

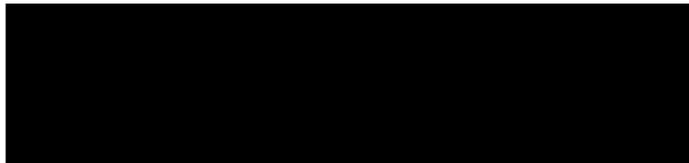
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U.S. Department of Homeland Security
20 Massachusetts Avenue, Room 3000
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U.S. Citizenship
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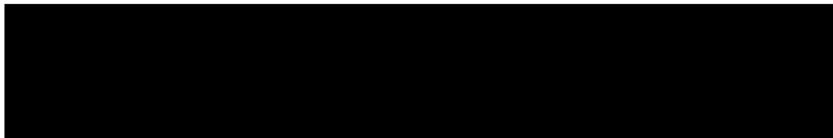


FILE: EAC 04 257 54752 Office: VERMONT SERVICE CENTER Date: JUL 05 2007

IN RE: Petitioner: [Redacted]
Beneficiary: [Redacted]

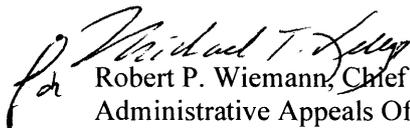
PETITION: Petition for a Nonimmigrant Worker Pursuant to Section 101(a)(15)(H)(i)(b) of the Immigration and Nationality Act, 8 U.S.C. § 1101(a)(15)(H)(i)(b)

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.

for 
Robert P. Wiemann, Chief
Administrative Appeals Office

DISCUSSION: The 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 company that offers pool management, lifeguarding services, and health and safety training programs. It seeks to employ the beneficiary as a contract administrator. 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 on the basis of his determination that the petitioner had failed to establish that the proposed position qualifies for classification as a specialty occupation.

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

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 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.

The term "specialty occupation" is further defined at 8 C.F.R. § 214.2(h)(4)(ii) as:

[A]n 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 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 proposed position.

In its September 14, 2004 letter of support, the petitioner stated that the duties of the proposed position would include negotiating with clients to administer, extend, terminate, and re-negotiate contracts. In an attachment to the Form I-129, the petitioner stated that beneficiary would negotiate with clients and draw up contracts to sell and manage the pool services offered by the petitioner; administer, extend, terminate, and re-negotiate contracts; formulate and coordinate construction proposals of new swimming pools; direct and coordinate the activities of personnel engaged in the formulating of bid proposals; review bids from other firms for conformity to contract requirements and determine bids; monitor and evaluate the performance of contracts so as to determine the necessity of amendments or extensions of those contracts as well as for compliance with contractual obligations; approve or reject requests for deviations from contract specifications and delivery schedules; estimate costs to ensure completeness and accuracy; compile data for preparing estimates; coordinate with other staff members to implement contracts and advise regarding contractual rights and obligations; and arbitrate complaints occurring arising during the performance of contracts. In its October 14, 2005 response to the director’s request for additional evidence, the petitioner stated that the beneficiary would spend 50-60 percent of her time managing sales and 30-40 percent of her time administering sales contracts.

In determining whether a proposed 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. The AAO routinely consults the Department of Labor’s *Occupational Outlook Handbook* (the *Handbook*) for its information about the duties and educational requirements of particular occupations.

In reaching its conclusion regarding the degree requirements of the proposed position, the AAO has compared the position’s duties against those described for a range of professions. This review has found that virtually all of the proposed position’s duties are listed among the occupational groupings of sales managers, sales worker supervisors, and contract administrators, as those positions are discussed in the *Handbook*.

In pertinent part, the *Handbook* states, at page 28, the following regarding the duties of advertising, marketing, promotions, public relations, and sales managers:

Sales managers direct the firm’s sales program. They assign sales territories, set goals, and establish training programs for sales representatives . . . Sales managers advise the sales representatives on ways to improve their sales performance. In large, multiproduct firms, they oversee regional and local sales managers and their staffs. Sales managers maintain contact with dealers and distributors. They analyze sales statistics gathered by their staffs to determine sales potential and inventory requirements and to monitor

customers' preferences. Such information is vital in the development of products and the maximization of profits.

The AAO next turns to the *Handbook's* discussion, at page 424, of the duties of sales worker supervisors:

Sales worker supervisors in nonretail establishments supervise and coordinate the activities of sales workers who sell industrial products, automobiles, or services . . . [They may also] approve sales contracts.

Finally, the AAO finds that the *Handbook's* discussion regarding the duties of administrative services managers, at page 25, also relates to the proposed position:

[A]dministrative services managers who work as contract administrators oversee the preparation, analysis, negotiation, and review of contracts related to the purchase or sales of equipment, materials, supplies, products, or services.

