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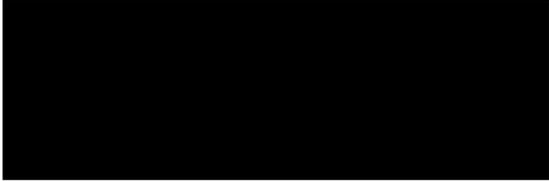
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20 Mass. Ave., N.W., Rm. 3000  
Washington, DC 20529



U.S. Citizenship  
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FILE: EAC 06 157 50783 Office: VERMONT SERVICE CENTER Date: OCT 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:  
[Redacted]

**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 Michael T. Kelly*  
Robert P. Wiemann, Chief  
Administrative Appeals Office

**DISCUSSION:** The Director, Texas 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 imports silk and velvet clothing for wholesale. On the Form I-129, the petitioner claims to employ 12 personnel, and to have a gross annual income of \$4.7 million, and to have a net annual income of \$76,000. It seeks to employ the beneficiary as an office manager.<sup>1</sup> Accordingly, 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).

On November 6, 2006, the director denied the petition determining that the record did not establish that the proffered position is a specialty occupation. On appeal, counsel for the petitioner asserts the director's decision is in error.

The record includes: (1) the Form I-129 filed April 2, 2006 and supporting documentation; (2) the director's August 16, 2006 request for evidence (RFE); (3) counsel for the petitioner's October 20, 2006 response to the director's RFE; (4) the director's November 6, 2006 denial decision; and, (5) the Form I-290B and counsel's brief in support of the appeal. The AAO reviewed the record in its entirety before issuing its decision.

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.

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;

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<sup>1</sup> On the Form I-129, the petitioner identifies the position as an office manager; in other documentation, the petitioner indicates the position is an assistant operations manager, and a general manager.

- (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.

The petitioner seeks the beneficiary's services as an office or general manager. In a March 15, 2006 letter appended to the Form I-129 petition, the petitioner stated:

[W]e need an office manager who is not only fluent in both English and Chinese but also with U.S. business degree. Since we have expanded our business for the last few years, our corporation needs to have a professional who can handle both general office routine duties such as personnel communication, department coordination, customer relations and more difficult jobs [such as] booking [sic] as prepare financial reports, monitor cash flow, review accounts receivable and accounts payable and so on.

The petitioner added:

In order to execute [the] responsibilities of the position, the applicant requires essential knowledge of business management, [sic] marketing analysis, express courier operation, customs clearance systems and delivery network.

In an October 20, 2006 response to the director's RFE, counsel for the petitioner stated:

[The beneficiary] is the general manger [sic] of our company overlooking the accounts receivable, invoicing, customer service, and purchasing departments. She has a few staff members under, and she supervises their tasks on a daily basis. [The beneficiary] also analyzes sales and inventory information to report seasonal sales results.

Counsel added:

The responsibility of our general manager is to make sure that all processes within the company runs smoothly and efficiently. At the same time, they [sic] must monitor all activities that will affect the company closely to help us grow and improve continuously.

Therefore it is crucial such a person must have excellent communication skill, be a multitasker, as well as having leadership qualities.

Counsel also referenced two companies and asserted that the companies were in the import and export industry. Counsel indicated that one company employed an office manager and the second company employed a general manager and that individuals with bachelor's degrees held these positions. Counsel noted that the petitioner had not previously hired an individual for the proffered position.

On November 6, 2006, the director determined that the duties of the proffered position did not appear to require a theoretical and practical application of highly specialized knowledge. The director also noted that the Department of Labor's *Occupational Outlook Handbook (Handbook)* did not report that the position of "office manager" required a four-year degree. The director acknowledged counsel's response to her RFE but found that counsel did not provide evidence that a four-year degree was required for the proffered position. The director concluded that the petitioner had not established that the proffered position satisfied any of the criteria at 8 C.F.R. § 214.2(h)(4)(iii)(A).

On appeal, counsel for the petitioner indicates that the beneficiary "is the general manager of the company overlooking the accounts receivable, invoicing, customer service and purchasing department, and she has staff members under her." Counsel also references the beneficiary's coursework in accounting, business finances, and consumer behavior and restates the job description of the proffered position to include: evaluating customer records; coordinating approval/rejection of lines of credit; collections; overseeing cash flow; recommending sales prices; reviewing reports to measure productivity; coordinating staff activities and managing staff; reviewing sales activities, accounting, recordkeeping, and receiving and shipping operations; analyzing and monitoring sales records and trends, and determining inventory; conferring with sales associates to monitor customer preferences; resolve customer complaints; gathering and analyzing information and developing solutions regarding inventory control; cost analysis; and reviewing operational records and reports to project sales and determine profitability. Counsel asserts that the director's decision is a mistake and that the position sought by the beneficiary requires at least a four-year degree and is a specialty occupation.

Counsel's assertion is not persuasive. The petitioner has not provided sufficient evidence to establish that the proffered position is a specialty occupation. To determine whether a particular job qualifies as a specialty occupation, CIS does not 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 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. In this matter, the petitioner's description of the proffered position does not describe a position that is a specialty occupation.

