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U.S. Citizenship  
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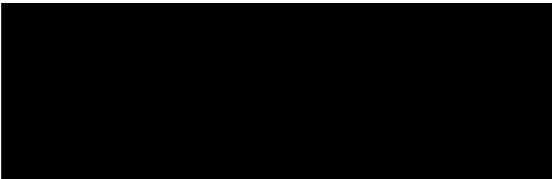


FILE: EAC 02 258 52561 Office: VERMONT SERVICE CENTER Date: MAY 17 2005

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 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 director of the Vermont 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 freight forwarding company, with 15 employees. It seeks to hire the beneficiary as a business manager. 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; (3) the petitioner's response to the director's request for evidence; (3) the director's denial letter; and (4) Form I-290B, with counsel's brief. The AAO reviewed the record in its entirety before reaching its decision.

The AAO first turns to the director's statements regarding the petitioner's need for a business manager. In his denial, the director noted it did not appear that the nature of the petitioner's business required the services of a professional business manager and that the petitioner had not established that it could employ the beneficiary on a full-time basis. The record, however, establishes the petitioner as a U.S. employer that is seeking the beneficiary's services as a business manager. The director's comments regarding the petitioner's business needs are, therefore, withdrawn.

The remaining 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 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.

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 (5<sup>th</sup> 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 petitioner states that it is seeking the beneficiary’s services as a business manager. Evidence of the beneficiary’s duties includes: the Form I-129; a letter of support from the petitioner submitted at the time of filing; and the petitioner’s response to the director’s November 27, 2002 request for evidence.

At the time of filing, the petitioner stated it required the services of a business manager to coordinate all of its business and financial activities. In response to the director’s request for evidence, the petitioner offered the following description of the beneficiary’s responsibilities:

- Oversight of all personnel, including the hiring, firing and training of staff;
- Analysis and streamlining of business practices and procedures, with ongoing review of sales and marketing in coordination with the petitioner’s president; and
- Implementation of a standard general accounting system, including the preparation of financial reports, and ongoing checks and audits of contracts and profit/loss statements.

To determine whether the duties just described are those of 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 is the normal minimum requirement for entry into the particular position; and 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 considered by the AAO when determining these criteria include: whether the Department of Labor’s (DOL) *Occupational Outlook Handbook (Handbook)*, on which the AAO routinely relies for the educational requirements of particular occupations, reports 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. Minn. 1999) (quoting *Hird/Blaker Corp. v. Slattery*, 712 F. Supp. 1095, 1102 (S.D.N.Y. 1989)).

Following a review of the duties of the proffered position and the 2004-2005 edition of the DOL *Handbook*, the AAO finds certain aspects of the proffered position to be closely aligned to the work of an administrative services manager. The *Handbook*, at page 21, describes the occupation as follows:

Administrative services managers perform a broad range of duties in virtually every sector of the economy . . . . These workers manage the many services that allow organizations to operate efficiently, such as secretarial and reception, administration, payroll . . . data processing, mail, materials scheduling and distribution . . . records management, telecommunications management, security . . . personal property procurement, supply and disposal.

Specific duties for these managers vary by degree of responsibility and authority. First-line administrative services managers directly supervise a staff that performs various support services. Mid-level managers . . . develop departmental plans, set goals and deadlines, implement procedures to improve productivity and customer service . . . . Mid-level managers also may be involved in the hiring and dismissal of employees . . . .

In small organizations, a single administrative services manager may oversee all support services . . . .

Because of the range of administrative services required by organizations, the nature of these managerial jobs also varies significantly . . . .

As the beneficiary would have hands-on responsibility for implementing a standard accounting system and preparing financial reports, the petitioner’s employment also appears to include the duties of a bookkeeper. The *Handbook*, at page 437, describes the occupation of bookkeeping, accounting and auditing clerks as follows:

Bookkeeping, accounting, and auditing clerks are an organization’s financial recordkeepers. They update and maintain one or more accounting records, including those which tabulate expenditures, receipts, accounts payable and receivable, and profit and loss. They have a wide range of skills and knowledge from full-charge bookkeepers who can maintain an entire company’s books to accounting clerks who handle specific accounts . . . .

In small establishments, bookkeeping clerks handle all financial transactions and recordkeeping. They record all transactions, post debits and credits, produce financial statements, and prepare reports and summaries for supervisors and managers.... They also may handle payroll, make purchases, prepare invoices, and keep track of overdue accounts....

Having concluded that the proffered position combines the duties of an administrative services manager with those of a bookkeeper, the AAO turns to the *Handbook's* discussion of the educational requirements for these occupations to determine whether the attainment of a baccalaureate or higher degree, or its equivalent, is normally the minimum requirement for employment. It finds neither occupation to impose a degree requirement. The *Handbook* at page 22, states the following regarding the educational backgrounds of administrative services managers:

Educational requirements for these managers vary widely, depending on the size and complexity of the organization. In small organizations, experience may be the only requirement needed to enter a position as office manager. When an opening in administrative services management occurs, the office manager may be promoted to the position based on past performance. In large organizations, however, administrative services managers normally are hired from outside and each position has formal education and experience requirements. Some administrative services managers have advanced degrees.

Specific requirements vary by job responsibility. For first-line administrative services managers of secretarial, mailroom, and related support activities, many employers prefer an associate degree in business or management, although a high school diploma may suffice when combined with appropriate experience . . . .

