

**identifying data deleted to  
prevent clearly unwarranted  
invasion of personal privacy**



**U.S. Citizenship  
and Immigration  
Services**



D1

FILE: WAC 03 193 50964 Office: CALIFORNIA SERVICE CENTER Date: **NOV 28 2006**

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:



PHOTOCOPY

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.

*Elizabeth*  
Robert P. Wiemann, Chief  
Administrative Appeals Office

**DISCUSSION:** On June 16, 2003, the petitioner filed a Form I-129 seeking to employ the beneficiary, who has been previously approved for H-1B status based on a petition filed by another employer, as a human resources manager 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 of the California Service Center denied the petition on April 26, 2004, and the petitioner appealed the decision to the Administrative Appeals Office (AAO). The AAO dismissed the appeal on January 27, 2006. Subsequently, the petitioner and the beneficiary filed a complaint in the U.S. District Court for the Central District of California seeking declaratory relief requiring Citizenship and Immigration Services (CIS) to approve the beneficiary's H-1B petition. *Ansa Productions, Inc. dba L.A. Auto Show and Catherine Defensor v. United States Department of Homeland Security and United States Citizenship and Immigration Services*, CV-06-2752 GHK (CTx) (filed May 5, 2006).

On July 13, 2006, the AAO, on its own motion, reopened the proceeding to reconsider its previous decision pursuant to 8 C.F.R. § 103.5(a)(5)(ii) and issued a request for evidence. The petitioner submitted its response on October 13, 2006. The AAO will withdraw its prior decision. The petition will be approved.

The petitioner manages and produces the Los Angeles Auto Show. It seeks to employ the beneficiary as a human resources manager 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 record of proceeding in the case 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; (4) the Form I-290B, with counsel's brief and additional evidence; (5) the AAO's dismissal of the appeal; (6) the AAO's request for evidence; and (7) counsel's response to that request, including a letter from the petitioner. The AAO reviewed the record in its entirety prior to reaching its decision.

The initial issue before the AAO is whether the proffered position qualifies as a "specialty occupation." As defined in section 214(i) of the Act, 8 U.S.C. § 1184(i), the term "specialty occupation" means an occupation that requires:

- (1) the theoretical and practical application of a body of highly specialized knowledge, and
- (2) 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, a 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.

In its July 13, 2006 request for evidence, the AAO sought information from the petitioner related to the duties to be performed by the beneficiary and the nature of the petitioner’s claimed business expansion. In response, counsel submits an October 5, 2006 letter from the petitioner discussing the beneficiary’s duties as they relate to both its permanent and contract staff and the growth of the Los Angeles Auto Show. The petitioner’s letter is supported by copies of the petitioner’s quarterly wage reports for the quarters ending September 30, 2005, December 31, 2005 and March 31, 2006; a 2005 Form W-3, Transmittal of Wage and Tax Statements; 2005 Form W-2s, Wage and Tax Statements, for 14 employees; a 2005 Form 1099, Miscellaneous Income, identifying 23 organizations and individuals receiving payment from the petitioner; the petitioner’s federal tax returns for 2003, 2004 and 2005; two media articles on the Los Angeles Auto Show and a contract retainer with the Design Academy, Inc. for the Los Angeles Auto Show.<sup>1</sup>

The AAO finds the petitioner’s response to the request for evidence and the submitted documentation to offer the clarification necessary to support its description of the duties of the proffered position. Accordingly, the AAO accepts the duties of the position as requiring the beneficiary to:

- Recruit, interview and select employees to fill vacant positions, including managing outside recruitment agencies and headhunters;

---

<sup>1</sup> Although the petitioner also submits a letter of agreement with AF Associates, Inc. DBA as “Houston Auto Show” as proof of its business expansion, the AAO will not consider this document. The letter is signed by the petitioner’s president and an individual identified as the president of AF Associates, Inc. However, this same individual is listed on the petitioner’s letterhead and in the copy of the contract retainer with the Design Academy, Inc. as the petitioner’s general manager. There no evidence in the record that establishes he also serves as the president of AF Associates, Inc. Accordingly, the AAO will not accept the letter of agreement as proof of the petitioner’s growth.

- Plan, draft and submit a policy manual to be given to all current and future staff, which would provide information on issues such as insurance coverage, medical plans, promotions, transfers, termination information, expected job behavior, unemployment and disability information; and periodically revise and update this material;
- Develop and conduct training programs, providing individual and group training instruction, including lectures, demonstrations, meetings, conferences and workshops for current and newly-hired employees;
- Formulate policy in the areas of recruitment, testing, placement, classification, orientation, benefits and industrial relations;
- Plan, direct, supervise and coordinate the work activities of subordinate staff;
- Develop competitive compensation plans by analyzing compensation policies, government regulations and prevailing wage rates;
- Prepare a budget for anticipated personnel operations, as well as a personnel forecast projecting future employment needs;
- Maintain employee records and compile statistical reports on personnel-related data, including hirings, transfers, performance appraisals and absenteeism;
- Analyze statistical data to identify and determine the causes of personnel problems affecting companies like the petitioner; and
- Develop recommendations for the overall improvement of the petitioner's personnel policies and practices.

