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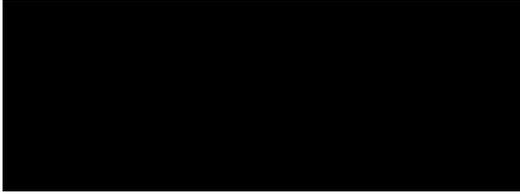
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U.S. Department of Homeland Security
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Washington, DC 20536



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



FILE: LIN 03 026 52434 Office: NEBRASKA SERVICE CENTER Date: **MAR 18 2004**

IN RE: Petitioner:
Beneficiary:

PETITION: Petition for a Nonimmigrant Worker Pursuant to Section 101(a)(15)(H) of the Immigration and Nationality Act, 8 U.S.C. § 1101(a)(15)(H)

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.

Robert P. Wiemann, Director
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 distributor, wholesaler, and importer of Asian foods and specialties that seeks to employ the beneficiary as a human resources coordinator. 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 is not a specialty occupation and the beneficiary is not qualified to perform a specialty occupation. On appeal, counsel submits a brief.

The AAO will first address the director's conclusion that the position is not a specialty occupation.

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 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 supporting documentation. The AAO reviewed the record in its entirety before issuing its decision.

The petitioner is seeking the beneficiary's services as a human resources coordinator. Evidence of the beneficiary's duties includes: the I-129 petition; the petitioner's October 30, 2002 letter in support of the petition; and the petitioner's response to the director's request for evidence. According to this evidence, the beneficiary would perform duties that entail: identifying, evaluating, and resolving human relations and work performance problems; handling job solicitations, interviews, screening, and recruiting; facilitating communication between management and employees; improving employee human relations skills and work performance; evaluating human relations and work-related problems; developing and conducting training; resolving labor issues; and assisting in sales and marketing issues. The petitioner indicated that a qualified candidate for the job would possess a bachelor's degree in human resources management, or a related management field.

The director found that the proffered position was not a specialty occupation because the job does not require a baccalaureate degree in a specific specialty. Citing to the Department of Labor's (DOL) *Occupational Outlook Handbook (Handbook)*, 2002-2003 edition, the director noted that the minimum requirement for entry into the position was not a baccalaureate degree or its equivalent in a specific specialty. The director found further that the petitioner failed to establish any of the criteria found at 8 C.F.R. § 214.2(h)(4)(iii)(A).

On appeal, counsel states, in part, that a human resources management position is a specialty field comprised of a broad range of expertise and, therefore, a wide range of academic preparation is necessary. Counsel further states that the proposed duties, which include identifying, evaluating, and resolving human relations and work performance problems, are so complex and unique that a baccalaureate degree is required.

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 turns first to 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 *Handbook* 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.Min. 1999)(quoting *Hird/Blaker Corp. v. Slattery*, 764 F. Supp. 872, 1102 (S.D.N.Y. 1991)).

The AAO routinely consults the *Handbook* for its information about the duties and educational requirements of particular occupations. The AAO does not concur with counsel that the proffered position is primarily that of a human resources coordinator/specialist, as described in the DOL's *Handbook*. None of the beneficiary's job duties entail the level of responsibility of that occupation. Furthermore, even if the proffered position were primarily that of a human resources coordinator/specialist, a review of the DOL's *Handbook*, at page 62, finds no requirement of a baccalaureate or higher degree in a specific specialty for employment as a human resources, training, and labor relations manager or specialist. Employers usually seek college graduates from a variety of educational backgrounds in filling entry-level jobs. Many employers prefer applicants who have majored in human resources, personnel administration, or industrial and labor relations. Other employers prefer college

graduates with a technical or business background or a well-rounded liberal arts education. It is noted that, in this case, the beneficiary holds a bachelor's degree in hotel, restaurant, and tourism management.

The proffered position primarily combines the duties of an office and administrative support worker manager with those of a marketing and sales manager. A review of the DOL's *Handbook*, at page 418, finds no requirement of a baccalaureate or higher degree in a specific specialty for employment as an office and administrative support worker manager. Most businesses fill administrative and office support supervisory and managerial positions by promoting clerical or administrative support workers within their organizations. In addition, certain personal qualities such as strong teamwork and problem solving skills and a good working knowledge of the organization's computer system are often considered as important as a specific formal academic background.

A review of the DOL's *Handbook*, at page 28, also finds no requirement of a baccalaureate or higher degree in a specific specialty for employment in marketing or sales managerial jobs. A wide range of educational backgrounds is suitable, but many employers prefer those with experience in related occupations plus a broad liberal arts background. In addition, most marketing and sales management positions are filled by promoting experienced staff or related professional or technical personnel. 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.

Regarding parallel positions in the petitioner's industry, the petitioner submitted Internet job postings for various human resources positions. One of the positions is that of a human resources/payroll coordinator for a manufacturing company, with requirements that entail a four-year degree (no specific specialty) and a minimum of one year of payroll processing experience. These requirements support the DOL's finding that the position does not require a baccalaureate degree in a specific specialty. Another position is that of a human resources manager for one of the world's largest outsourced call centers and CRM solution providers for customer service, technical support, and sales solutions, that operates seven customer interaction centers throughout North America. The duties entail, in part, managing the associate services staff and serving as a member of the management team. The petitioner has not demonstrated that the duties of the proffered position are as complex as the duties listed for this advertised position. Furthermore, there is no evidence to show that the employers issuing these postings are similar to the petitioner. Thus, the advertisements have little relevance.

The record also does not include any evidence from professional associations regarding an industry standard, or documentation to support the complexity or uniqueness of the proffered position. The petitioner has, thus, not established the criteria set forth at 8 C.F.R. § 214.2(h)(4)(iii)(A)(1) or (2).

The AAO now turns to the criterion at 8 C.F.R. § 214.2(h)(4)(iii)(A)(3) – the employer normally requires a degree or its equivalent for the position. As counsel does not address this issue on appeal, it will not be discussed further.

Finally, the AAO turns to the criterion at 8 C.F.R. § 214.2(h)(iii)(A)(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.

To the extent that they are depicted in the record, the duties do not appear so specialized and complex as to require the highly specialized knowledge associated with a baccalaureate or higher degree, or its equivalent, in a specific specialty. Therefore, the evidence does not establish that the proffered position is a specialty occupation under 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.

The director also found that the beneficiary would not be qualified to perform the duties of the proffered position if the job had been determined to be a specialty occupation. However, as the AAO is dismissing the appeal because the job is not a specialty occupation, it will not discuss the beneficiary's qualifications.

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.