Therefore, based upon its reading of the *Handbook*, the AAO concludes that the proposed position, as described by the petitioner in its letter of support and in response to the director's request for additional evidence, combines the duties of sales managers, sales worker supervisors, and contract administrators, as those positions are described in the *Handbook*.

Having made such a determination, the AAO next turns to the *Handbook* to determine whether these occupations normally require applicants for employment to have the minimum of a baccalaureate or higher degree, or its equivalent, in specific field of study. The *Handbook* states the following regarding the educational requirements for sales managers:

A wide range of educational backgrounds is suitable for entry into advertising, marketing, promotions, public relations, and sales managerial jobs, but many employers prefer those with experience in related occupations plus a broad liberal arts background. A bachelor's degree in sociology, psychology, literature, journalism, or philosophy, among other subjects, is acceptable. However, requirements vary, depending upon the particular job.

For marketing, sales, and promotions management positions, some employers prefer a bachelor's or master's degree in business administration with an emphasis on marketing. Courses in business law, economics, accounting, finance, mathematics, and statistics are advantageous. . . .

Most advertising, marketing, promotions, public relations, and sales management positions are filled by promoting experienced staff or related professional personnel. For example, many managers are former sales representatives, purchasing agents, buyers, or product, advertising, promotions, or public relations specialists. In small firms, where the number of positions is limited, advancement to a management position usually comes slowly. In large firms, promotion may occur more quickly.

The *Handbook* states the following regarding the educational requirements for sales worker supervisors:

Sales worker supervisors usually acquire knowledge of management principles and practices—an essential requirement for a supervisory or managerial position in retail trade—through work experience. . . .

The educational backgrounds of sales worker supervisors vary widely. Regardless of the education they receive, recommended courses include accounting, marketing, management, and sales, as well as psychology, sociology, and communication. Supervisors also must be computer literate, because almost all cash registers, inventory control systems, and sales quotes and contracts are computerized.

Supervisors who have postsecondary education often hold associate's or bachelor's degrees in liberal arts, social sciences, business, or management. To gain experience, many college students participate in internship programs that usually are developed jointly by individual schools and firms.

Individuals who display leadership and team-building skills, self-confidence, motivation, and decisiveness become candidates for promotion to assistant manager or manager. A postsecondary degree may speed a sales worker supervisor's advancement into management, because it is viewed by employers as a sign of motivation and maturity—qualities deemed important for promotion to more responsible positions.

Finally, the AAO turns to the *Handbook's* discussion of the educational requirements for contract administrators:

Managers of highly complex services, such as contract administration, generally need at least a bachelor's degree in business administration, human resources, or finance. Regardless of major, the curriculum should include courses in office technology, accounting, business mathematics, computer applications, human resources, and business law.

These findings do not support a finding that the proposed position qualifies for classification under 8 C.F.R. § 214.2(h)(4)(iii)(A)(I), which requires a demonstration that a baccalaureate or higher degree in a specific specialty or its equivalent is normally the minimum requirement for entry into the type of position being proposed. The *Handbook* indicates that most sales manager positions are filled on the basis of experience, and the fact that some employers “prefer” a degree or that individuals possessing degrees “should have the best job opportunities” does not rise to the standard of normally requiring at least a bachelor's degree or its equivalent in a specific specialty. For sales worker supervisors, even those with postsecondary education do not necessarily possess a bachelor's degree: the *Handbook* specifically states that supervisors' educational backgrounds vary widely, and that those who did attend postsecondary education often hold either associate's or bachelor's degrees. The fact that some sales worker supervisors possess bachelor's degrees is not synonymous with the “normally required” standard imposed by the regulation. While the *Handbook* states that contract administrators generally need a bachelor's degree, it does not indicate that it need be in a particular field of study: degrees in business administration, human resources, or finance would suffice.

Finally, the AAO notes that the petitioner finds acceptable a range of degrees to perform the duties of the proposed position: it states that it requires an individual with a bachelor's degree in either business administration, management, legal studies, or a related field. However, when a range of degrees, e.g., the liberal arts, or a degree of generalized title without further specification, e.g., business administration, can perform a job, the position does not qualify as a specialty occupation. *See Matter of Michael Hertz Associates*, 19 I&N Dec. 558 (Comm. 1988). To prove that a job requires the theoretical and practical application of a body of specialized knowledge as required by Section 214(i)(1) of the Act, a petitioner must establish that the position requires the attainment of a bachelor's or higher degree in a specialized field of study. CIS has consistently stated that, although a general-purpose bachelor's degree, such as a degree in business administration, may be a legitimate prerequisite for a particular position, requiring such a degree, without more, will not justify a finding that a particular position qualifies for classification as a specialty occupation. *See Royal Siam Corp. v. Chertoff*, --- F.3d ---, 2007 WL 1228792 (C.A. 1 (Puerto Rico) 2007). As stated previously, CIS interprets the degree requirement at 8 C.F.R. § 214.2(h)(4)(iii)(A)(1) to require a degree in a specific specialty that is directly related to the proposed position.