As asserted by the petitioner, the above responsibilities establish the proffered position as that of a human resources generalist, employment discussed under the occupational title of human resources, training and labor relations managers and specialists in the 2006-2007 edition of the *Occupational Outlook Handbook (Handbook)*, the resource on which the AAO routinely relies for information on occupations and the preparation required to perform them. In that the *Handbook* indicates that the educational backgrounds for such employment “vary considerably because of the diversity of duties and levels of responsibility” and that entry-level jobs may be filled by individuals who hold a broad range of degrees, the AAO has concluded that the proffered position may not be established as a specialty occupation under the criterion at 8 C.F.R. § 214.2(h)(4)(iii)(A)(1) – a baccalaureate or higher degree or its equivalent is normally the minimum requirement for entry into the particular position. While the AAO notes the documentation submitted by the petitioner to satisfy the first criterion – a proposed Department of Labor (DOL) regulation from 79 INTERPRETER RELEASES, which is a reprint of “Education and Training Categories by O\*NET-SOC Occupation,” from the *Federal Register* of May 6, 2002; the *Handbook's* discussion of human resources, training, and labor relations managers and specialists; “Human Resources Specialists and Managers,”

*California Occupational Guide (Guide)*, Number 135; Internet job advertisements for human resources managers; and two expert opinions, one from a professor at the Industrial Relations Center in the Carlson School of Management at the University of Minnesota and the other from a professor of labor economics in the School of Industrial and Labor Relations at Cornell University – this evidence is insufficient to overcome the *Handbook's* finding that the occupation does not require a degree in a specific specialty, as required for classification as a specialty occupation.

Although the proposed DOL rule indicates that employment as a human resources manager requires a degree at the baccalaureate level, it does not establish the proffered position as a specialty occupation. The *Occupational Information Network (O\*Net)* is not a persuasive source of information as to whether a job requires the attainment of a baccalaureate or higher degree (or its equivalent) in a specific specialty. It provides only general information regarding the tasks and work activities associated with a particular occupation, as well as the education, training, and experience required to perform the duties of that occupation. Further, the Education and Training Category Code of 4 assigned to human resources managers in the regulation's list of occupations does not indicate that the bachelor's degree must be in a specific specialty, as required for classification as a specialty occupation.

The *California Occupational Guide* provides California-specific information about job duties, working conditions, employment outlook, wages, benefits and entrance requirements and training. However, in the present case, the *Guide*, like the *Handbook*, indicates that individuals seeking employment as human resources managers may hold baccalaureate degrees in a wide range of disciplines rather than a specific specialty. Accordingly, it is not evidence that the proffered position qualifies as specialty occupation.

The petitioner has submitted 31 Internet job advertisements for human resources managers to establish the occupation's degree requirement. However, while 29 of the listings indicate that job seekers must hold a baccalaureate degree as a prerequisite for employment, only nine require a degree in a specific specialty. As a result, these announcements, like the *California Occupational Guide* just discussed, support the *Handbook's* finding that individuals seeking employment as human resources managers need not hold a degree in a directly-related academic field. Accordingly, they, too, fail to establish the proffered position as a specialty occupation.

The two expert opinions indicate that their authors have reviewed the job description provided in the petitioner's June 12, 2003 letter in support of the petition and find the duties listed to establish the proffered position as that of a human resources manager. Only the University of Minnesota professor, however, offers his opinion regarding the degree requirements of the occupation of human resources manager.

The University of Minnesota professor states that "the person whose employment is being sought will definitely be working as a Human Resources Manager which, based upon my definition, will require that the position incumbent hold a Bachelor's Degree in such areas Human Resources Management, Business Administration, or Psychology." While the AAO notes the academic experience listed by the professor and his designation as a labor arbitrator for several labor mediation organizations, it does not find the record to establish his authority to speak to the requirements generally imposed by U.S. employers when hiring human resources managers. Neither does the record support his opinion with any industry surveys, trade publications or other industry data. Going on record without supporting documentation is not sufficient to meet the burden

of proof in these proceedings. *See 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)). Accordingly, the AAO does not find the professor's opinion to overcome the information reported by the *Handbook*, which offers an overview of national hiring practices, drawing on personal interviews with individuals employed in the occupation or from websites, published training materials and interviews with the organizations granting degrees, certification or licenses in the field to reach its conclusions regarding U.S. employers' practices when hiring human resources managers and specialists. Where an opinion is not in accord with other information or is in any way questionable, the AAO is not required to accept or may give less weight to that evidence. *Matter of Caron International*, 19 I&N Dec. 791 (Comm. 1988).

