting of the company's business development budget, and participate in special projects that will provide value-added benefits to our clients and prospects. He will act as internal administrative support for corporate proposals, as well as annual business planning and budgeting. His duties will include:

- Project lead for trade show management and related communications and marketing, Business Development events, conferences, and MAP roundtables
- Co-management of Annual Users Conference
- Accurate accounting of business development budget and departmental expenses[]
- Accurate accounting of assigned corporate facilities
- Monitor regular base invoices with Log Check
- Maintain/update corporate inventory
- Maintain vendor relations, warranties, agreements in assigned arrears: facilities, licenses, mandate postings, and other
- List/Database management
- Administrative support for corporate proposals, annual business plan and budget
- Avidian CRM (Client Relationship Management) administrator and system manager
- Management of MAP websites
- Departmental support as requested
- Client Bulletin Distribution and other communications
- Quarterly data entry and co-management of Visa-Penetration-Activation-Usage Model project with Client Services Department

The director found this initial evidence insufficient to demonstrate that the proffered position was that of a specialty occupation. Consequently, the director issued an RFE dated April 25, 2009, which requested additional information pertaining to the petitioner's organizational structure and previous hiring practices with regard to the proffered position. In a response dated June 5, 2009, counsel for the petitioner addressed the director's queries.

In response to the RFE, the petitioner, through counsel, submitted copies of the petitioner's tax returns and a company overview, as well as a list of the petitioner's future plans for the company's expansion. The petitioner also submitted a more detailed job description for the proffered position, in which it essentially supplemented the bulleted tasks listed above with additional information.

On June 25, 2009, the director denied the petition. Specifically, the director concluded that the duties of the proffered position were akin to a marketing manager, and noted that a degree in a specific specialty was not required for such a position. On appeal, counsel asserts that the beneficiary's position, while encompassing some of the duties of a marketing manager, is distinguishable from that occupation, and therefore satisfies the requirements for a specialty occupation position.

Upon review of all of the duties attributed to the proffered position, from the filing of the Form I-129 through the documents submitted on appeal, the AAO finds that they fail to establish that their performance would require the theoretical application of at least a bachelor's degree level of highly specialized knowledge in a specific specialty, as required to establish that the position that they comprise merits recognition as a specialty occupation. In this regard, the AAO first notes that it is not self-evident that the duties as described in the record require a particular level of higher education in any specific field; and the petitioner fails to document

any nexus between those duties and a need for at least a baccalaureate level of education in a specific specialty. The duty descriptions do not convey the substantive nature and educational level of whatever highly specialized knowledge the beneficiary would have to apply in the actual performance of his job functions, and the petitioner has not supplemented the record with documentation remedying this deficiency.

The AAO will now discuss the U.S. Department of Labor's (DOL) *Occupational Outlook Handbook (Handbook)*, on which the AAO routinely relies for the educational requirements of particular occupations. The AAO recognizes DOL's *Handbook* as an authoritative source on the duties and educational requirements of the wide variety of occupations that it addresses.¹ The *Handbook* does not contain an occupation with the specific title of business development coordinator. Upon review of the described duties, the AAO concurs with the director's finding that the proffered position encompasses duties found in the description of the occupation of marketing manager. In addition, the AAO notes that the proffered position also encompasses the duties of several occupations listed under the heading of "Advertising, Marketing, Promotions, Public Relations, and Sales Managers" in the *Handbook*, including promotions managers and public relations managers.

According to the 2010-2011 *Handbook*, the occupations under this heading are described as follows:

Advertising, marketing, promotions, public relations, and sales managers coordinate their companies' market research, marketing strategy, sales, advertising, promotion, pricing, product development, and public relations activities. In small firms the owner or chief executive officer might assume all advertising, promotions, marketing, sales, and public relations responsibilities. In large firms, which may offer numerous products and services nationally or even worldwide, an executive vice president directs overall advertising, marketing, promotions, sales, and public relations policies. (Executive vice presidents are included in the *Handbook* statement on top executives.)

The *Handbook* describes marketing managers as follows:

Marketing managers. Marketing managers work with advertising and promotion managers to promote the firm's or organization's products and services. With the help of lower level managers, including *product development managers* and *market research managers*, marketing managers estimate the demand for products and services offered by the firm and its competitors and identify potential markets for the firm's products. Marketing managers also develop pricing strategies to help firms maximize profits and market share while ensuring that the firms' 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 they oversee product development.

Regarding promotions managers, the *Handbook* states:

¹ All references herein are to the 2010-2011 edition of the *Handbook*, which may be accessed at the Internet site <http://www.bls.gov/OCO/>.

Promotions managers. Promotions managers direct promotions programs that combine advertising with purchasing incentives to increase sales. Often, the programs are executed through the use of direct mail, inserts in newspapers, Internet advertisements, in-store displays, product endorsements, or other special events. Purchasing incentives may include discounts, samples, gifts, rebates, coupons, sweepstakes, and contests.

Finally, with regard to public relations managers, the *Handbook* states:

Public relations managers. Public relations managers plan and direct public relations programs designed to create and maintain a favorable public image for the employer or client. For example, they might write press releases or sponsor corporate events to help maintain and improve the image and identity of the company or client. They also help to clarify the organization's point of view to their main constituency. They observe social, economic, and political trends that might ultimately affect the firm, and they make recommendations to enhance the firm's image on the basis of those trends. Public relations managers often specialize in a specific area, such as crisis management, or in a specific industry, such as healthcare.

