

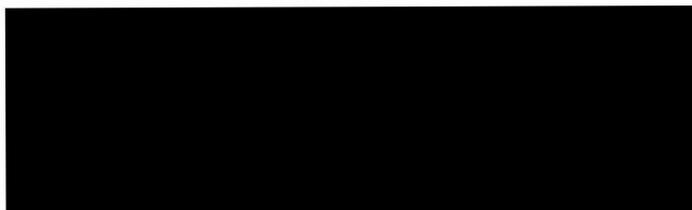
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**U.S. Citizenship
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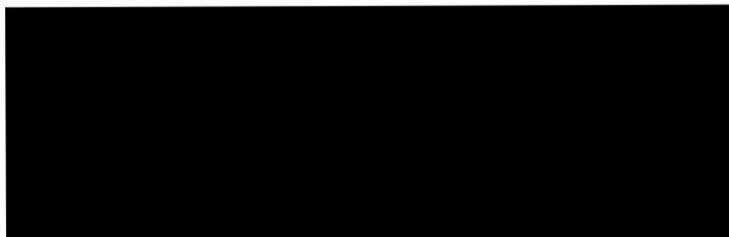
FILE: WAC 03 106 52094 Office: CALIFORNIA SERVICE CENTER Date: **JUN 23 2006**

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.

A handwritten signature in black ink, appearing to read "Robert P. Wiemann".

Robert P. Wiemann, Chief
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 wholesale auto parts and distribution company that seeks to employ the beneficiary as a human resources 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, finding that the proffered position is not a specialty occupation. Counsel submits a timely appeal.

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) the 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) the Form I-290B and the appeal brief. The AAO reviewed the record in its entirety before issuing its decision.

The petitioner is seeking the beneficiary's services as a human resources manager. Evidence of the beneficiary's duties includes: the Form I-129; the attachments accompanying the Form I-129; the petitioner's 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:

- reviewing and maintaining selection and recruitment processes including human resource data to ensure the consistent and fair application of personnel policies and procedures;
- preparing customized reports relating to the selection, recruitment, and classification process, and special projects concerning personnel issues;
- developing and implementing proactive employee recruitment and selection strategies that support an open, honest, and fair workplace;
- coordinating daily recruitment and employment functions, writing job ads and offer letters, reviewing applications, maintaining spreadsheets, conducting and arranging required post-offer employment checks, and other requirements that are needed to facilitate employee hiring;
- conducting research, assisting in developing policies, and making recommendations involving human resource issues;
- planning and recommending the course of action in developing screening tools and selection methods; and
- developing initiatives and recommending priorities in program monitoring and evaluations in order to improve evaluation methodologies, plans, and activities.

The petitioner asserts that it requires a baccalaureate degree or its equivalent in the field of human resources, behavioral science, or psychology for the proposed position.

The director determined that based on the submitted evidence, the petitioner failed to establish one of the criteria at 8 C.F.R. § 214.2(h)(4)(iii)(A).

On appeal, counsel contends that the offered position requires a baccalaureate degree in a specific field. Counsel asserts that despite the petitioner's size and number of employees, the petitioner needs to employ a human resources manager in order to compete in its industry. Counsel maintains that the petitioner needs to pursue business by ensuring quality and competence in dealing with clients. According to counsel, a prior AAO decision determined that the size, scope, and income of a petitioner are irrelevant factors in determining the specialty nature of an occupation. What really matters, counsel states, are the proposed duties. Counsel indicates that the petitioner should not be deprived of the services of a human resources manager on the ground that the position "is uncommon to the industry in parallel positions among similar organizations." Counsel maintains that CIS should not become involved in the reasonable and legitimate subjective and/or objective plans and operations of private enterprise.

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 offered 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 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 Department of Labor's *Occupational Outlook Handbook* (the *Handbook*), a resource that the AAO routinely consults, 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)).

In determining whether a position qualifies as a specialty occupation, CIS looks beyond the title of the position and determines, from a review of the duties of the position and any supporting evidence, whether the position actually requires the theoretical and practical application of a body of highly specialized knowledge, and the attainment of a baccalaureate degree in a specific specialty as the minimum for entry into the occupation as required by the Act.