However, while the letter prepared by the University of Minnesota professor does not establish the occupation of human resources managers generally as a specialty occupation, it is sufficient to prove that the performance of the human resources position offered by the petitioner would impose a degree requirement on the beneficiary.<sup>2</sup> The professor's opinion indicates that he has reviewed the position's duties and has found them to involve "extensive writing, research, analytical, communications, business and legal skills, all of which are included in the course of study leading to a four-year university degree." In light of the professor's academic background in industrial/labor relations and his affiliation with the Industrial Relations Center at the University of Minnesota, the AAO concludes that his opinion that the position's duties would require the beneficiary to hold a degree in human resources management, business administration<sup>3</sup> or psychology satisfies the requirements of the criterion at 8 C.F.R. § 214.2(h)(4)(iii)(A)(4) – the nature of the specific duties is so specialized and complex that knowledge required to perform them is usually associated with the attainment of a baccalaureate or higher degree in a specific specialty. Therefore, the petitioner has established the proffered position as a specialty occupation.

The AAO now turns to the issue of whether the beneficiary is qualified to perform the duties of a specialty occupation.

Specific discussion of how an alien qualifies to perform services in a specialty occupation is found at 8 C.F.R. § 214.2(h)(4)(iii)(C), and requires the individual to:

---

<sup>2</sup> The AAO will not consider the opinion offered by the Cornell University professor who indicates his fields of academic specialization as personnel economics, labor economics and applied econometrics, and that he has previously been employed as an assistant economist at the Federal Reserve Bank of Richmond and a research assistant at Stanford University. The professor states that his opinion is based on his experience in researching domestic labor relations and the personnel policies of businesses, his reading of personnel economics and human resources professional literature and his own research. The record does not, however, establish that the professor's academic experience in the field of labor economics or his previous employment with the Federal Reserve Bank of Richmond or at Stanford University provide him with expertise in human resources management. Where an opinion is not in accord with other information or is in any way questionable, the AAO is not required to accept it or may give less weight to that evidence. *Matter of Caron International*, 19 I&N Dec. 791 (Comm. 1988).

<sup>3</sup> The AAO notes, however, that a degree in business administration would have to reflect an emphasis in a field directly-related to human resources management. A degree of generalized title, such as business administration, does not, without further specification, qualify a position as a specialty occupation. *See Matter of Michael Hertz Associates*, 19 I&N Dec. 558, 560 (Comm. 1988).

- (1) Hold a United States baccalaureate or higher degree required by the specialty occupation from an accredited college or university;
- (2) Hold a foreign degree determined to be equivalent to a United States baccalaureate or higher degree required by the specialty occupation from an accredited college or university;
- (3) Hold an unrestricted state license, registration or certification which authorizes him or her to fully practice the specialty occupation and be immediately engaged in that specialty in the state of intended employment; or
- (4) Have education, specialized training, and/or progressively responsible experience that is equivalent to completion of a United States baccalaureate or higher degree in the specialty occupation, and have recognition of expertise in the specialty through progressively responsible positions directly related to the specialty.

The petitioner seeks to establish the beneficiary's qualifications to perform the duties of a specialty occupation based on the degree in psychology awarded her by St. Scholastica's College in The Philippines. The *Handbook* notes that some employers look for college graduates with a well-rounded liberal arts education. The *Handbook* states that an interdisciplinary background is appropriate in the field, and that a combination of courses in the social sciences, business and behavioral sciences is useful. As proof that the beneficiary holds the equivalent of a U.S. degree required by the proffered position, the petitioner has submitted a copy of the beneficiary's academic transcripts from St. Scholastica's College, which indicate that she graduated on March 19, 2000 with a bachelor of science degree in psychology and a bachelor of arts degree in guidance and counseling; and an evaluation of the beneficiary's academic experience by International Credential Evaluators (ICE), Inc. in Norman, Oklahoma. The ICE evaluation finds the beneficiary's psychology degree to be the equivalent of a bachelor of science degree in psychology awarded by an accredited U.S. university. Based on its review of the record, the AAO concurs with the ICE evaluation. It also notes that the coursework taken by the beneficiary reflects a significant number of courses related to the duties to be performed by the beneficiary, e.g., courses in guidance, counseling, training and management. Accordingly, the AAO finds the beneficiary to hold the equivalent of a baccalaureate degree in psychology, with an emphasis directly related to the duties of the proffered position. Therefore, the petitioner has established the beneficiary's qualifications to perform the duties of a specialty occupation under the criterion at 8 C.F.R. § 214.2(h)(4)(iii)(C)(2).

For reasons previously discussed, the petitioner has established the proffered position as a specialty occupation under the regulation at 8 C.F.R. § 214.2(h)(4)(iii)(A)(4) and the beneficiary as qualified to perform the duties of a specialty occupation pursuant to the requirements at 8 C.F.R. § 214.2(h)(4)(iii)(C)(2). Accordingly, the AAO will withdraw its previous decision. The petition will be approved.

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 sustained that burden.

**ORDER:** The decision of the AAO is withdrawn. The petition is approved.