

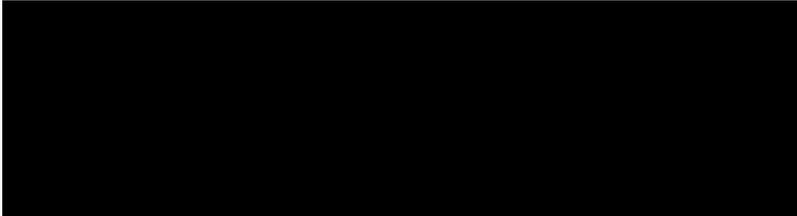
identifying data deleted to
prevent clearly unwarranted
invasion of personal privacy

public copy

U.S. Department of Homeland Security
20 Mass Ave., N.W., Rm. A3042
Washington, DC 20529



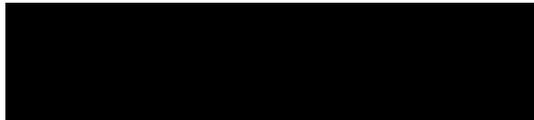
U.S. Citizenship
and Immigration
Services



DI

FILE: WAC 02 266 50768 Office: CALIFORNIA SERVICE CENTER Date: MAY 10 2005

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.

Handwritten signature of Robert P. Wiemann in black ink.

Robert P. Wiemann, Director
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 is a brokerage and international freight forwarding company that seeks to employ the beneficiary as an operations 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 because the proposed position is not a specialty occupation. On appeal, counsel submits a brief.

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

The petitioner is seeking the beneficiary's services as an operations manager. Evidence of the beneficiary's duties includes: the Form I-129; the attachments accompanying the Form I-129; the company support letter; and the petitioner's response to the director's request for evidence. According to this evidence, the beneficiary would perform duties that entail formulating, implementing, and administering operation policies in the Los Angeles office; supervising the marketing and accounting department; overseeing and supervising operations which includes booking for air and ocean shipment, accepting incoming and outgoing cargo, setting up air and ocean freight costs, and buying and approving of equipment purchases; communicating with agencies such as banks and customs officials for the clearance of goods; interfacing with agents and the main office in the Philippines to ensure operational efficiency and expeditious movement of cargo; discussing freight costs, flight or sailing schedules, carriers, and deliveries with clients; and resolving problems regarding delays, losses, damages, and claims. The petitioner indicates that it requires "an individual with a bachelor's degree in business administration or [its] equivalent."

The director found the submitted evidence unpersuasive in establishing that the proposed position qualifies as a specialty occupation. The Department of Labor's *Occupational Outlook Handbook* (the *Handbook*), the director stated, shows that baccalaureate-level training in a specific specialty is not normally the minimum industry-wide requirement for entry into a general manager and top executive position. The director found that the proposed position's stated level of responsibility did not indicate complexity or authority that is beyond what is normally encountered in the occupational field.

On appeal, counsel contends that the requirement of a bachelor's degree is common and usual in the industry; that an operations manager must have knowledge about the management and business principles that are associated with a baccalaureate-level degree; that it is cost effective to employ an operations manager with a baccalaureate degree; and that the job postings establish that other companies in the industry also employ operations managers holding a baccalaureate degree.

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 in a specific specialty is the normal minimum requirement for entry into the particular position; a specific 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 in a specific specialty.

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 which is *in a specific specialty* that is directly related to the proffered position. In the August 2, 2002 and the May 19, 2003 letters the petitioner states that it requires a bachelor's degree in business administration for the proposed position. This educational requirement is not enough to

establish that the proposed position qualifies as a specialty occupation. As stated by the court in *Matter of Michael Hertz Assocs.*, 19 I&N Dec. 558, 560 (Comm. 1988), for a position to qualify as a specialty occupation:

A petitioner must establish that the position realistically requires knowledge, both theoretical and applied, which is almost exclusively obtained through studies at an institution of higher learning. The depth of knowledge and length of studies required are best typified by a degree granted by such institution at the baccalaureate level. It must be demonstrated that the position requires a precise and specific course of study which relates directly and closely to the position in question. Since there must be a close corollary between the required specialized studies and the position, the requirement of a degree of generalized title, such as business administration or liberal arts, without further specification, does not establish eligibility.

In this case, the petitioner accepts a baccalaureate degree of generalized title, business administration, without indicating further specification. As discussed in *Matter of Michael Hertz Assocs.*, this educational requirement satisfies none of the criteria at 8 C.F.R. § 214.2(h)(4)(iii)(A): (1) a baccalaureate or higher degree or its equivalent is the normal minimum requirement for entry into the particular position; (2) a degree requirement is common to the industry in parallel positions among similar organizations or, in the alternative, that the position is so complex or unique that it can be performed only by an individual with a degree; (3) the petitioner establish that it normally requires a degree or its equivalent; or (4) the nature of the specific duties is so specialized and complex that the knowledge required to perform the duties is usually associated with the attainment of a baccalaureate or higher degree.

As related in the discussion above, the petitioner has failed to establish that the proposed position is 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.