For all of these reasons, the petitioner has failed to establish that the proposed position qualifies for classification as a specialty occupation under 8 C.F.R. § 214.2(h)(4)(iii)(A)(1).

Nor does the proposed position qualify as a specialty occupation under either prong of 8 C.F.R. § 214.2(h)(4)(iii)(A)(2). The first prong of this regulation requires a showing that a specific degree requirement is common to the industry in parallel positions among similar organizations. On appeal, counsel states that one of the petitioner's competitors, which is "somewhat similar in size and nature of its business" to the petitioner, employs an individual with the equivalent of a bachelor's degree as a contract administrator, and submits a copy of an H-1B approval notice.

However, the petitioner has submitted no evidence to demonstrate that this business is similar to petitioner in size, scope, and scale, complexity of operations, business efforts, or expenditures. Nor has the petitioner submitted any evidence, such as payroll records or copies of paystubs, to demonstrate that this individual has been working for that company in the capacity asserted. Nor does the petitioner submit a detailed description of this individual's job duties, which would allow the AAO to evaluate whether she is in fact working in a position parallel to that of the proposed position. Simply 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)). Thus, the petitioner has not satisfied the first prong of 8 C.F.R. § 214.2(h)(4)(iii)(A)(2).

The second prong of 8 C.F.R. § 214.2(h)(4)(iii)(A)(2) requires the petitioner to prove that the duties of the proposed position are so complex or unique that only an individual with a degree can perform them. The nature of the duties of the proposed position as set forth in the petition does not support such a finding, as they are similar to those of sales managers, sales worker supervisors, and contract administrators as discussed in the *Handbook*, which do not require a bachelor's or higher degree, or its equivalent, in a specific field of study. The record contains no documentation to support a finding that the proposed position is more complex or unique than such positions at other, similar organizations.

Therefore, the petitioner has not established that the proposed position qualifies as a specialty occupation under either prong of 8 C.F.R. § 214.2(h)(4)(iii)(A)(2).

Nor does the proposed position qualify as a specialty occupation under 8 C.F.R. § 214.2(h)(4)(iii)(A)(3), which requires a showing that the petitioner normally requires a degree or its equivalent for the proposed position. To determine a petitioner's ability to meet this criterion, the AAO normally reviews the petitioner's past employment practices, as well as the histories, including names and dates of employment, of those employees with degrees who previously held the position, and copies of those employees' diplomas.

While the petitioner has submitted evidence regarding the educational credentials of one of its employees, it has not indicated in what capacity this individual works. Nor has the petitioner submitted any evidence to establish that this individual works for the petitioner. Accordingly, the petitioner has not established the proposed position as a specialty occupation under 8 C.F.R. § 214.2(h)(4)(iii)(A)(3): that it normally requires a degree or its equivalent for the position.

Finally, the AAO turns to the criterion at 8 C.F.R. § 214.2(h)(4)(iii)(A)(4), which requires a demonstration that 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 the extent that they are depicted in the record, the duties of the proposed position 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. There is no information in the record to support a finding that the proposed position is more specialized and complex than the general range of sales manager, sales worker supervisor, and contract administrator positions for which the *Handbook* indicates no requirement for the highly specialized knowledge associated with at least a bachelor's degree in a specific field of study. Therefore, the evidence does not establish that the proposed position is a specialty occupation under 8 C.F.R. § 214.2(h)(4)(iii)(A)(4).

Finally, the AAO notes that the petitioner has submitted an advisory opinion from [REDACTED] the academic program director of the Florida Metropolitan University Graduate School of Business, dated October 21, 2005. [REDACTED] lists the duties of the proposed position and then states his opinion that the position requires a bachelor's degree, or its equivalent, in business administration/management.

The AAO finds that an inadequate factual foundation to support [REDACTED]'s opinion has been established. He does not note the location or size of the petitioner, nor indicate whether he reviewed company information about the petitioner, visited its site, reviewed the job duties of any individuals working in positions similar to the position proposed here, or interviewed anyone affiliated with the petitioner. Nor does he describe the duties of the proposed position in any detail (he lists the duties of the proposed position in two paragraphs of his letter). The extent of his knowledge of the proposed position is, therefore, questionable. Thus, the petitioner has not established the reliability and accuracy of his pronouncements and this submission is therefore not probative of any of the specialty occupation criteria. The AAO may, in its discretion, use as advisory opinion statements submitted as expert testimony. However, 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).

Accordingly, this evaluation has satisfied none of the aforementioned criteria, and has not established the proposed position as a specialty occupation.

The petitioner has failed to establish that the position qualifies for classification as a specialty occupation under any of the criteria set forth at 8 C.F.R. §§ 214.2(h)(4)(iii)(A)(1), (2), (3), and (4). As the proposed

position is not a specialty occupation, the beneficiary's qualifications to perform its duties are immaterial. Accordingly, the AAO will 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.