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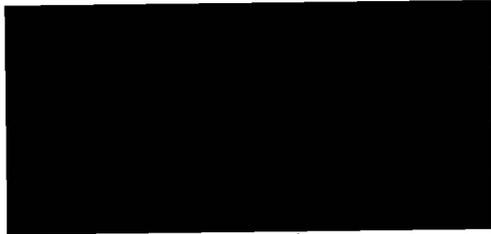
U.S. Department of Homeland Security
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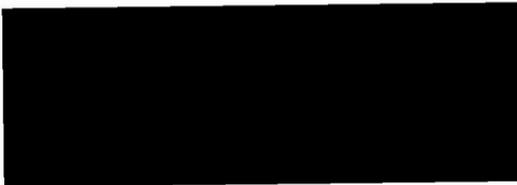
FILE: SRC 04 157 50986 Office: TEXAS SERVICE CENTER Date: **AUG 10 2006**

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.

Robert P. Wiemann, Chief
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 manufacturer of folding cartons that seeks to employ the beneficiary as a general supervisor. 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 on the grounds that the proffered position is not a specialty occupation. On appeal, the petitioner submits a brief.

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 general supervisor. Evidence of the beneficiary's duties includes the I-129 petition and the petitioner's response to the director's request for evidence. According to this evidence, the beneficiary would perform duties that entail the following:

- Confer with management personnel to review work in progress and obtain data for planning new goals and commitments
- Analyze data processing requirements to plan data processing system that will provide system capabilities required for projected workloads
- Prepare detail designs according to specifications
- Prepare detail drawings designs according to customer's specifications
- Applying knowledge of design in the manufacture department
- Plan layout of project and integrate elements into unified design for management review and approval

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.

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): whether 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 the 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 Department of Labor's *Occupational Outlook Handbook (Handbook)*, 2006-2007 edition, 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. Minn. 1999)(quoting *Hird/Blaker Corp. v. Sava*, 712 F. Supp. 1095, 1102 (S.D.N.Y. 1989)).

The duties of the proffered position are that of an industrial production manager. The *Handbook* indicates that there is no standard preparation for this occupation. While some employers require a college degree, others train promising apprentices and workers. Furthermore, although many employers prefer candidates with a business or engineering background, some companies hire well-rounded liberal arts graduates, who are willing to spend time in a production related job. The petitioner, therefore, has not established the criteria set forth at 8 C.F.R. § 214.2(h)(4)(iii)(A)(1).

The AAO next turns to the criteria at 8 C.F.R. § 214.2(h)(4)(iii)(A)(2): whether a degree requirement is common to the industry in parallel positions among similar organizations or the particular position is so complex or unique that it can be performed only by an individual with a degree.

The evidence submitted by the petitioner to demonstrate that a degree requirement is common to the industry in parallel positions among similar organizations is insufficient and unpersuasive. The petitioner submitted one letter from a box printing company, which the director observed does not indicate that a baccalaureate degree in a specific specialty is required. Counsel contends that the petitioner is unable to submit more evidence of industry

standards because the petitioner is “the only industry of its kind in the region.” Regardless of whether the petitioner is the only manufacturer of folding cartons in the El Paso area, the petitioner has not established that a degree requirement in a specialty is common to the industry in parallel positions among similar organizations. Nor has the petitioner established the second prong of the criterion. As reflected in the above excerpts from the record, the petitioner has limited its description of the position and its duties to generic terms that relate abstract, general functions. The record contains no examples of the work that has been performed under the abstract functions listed as the beneficiary’s duties. The duties of the proffered position are typical for industrial production managers. The petitioner has failed to submit sufficient evidence applying these general duties to specific performance requirements that require the theoretical and practical application of a body of highly specialized knowledge to demonstrate that the duties of the proffered position are so complex or unique that they can be performed only by an individual with a degree. The petitioner, therefore, has not established the criteria set forth at 8 C.F.R. § 214.2(h)(4)(iii)(A)(2).

The AAO next considers the criterion at 8 C.F.R. § 214.2(h)(4)(iii)(A)(3): whether the employer normally requires a degree or its equivalent for the position. Counsel concedes that the petitioner employed a “non-degreed individual” in the general supervisor position in the past, but indicates that this led to “disastrous results.” Counsel does not specify what these disastrous results were, but states that the petitioner has changed its educational requirement for the general supervisor position as a consequence. Without documentary evidence to support the claim, the assertions of counsel will not satisfy the petitioner's burden of proof. The unsupported assertions of counsel do not constitute evidence. *Matter of Obaigbena*, 19 I&N Dec. 533, 534 (BIA 1988); *Matter of Laureano*, 19 I&N Dec. 1 (BIA 1983); *Matter of Ramirez-Sanchez*, 17 I&N Dec. 503, 506 (BIA 1980). Furthermore, the record does not demonstrate a sufficient history of the petitioner’s recruiting and hiring practices with regard to the proffered position.

The AAO further notes that the petitioner's creation of a position with a perfunctory bachelor's degree requirement will not mask the fact that the position is not a specialty occupation. Citizenship and Immigration Services (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 (5th Cir. 2000). The critical element is not the title of the position or 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.¹ To interpret the regulations any other way would lead to absurd results: if CIS were limited to reviewing a petitioner’s self-imposed employment requirements, then any alien with a bachelor’s degree could be brought into the United States to perform a menial, non-professional, or an otherwise non-specialty occupation, so long as the employer required all such employees to have baccalaureate or higher degrees. *See id.* at 388. The petitioner, therefore, has not established the criterion set forth at 8 C.F.R. § 214.2(h)(4)(iii)(A)(3).

¹ The court in *Defensor v. Meissner* observed that the four criteria at 8 C.F.R. 214.2(h)(4)(iii)(A) present certain ambiguities when compared to the statutory definition, and “might also be read as merely an additional requirement that a position must meet, in addition to the statutory and regulatory definition.” *See id.* at 387.

Finally, the AAO examines the criterion at 8 C.F.R. § 214.2(h)(4)(iii)(A)(4): whether the nature of the specific duties of the proffered position 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. 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. As stated above, the petitioner has limited its description of the position and its duties to generic terms that relate only general functions and has failed to demonstrate that the specific performance requirements of the proffered position are so specialized and complex that the knowledge necessary to meet these requirements is usually associated with the attainment of a baccalaureate or higher degree. The petitioner, therefore, has not established the criterion set forth at 8 C.F.R. § 214.2(h)(4)(iii)(A)(4).

As demonstrated 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 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.