A review of the duties of the proffered position indicates that a combination of the duties of marketing, promotions, and public relations manager most accurately corresponds to the position of business development coordinator. The AAO notes that according to the petitioner, the beneficiary is responsible for researching prospective tradeshows, promoting new sales, and managing promotions, and does not make final decisions on product development and strategic planning. On appeal, counsel contends that the beneficiary will not be developing products and services, but rather reporting and synthesizing trade show research.

While the AAO concurs with counsel's contention that the proffered position is not solely that of a marketing manager, it is clear that the duties of the proffered position encompass some marketing duties, in addition to promotions and public relations duties. The beneficiary's role in trade show coordination for the petitioner directly correlates with the role of a promotions manager. Moreover, the beneficiary's research with regard to trade shows is akin to the position of public relations manager, who observes trends that may affect an employer and reports them as necessary. Consequently, while the AAO finds that the proffered position does not align specifically with one of these managerial positions, it is a *mélange* of duties from the three managerial positions discussed above.

The *Handbook* indicates that a wide range of educational backgrounds is suitable for entry into advertising, marketing, promotions, public relations, and sales manager jobs. Specifically, the *Handbook* states:

Education and training. For marketing, sales, and promotions management positions, employers often prefer a bachelor's or master's degree in business administration with an emphasis on marketing. Courses in business law, management, economics, accounting, finance, mathematics, and statistics are advantageous. In addition, the completion of an internship while the candidate is in school is highly recommended. 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 through promotions of 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, in which the number of positions is limited, advancement to a management position usually comes slowly. In large firms, promotion may occur more quickly.

While the *Handbook* indicates that a bachelor's degree in a wide variety of specialties is preferred, it does not indicate that a degree in a specific specialty is the minimum requirement for entry into such positions.

In short, the AAO finds that, to the extent that it is described in the record of proceeding, the proffered position does not align with any occupational classification which the *Handbook* indicates as categorically requiring at least a bachelor's degree, or the equivalent, in a specific specialty.

As the record of proceeding contains no evidence establishing that the proffered position is one that normally requires at least a bachelor's degree, or the equivalent, in a specific specialty, the petitioner has not satisfied the criterion at 8 C.F.R. § 214.2(h)(4)(iii)(A)(1).

Nor has the petitioner satisfied either prong of the second criterion – the degree requirement is common to the industry in parallel positions among similar organizations or the position is so complex or unique that it can only be performed by a degreed individual.

The petitioner failed to submit any evidence demonstrating that, for the position of business development coordinator in organizations similar to that of the petitioner in its industry, there is a common requirement for at least a bachelor's degree, or the equivalent, in a specific specialty.

The petitioner has likewise failed to satisfy the second alternative prong of 8 C.F.R. § 214.2(h)(4)(iii)(A)(2), by showing that the proffered position is so complex or unique that it can only be performed by a person with at least a bachelor's degree, or the equivalent, in a specific specialty. Neither the descriptions of duties nor any other aspect of the record of proceeding so develops the proffered position in terms of uniqueness or degree of complexity as required to meet the degree-requirement threshold of this criterion. The duties comprising the proffered position do not convey that requirement, and the petitioner has not supplemented the position and duties descriptions with any documentation demonstrating that the petitioner's business development coordinator position meets this standard.

Accordingly, the petitioner failed to establish its position as a specialty occupation under either of the requirements at 8 C.F.R. § 214.2(h)(4)(iii)(A)(2).

The AAO next considers the regulation at 8 C.F.R. § 214.2(h)(4)(iii)(A)(3): the employer normally requires a degree or its equivalent for the position. To determine a petitioner's ability to meet the third criterion, the AAO normally reviews the petitioner's past employment practices, as well as the histories, including names and dates of employment, of those employees with degrees who previously held the position, and copies of those employees' diplomas. The petitioner failed to submit any evidence pertaining to its recruiting and hiring history. Accordingly, the petitioner failed to establish the proffered position as a specialty occupation under the third criterion at 8 C.F.R. § 214.2(h)(4)(iii)(A). The petitioner's claimed degree requirement for the proffered position is not evidence of its normal employment practices.

Finally, the petitioner has not satisfied the fourth criterion of 8 C.F.R. § 214.2(h)(4)(iii)(A), which is reserved for positions with specific duties so specialized and complex that their performance requires knowledge that is usually associated with the attainment of a baccalaureate or higher degree in a specific specialty. Although the petitioner attributes numerous duties to the proffered position, the extent to which they are described in the record does not convey the degree of specialization and complexity required to satisfy this criterion. Though numerous, the duties as described in the record do not convey any aspect of their performance as requiring the application of at least a bachelor's degree level of highly specialized knowledge in any specific specialty.

For the reasons discussed above, the AAO concludes that the petitioner has failed to establish that its proffered position meets the specialized and complex threshold of the fourth criterion at 8 C.F.R. § 214.2(h)(4)(iii)(A).

Accordingly, the petitioner in the instant case failed to prove by a preponderance of the evidence that the beneficiary is coming to the United States to perform a specialty occupation. A petitioner must establish that a beneficiary is coming temporarily to the United States to perform services in a specialty occupation. Section 101(a)(15)(H)(i)(b) of the Act, 8 U.S.C. § 1101(a)(15)(H)(i)(b); 8 C.F.R. § 214.2(h)(1)(ii)(B)(1). The petitioner has failed to establish that the proffered position qualifies as a specialty occupation.

Therefore, for reasons related in the preceding discussion, the petitioner has failed to establish the proffered position as a specialty occupation. Accordingly, the AAO shall not disturb the director's denial of the petition.

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.