The AAO turns first to the description of the duties of the proffered position. The AAO routinely consults the *Handbook* for information about the duties and educational requirements of particular occupations. The AAO finds that the petitioner's initial description of the duties of the proffered position and counsel's description in

response to the director's RFE provided a general overview of a position resembling an office or general manager. The *Handbook* reports that office managers plan the work and supervise staff, and oversee the work to ensure it is proceeding on schedule and meeting established quality standards. The *Handbook* indicates that general managers plan, direct, or coordinate the operations of companies, manage daily operations and plan the use of materials and human resources. The petitioner's indication that the beneficiary would handle general office duties such as personnel communication, department coordination, customer relations; would oversee accounts receivable, invoicing, customer service, and purchasing; would analyze sales and inventory information; and would prepare financial reports and monitor cash flow comport with the *Handbook's* general discussion of office and general managers. On appeal, counsel details particular duties that fall within the general duties of an office or general manager.

The *Handbook* reports that most firms fill office managerial positions by promoting office or administrative support workers from within their organizations, looking for individuals who provide strong teamwork, problem-solving, leadership, and communication skills as well as possess the ability to organize and coordinate work efficiently, set priorities, and motivate others. The *Handbook* does not indicate that an individual must possess a bachelor's or higher degree in a specific discipline to perform the services of an office manager. Likewise, the *Handbook* indicates that the educational requirements for general managers, under the *Handbook's* discussion of top executives, varies widely, and that many top executives have a bachelor's or higher degree in business administration or liberal arts while many top executives positions are filled from within the organization by promoting experienced, lower-level managers. The *Handbook* notes, for example, that in retail trade or transportation industries it is possible for individuals without a college degree to work their way up within the company and become managers.

Thus, a baccalaureate or higher degree or its equivalent is not normally the minimum requirement for entry into an office or general manager position as required by the criterion at 8 C.F.R. § 214.2(h)(4)(iii)(A)(1). The AAO notes counsel's reference to the beneficiary's coursework in accounting, customer relations, and purchasing; however, the beneficiary's academic experience does not create a specialty occupation. Rather, it is the specific daily duties of a particular position that define a specialty occupation. In this matter, the duties described do not comprise duties that require the theoretical and practical application of a body of highly specialized knowledge attained through a four-year course of study in a specific specialty at university level.

The AAO next turns to the criterion 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 a particular position is so complex or unique that it can be performed only by an individual with a degree. To determine whether the petitioner's degree requirement is shared within its industry, CIS often considers whether the *Handbook* 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 this matter as observed above, the *Handbook* does not report that an office or general manager normally requires a baccalaureate degree. With regard to parallel positions in industries similar to the petitioner's import business, counsel for the petitioner references two other firms and claims that the firms have employed individuals in positions labeled office manager and general manager and that those individuals have

bachelor's degrees. However, the record does not contain letters or affidavits from those firms and does not include any other documentation substantiating counsel's claim. 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). The petitioner has not satisfied the first prong of the criterion at 8 C.F.R. § 214.2(h)(4)(iii)(A)(2).

In the alternative, the petitioner may show that the proffered position is so complex or unique that only an individual with a degree can perform the work associated with the position. The record does not contain a description of any documentary evidence that demonstrates that the duties of the proposed position exceed the scope of an office or general manager who has a basic understanding of the import business and who possesses teamwork, problem-solving, leadership, and communication skills as well as the ability to organize and coordinate work efficiently, set priorities, and motivate others. The AAO is not persuaded that the nature of the specific duties of the proposed position is more specialized and complex than that of a typical office manager or general manager, positions that do not normally require a degree or that the knowledge required to perform the duties of the proffered position is usually associated with the attainment of a bachelor's or higher degree in a specific discipline. The petitioner has failed to establish the proffered position is a specialty occupation under the second prong of the criterion at 8 C.F.R. § 214.2(h)(4)(iii)(A)(2).

A review of the evidence of record finds it insufficient to establish the proposed duties as a position that is identifiable with an industry-wide educational standard, or distinguishable, by its unique nature or complexity, from similar but non-degree-requiring positions. The petitioner has failed to establish the proffered position as a specialty occupation under either prong of the criterion at 8 C.F.R. § 214.2(h)(4)(iii)(A)(2).

The AAO 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 to assist in determining whether the petitioner has satisfied the criterion at 8 C.F.R. § 214.2(h)(4)(iii)(A)(3). In this matter, the petitioner acknowledges that this is a new position and that it has not previously hired anyone to fill the position. Thus, the petitioner has not established that its past employment practices incorporates a requirement of a bachelor's degree or its equivalent for the position. Moreover, the AAO finds that while a petitioner may believe that a proffered position requires a degree, that opinion cannot establish the position as a specialty occupation. Were CIS limited solely to reviewing a petitioner's self-imposed requirements, then any individual with a bachelor's degree could be brought to the United States to perform any occupation as long as the employer required the individual to have a baccalaureate or higher degree. *See Defensor v. Meissner*, 201 F. 3d at 384. The petitioner has failed to establish the referenced criterion at 8 C.F.R. § 214.2(h)(4)(iii)(A)(3).

Finally, the AAO turns to the criterion at 8 C.F.R. § 214.2(h)(iii)(A)(4) which requires that the petitioner establish 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. The petitioner has not provided sufficient documentary evidence that the duties of the proffered position contain elements different from that of a generic office or general manager. Neither does the position, as described, represent a combination of jobs that would require the beneficiary to have a unique set of skills beyond those of a typical

office or general manager. The petitioner has not described complex projects or specialized duties that incorporate knowledge that is gained only through coursework at the university level. 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)). The description of duties as depicted in the record does not demonstrate the nature of the 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. Without such evidence, the petitioner has not established the criterion at 8 C.F.R. § 214.2(h)(4)(iii)(A)(4).

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.