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FILE: WAC 03 236 51891 Office: CALIFORNIA SERVICE CENTER Date: MAY 2003

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 materials 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. The matter is now on appeal before the Administrative Appeals Office (AAO). The appeal will be dismissed. The petition will be denied.

The petitioner is a fast-food restaurant chain in the Greater Los Angeles area. It seeks to employ the beneficiary as a human resources specialist and to classify her 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 on the ground that the proffered position does not qualify as 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.

As provided in 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 evidence (RFE); (3) the petitioner's response to the RFE; (4) the notice of decision; and (5) Form I-290B, counsel's appeal brief, and supporting materials. The AAO reviewed the record in its entirety before issuing its decision.

The petitioner indicated in Form I-129 that its restaurant business, established in 2000, has 24 employees and gross annual income of \$480,000. In an accompanying letter the petitioner listed the duties of the human resources specialist, and the percentage of time required by each duty, as follows:

- Plan and carry out policies relating to all phases of personnel activity; recruit, interview, and select employees to fill vacant positions – 10%.
- Investigate accidents and prepare reports for insurance carriers – 5%.
- Plan and conduct new employee orientation to foster positive attitude toward company goals – 10%.
- Keep record of insurance coverage, pension plan, and personnel transactions, such as hires, promotions, transfers, and terminations – 10%.
- Conduct wage survey within labor market to determine competitive wage rate – 5%.
- Prepare budget of personnel operations – 15%.
- Meet with supervisors to resolve grievances – 10%.
- Write separation notices for employees separating with cause and conduct exit interviews to determine reasons behind separations – 5%
- Prepare reports and recommend procedures to reduce absenteeism and turnover – 10%.
- Represent company at personnel-related hearings and investigations – 5%.
- Contract with outside suppliers to provide employee services, such as canteen, transportation, or relocation service – 15%.

The petitioner asserted that the beneficiary has the educational qualifications to perform the job by virtue of her bachelor of science degree in agricultural business from the University of the Philippines in 1982 and her master of science degree in business administration from Araullo University, in the Philippines, granted in 1996.

Based on the duties described by the petitioner, the type of business involved, and the scale of its operations, the director determined that the duties of the proffered position were primarily administrative in nature and could be handled by a personnel clerk, as described in the Department of Labor (DOL)'s *Occupational Outlook Handbook (Handbook)*. A personnel clerk, described under the *Handbook's* occupational category of human resources assistants, does not require a baccalaureate degree in a specific specialty. The director found that the proffered position lacked sufficient complexity and authority to require the services of an individual with a specialty degree and that the petitioner had no record of requiring such a degree for the proffered position in the past. The director also found that the petitioner failed to show that similar companies require specialty degrees for parallel positions. The director concluded that the proffered position did not meet any of the criteria of a specialty occupation enumerated in 8 C.F.R. § 214.2(h)(4)(iii)(A).

In determining whether a position meets the statutory and regulatory criteria of a specialty occupation, CIS routinely consults the *Handbook, supra*, as an authoritative source of information about the duties and educational requirements of particular occupations. Factors typically considered are whether the *Handbook* indicates a degree is required by the industry; 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)). CIS also analyzes the specific duties and complexity of the position at issue, with the *Handbook's* occupational descriptions as a reference, as well as the petitioner's past hiring practices for the position. See *Shanti, id.*, at 1165-66.

On appeal counsel asserts that the director erred in finding that the duties of the proffered position were those of a personnel clerk. According to counsel the record demonstrates that the duties of the position accord with those of a human resources manager or specialist, as described in the *Handbook*, which require a baccalaureate degree. Counsel asserts that the scale of the petitioner's business operations – three restaurants and growing – necessitates the services of a human resources specialist, not a personnel clerk. Based on the evidence of record, the AAO is persuaded that the proffered position is more akin to that of a human resources manager than that of a personnel clerk.

As indicated in the *Handbook*, human resources managers and specialists comprise a broad occupational category and the duties of individual positions vary considerably depending on the nature of the company and the scale of its operations. Reflecting the broad range of positions within the occupational category, educational requirements for human resources managers also vary. As explained in the *Handbook*, 2004-05 edition, at page 49:

Because of the diversity of duties and levels of responsibility, the educational backgrounds of human resources . . . managers and specialists vary considerably. In filling entry-level jobs, many employers seek college graduates who have majored in human resources, personnel administration, or industrial and labor relations. Other employers look for college graduates with a technical or business background or a well-rounded liberal arts education.

According to the *Handbook*, therefore, different employers look for different educational credentials in hiring entry-level human resources managers and specialists. The record does not establish that a baccalaureate or higher degree in a specific specialty is the normal minimum requirement for entry into a position of human resources specialist. Thus, the proffered position does not meet the first alternative criterion of a specialty occupation, set forth in 8 C.F.R. § 214.2 (h)(4)(iii)(A)(1).

With respect to the second alternative criterion of a specialty occupation, set forth in 8 C.F.R. § 214.2 (h)(4)(iii)(A)(2), the record does not establish that a baccalaureate degree in a specific specialty is common to the industry in parallel positions among similar organizations. The record includes job advertisements by the Los Angeles Times for a "human resources representative," requiring a bachelor's degree in human resources or a related discipline, and by the City Government of Cupertino for a "human resources analyst," requiring the "equivalent" of a bachelor's degree with major coursework in human resources, public or business administration, or a related field. Neither of those employers is similar to the petitioner in its type of business and scale of operations, however, and the duties of those positions, as described in the announcements, are more demanding than the position proffered by the petitioner. Moreover, the job posting of the City Government of Cupertino clearly indicates that its human resources specialist does not require a bachelor's degree in a specific specialty. Nor does the record show that the proffered position in this case is so complex or unique that it can only be performed by an individual with a baccalaureate degree in a specific specialty. Thus, the proffered position does not qualify as a specialty occupation under either prong of 8 C.F.R. § 214.2 (h)(4)(iii)(A)(2).

As indicated in the record, the position of human resources specialist was newly created at the time of filing. Since there is no hiring history for the job, the petitioner cannot establish that it normally requires a specialty degree or its equivalent for the position, as required for the position to meet the third alternative criterion of a specialty occupation at 8 C.F.R. § 214.2(h)(4)(iii)(A)(3).

Finally, the record does not establish that the duties of the human resources specialist are so specialized and complex that the knowledge required to perform them is usually associated with a baccalaureate degree. Based on the evidence of record, the AAO concludes that the duties of the position could be performed by an experienced individual without baccalaureate level knowledge in a specific specialty. Thus, the proffered position does not meet the fourth alternative criterion of a specialty occupation at 8 C.F.R. § 214.2(h)(4)(iii)(A)(4).

For the reasons discussed above, the record fails to demonstrate that the proffered position meets any of the criteria enumerated in 8 C.F.R. § 214.2(h)(4)(iii)(A) to qualify as a specialty occupation. The petitioner has not established that the beneficiary will be coming temporarily to the United States to perform services in a specialty occupation, as required under section 101(a)(15)(H)(i)(b) of the Act, 8 U.S.C. § 1101(a)(15)(H)(i)(b).

The petitioner bears the burden of proof in these proceedings. *See* section 291 of the Act, 8 U.S.C. § 1361. The petitioner has not sustained that burden. Accordingly, the AAO will not disturb the director's decision denying the petition.

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