The educational requirements for those seeking employment as financial clerks, the occupation within which the *Handbook* places bookkeepers, is discussed at page 434:

Most financial clerks are required to have at least a high school diploma. However, having completed some college is becoming increasingly important, particularly for those occupations requiring knowledge of accounting. For occupations such as bookkeepers, accounting clerks, and procurements clerks, an associate's degree in business or accounting often is required. Some financial clerks have bachelor's degrees in business, accounting, or liberal arts. Although a degree is rarely required, many graduates accept entry-level clerical positions to get into a particular company or to enter the finance or accounting field with the hope of being promoted to professional or managerial positions. Some companies have a set plan of advancement that tracks college graduates from entry-level clerical jobs into managerial positions. Workers with bachelor's degrees are likely to start at higher salaries and advance more easily than those without degrees.

Based on the above discussions, the AAO concludes that none of the duties of the proffered position would require the beneficiary to hold a baccalaureate or higher degree, or its equivalent. Accordingly, the position cannot be established as a specialty occupation under the first criterion at 8 C.F.R. § 214.2(h)(4)(iii)(A).

To establish the position as a specialty occupation under second criterion -- 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 it can be performed only by an individual with a degree in the specific specialty -- the petitioner, in response to the director's request for evidence, submitted a letter from a travel business stating its two business managers have held business administration degrees. However, the letter does not meet the requirements of the criterion's first prong, i.e., it does not come from a business that is similar to the petitioner, nor does it offer a description of the duties of its business manager position that might establish the

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position as parallel to the proffered position. The AAO also notes, however, that a letter from a single employer, even if it met the requirements of the first prong, would be insufficient proof of an industry-wide practice.

On appeal, counsel submits six Internet job postings for office or business managers. However, like the letter just discussed, these online employment listings do not establish that the petitioner's degree requirement is the norm within its industry. Of the six announcements, none come from a company in the petitioner's industry, i.e., a freight forwarding business. Instead, the advertisements have been posted by a trucking company, a firm providing food and facilities management services, a computer services business, an automobile dealership, a communications company and a hospital. Further, only four of the announcements provide any indication of the duties of the position being advertised and, in all four cases, the duties listed do not appear to reflect employment parallel to the proffered position.

The AAO also concludes that the record before it does not establish that petitioner's position qualifies as a specialty occupation under the second prong at 8 C.F.R. § 214.2(h)(4)(iii)(A)(2) -- the position is so complex or unique that it can be performed only by an individual with a degree. It finds no evidence in the record that would support such a finding. Accordingly, the petitioner cannot establish its position as a specialty occupation under either prong of the second criterion.

The AAO next considers the criteria at 8 C.F.R. §§ 214.2(h)(4)(iii)(A)(3) and (4): the employer normally requires a degree or its equivalent for the position; 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 determine a petitioner's ability to meet the third criterion, the AAO normally reviews the petitioner's past employment practices, as well as the employment histories, including names and dates of employment, of those employees with degrees who previously held the position, and copies of those employees' diplomas. In the instant case, there are no such records available for AAO review. The petitioner's response to the director's request for evidence stated that, as the proffered position was newly created, it was unable to provide any employment history regarding it. Accordingly, the petitioner cannot establish its proffered position as a specialty occupation based on its normal hiring practices.

The fourth criterion requires a petitioner to establish that the nature of the specific duties of its position is so specialized and complex that the knowledge required to perform these duties is usually associated with the attainment of a baccalaureate or higher degree. In assessing whether the petitioner has met its burden with regard to this criterion, the AAO has again reviewed the duties of the proffered position, as described by the petitioner at the time of filing and in response to the director's request for evidence. Further, the AAO has considered counsel's statements on appeal regarding the complexity of the proffered position. Counsel contends that a business-oriented bachelor's degree or its equivalent is required where the duties of the position "encompass the broad range of personnel management and human resources law issues, overall administration of the [petitioner's] many and growing operations and the development and conduct of an in-house accounting operation."

The AAO's review of the record finds it to offer no basis for concluding that the position would require the beneficiary to have a higher degree of knowledge and skill than other persons hired to perform the work of administrative services managers/full-charge bookkeepers. The petitioner's description of its proffered position does not reflect duties beyond those normally performed by administrative services managers and full-charge bookkeepers. Further, counsel's contention that the beneficiary's personnel management duties, his overall administration of the company's operations and his development of an in-house accounting system require a business-related degree is not persuasive.

While the personnel management and financial duties identified by counsel are, as already noted, routinely handled by administrative services managers and bookkeepers, that of managing the petitioner's operations would significantly increase the complexity of the proffered position. However, counsel's assertion regarding the beneficiary's responsibility for "overall administration of the [petitioner's] many and growing operations" is not supported by the record. The AAO does not find the petitioner's listing of the proffered position's duties -- either at time of filing or in response to the director's request for evidence -- to have included oversight of its operations. Accordingly, this additional responsibility cannot be used on appeal to support a degree requirement for the proffered position and will not be considered. A petitioner cannot, on appeal, offer a new position to a beneficiary, or materially change a position's title, its level of authority within the organizational hierarchy, or the associated job responsibilities. *Matter of Michelin Tire Corp.*, 17 I&N Dec. 248, 249 (Reg. Comm. 1978). The AAO, therefore, concludes that the record does not establish the proffered position as a specialty occupation under the requirements at 8 C.F.R. § 214.2(h)(4)(iii)(A)(4).

For reasons related in the preceding discussion, the petitioner has failed to establish that its proffered position is a specialty occupation. Accordingly, although the AAO has withdrawn the director's conclusions regarding the petitioner's need for a business manager, it 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.