As described by the petitioner, the proposed position involves recruitment activities. Based on the evidence of record, the AAO finds that the proposed duties are encompassed within the *Handbook's* description of a recruiter, which is an occupation within the *Handbook's* classification entitled "Human Resources, Training, and Labor Relations Managers and Specialists." The *Handbook* states:

Recruiters maintain contacts within the community and may travel considerably, often to college campuses, to search for promising job applicants. Recruiters screen, interview, and occasionally test applicants. They also may check references and extend job offers. These workers must be thoroughly familiar with the organization and its human resources policies in order to discuss wages, working conditions, and promotional opportunities with prospective employees. They also must keep informed about equal employment opportunity (EEO) and affirmative action guidelines and laws, such as the Americans with Disabilities Act.

The *Handbook* indicates that a baccalaureate degree in a specific specialty is not required for an occupation in the human resources, training, and labor relations manager and specialist classification. It states:

The educational backgrounds of human resources, training, and labor relations managers and specialists vary considerably because of the diversity of duties and levels of responsibility. In filling entry-level jobs, many employers seek college graduates who have majored in human resources, human resources 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.

Accordingly, based on the evidence in the record and the *Handbook's* information, the petitioner fails to establish the first criterion at 8 C.F.R. § 214.2(h)(4)(iii)(A): that a baccalaureate or higher degree or its equivalent in a specific specialty is the normal minimum requirement for entry into the particular position.

There is no evidence in the record to establish the first alternative prong at 8 C.F.R. § 214.2(h)(4)(iii)(A)(2) - that a specific degree requirement is common to the industry in parallel positions among similar organizations.

To establish the second alternative prong at 8 C.F.R. § 214.2(h)(4)(iii)(A)(2) the petitioner must show that the proffered position is so complex or unique that it can be performed only by an individual with a degree. The *Handbook* reports that the proposed duties parallel those of a recruiter, which is an occupation that does not require a baccalaureate degree in a specific specialty. Furthermore, the evidence of record does not indicate that the offered position is a specialty occupation. The petitioner states in the February 6, 2003 letter that it has an expansion program that involves "hiring additional personnel and the development of personnel programs and policies such as recruitment, interview of new personnel and training – all for the purpose of improving morale and productivity." The petitioner does not submit its expansion plan into the record; nor does the petitioner describe the personnel that it seeks to hire. The petitioner's organizational chart does not reflect the employees the beneficiary will supervise, although the petitioner's August 11, 2003 letter stated "the chart likewise indicate[s] the beneficiary's position including the list of all employees under her supervision." Going on record without supporting documentary evidence is not sufficient for purposes of meeting the burden of proof in these proceedings. *Matter of Soffici*, 22 I&N Dec. 158, 165 (Comm. 1998) (citing *Matter of Treasure Craft of California*, 14 I&N Dec. 190 (Reg. Comm. 1972)). As such, the petitioner fails to establish the second alternative prong at 8 C.F.R. § 214.2(h)(4)(iii)(A)(2).

The petitioner submitted no evidence to establish the criterion at 8 C.F.R. § 214.2(h)(4)(iii)(A)(3), which requires that the petitioner show that it normally requires a degree or its equivalent for the position.

The criterion at 8 C.F.R. § 214.2(h)(4)(iii)(A)(4) requires that the petitioner demonstrate that 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 in a specific specialty. The proposed duties resemble those of a recruiter, which is an occupation that the *Handbook* indicates does not require a baccalaureate degree in a specific specialty. As already discussed, the evidence of record such as the beneficiary's job description, the organizational chart, and the petitioner's letters is insufficient to establish the offered position as a specialty occupation requiring a bachelor's degree in a specific academic specialty. The petitioner does not furnish its expansion plan into the record and does not describe the personnel that it seeks to recruit, although this evidence directly relates to the proposed position. Consequently, the petitioner fails to establish this last criterion at 8 C.F.R. § 214.2(h)(4)(iii)(A)(4).

As related in the discussion above, the petitioner has failed to establish the proffered position as a specialty occupation. Accordingly, the AAO shall not disturb the director's denial of the petition on this ground.

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.