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U.S. Citizenship
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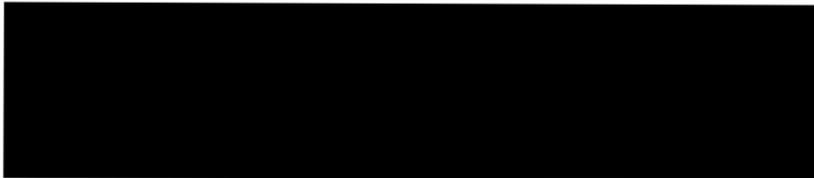
FILE: EAC 07 134 51704 Office: VERMONT SERVICE CENTER Date: **JUN 03 2008**

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.

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

DISCUSSION: The Director, Vermont 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 operates a martial arts institution, employs two personnel, and had a gross annual income of \$128,000 when the petition was filed. It seeks to employ the beneficiary as an administrative services manager. 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 May 8, 2007, 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 submits a brief and documentation in support of the appeal.

The record contains: (1) the Form I-129 filed April 3, 2007 and supporting documentation; (2) the director's April 17, 2007 request for evidence (RFE); (3) counsel for the petitioner's April 24, 2007 response to the director's RFE; (4) the director's May 8, 2007 denial decision; and (5) the Form I-290B, counsel's brief, and documentation in support of the appeal. The AAO reviewed the record in its entirety before issuing its decision.

The petitioner in this matter has not established that the proffered position is a specialty occupation. To meet its burden of proof in this regard, the petitioner must establish that the job it is offering to the beneficiary meets the following statutory and regulatory requirements.

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;
- (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.

In a March 31, 2007 letter appended to the petition, the petitioner stated that the individual in the position of administrative services manager would have the following duties and responsibilities:

- Manage daily operation;
- **Prepare and review** operational reports and schedules for accuracy and efficiency;
- Monitor and oversee facilities maintenance and custodial operations;
- Plan and control budgets for equipment and supplies;
- Recommend business solutions to the President;
- Responsible for recordkeeping, taking incoming calls and correspondences with students and suppliers, and
- Create curriculum and submit for review by the President.

The petitioner referenced the Department of Labor's *Online O*Net (O*Net)* and asserted that an assistant administrative services occupation required college and practical training for the individual entering the occupation.

In an April 24, 2007 response to the director's RFE, counsel for the petitioner again referenced the *O*Net* and noted that an administrative services manager position falls within the *O*Net's* JobZone 4 rating, indicating that most occupations within the JobZone 4 rating require a four-year bachelor's degree. Counsel also submitted four form letters from individuals in the martial arts industry: (1) an undated letter from the president of the Koryo Family Taekwondo Center stating that his center had two employees and yearly gross sales of \$110,000, and that the center employed an administrative services manager and an assistant administrative services manager and required that candidates for both positions have at least a bachelor's degree; (2) an April 17, 2007 form letter from the president of Dragon Ben's Tae Kwon Do stating that his organization employed five personnel and had yearly gross sales in the amount of \$120,000, that the organization employed an administrative services manager and an assistant administrative services manager,

and that it required that the candidates have at least a bachelor's degree; (3) an undated form letter from the president of Jung's Ultimate Taekwondo stating that his company employed one person and has yearly gross sales of \$120,000, that the organization employed one administrative services manager and 0 assistant services manager but that it required the candidate in both positions to have a bachelor's degree; and (4) an undated letter signed by Master Kwon of Kwon's Tae Kwon Do who states that his center employs two personnel and has yearly gross sales of \$130,000, that his center employs one administrative services manager and one assistant services manager and that he requires candidates for both position to possess at least a bachelor's degree. Counsel noted that the petitioner's president had previously handled the duties of the position being offered to the beneficiary but that due to the petitioner's steady and rapid growth the petitioner had offered the job of assistant administrative service manager to a qualified individual who had a bachelor's degree in business administration, business management, or other similar business operation related field of studies. Counsel asserted that the information provided established that the proffered position is a specialty occupation.

On May 8, 2007, the director denied the petition. The director observed that the petitioner had not provided any documentary evidence establishing that its business had experienced growth. The director also observed that the petitioner had provided form letters completed by representatives of different martial arts centers that did not include evidence substantiating the companies' claim that they routinely employed individuals with bachelor's degrees to perform duties similar to those described for the proffered position. The director noted the substantial difference between the level 1 wage of an administrative services manager at \$59,010 and the wage to be paid to the beneficiary as an assistant administrative services manager of \$29,640. The director concluded that the petitioner had not presented evidence sufficient to establish that the proffered position qualified as a specialty occupation.

On appeal, counsel for the petitioner asserts that the petitioner's initial description of the proffered position's duties included: analytical duties as they include management and preparation and review of operational reports and schedules; detail-oriented duties as they include monitoring the facility's maintenance and custodial operations, planning and controlling budgets and recordkeeping; and good communication skills as the duties include correspondences with students and suppliers. Counsel contends that the some of these duties like planning and controlling budgets and creating a curriculum involve duties similar to contract administration. Counsel also notes that while the management and business operation are key components of the job duties and responsibilities, research and analysis, evaluation of students' progress, preparing a curriculum, in-depth financial analysis, policy and strategy making are also critical duties and require business-related analytical and critical thinking. Counsel also further described the initial duties by providing examples of certain tasks: for example reviewing and managing the lease and other contract obligations, conducting costs/benefits analysis, managing the business premises and monitoring the facility for safety and security, negotiating with various suppliers and potential students, analyzing risk and identifying synergies for business optimization, conducting information and data processing, and gathering quantitative and qualitative inputs on the market industry related to the services and curriculum provided by other institutions.

Counsel references several unpublished cases; claims that the petitioner's growth has been established by the petitioner's 2004 and 2005 Internal Revenue Service (IRS) Form 1120S, U.S. Income Tax Return for S Corporation; asserts the letters previously submitted by other companies in the industry are indicative of the industry standard and, that as the phone numbers of the letter-writers had been provided, CIS could verify

them; and that the proffered position is a part-time position and the beneficiary will be compensated on an hourly basis. Counsel submits the petitioner's employee list showing that the president/general manager/instructor, the individual previously performing the duties of the proffered position, has a high school education while an instructor has a bachelor's degree in an undisclosed discipline. Counsel also submits two additional industry letters that provide a description of an assistant administrative services manager position and indicate that the companies require an ideal candidate to have a bachelor's degree in business administration or business management.

Counsel further submits a May 29, 2007 position evaluation prepared by [REDACTED], Ph.D, Associate Professor of Management Science at the Robert H. Smith School of Business at the University of Maryland. [REDACTED] recites the petitioner's initial description of duties and opines: "these duties are specialized and require the theoretical and practical application of a body of highly specialized knowledge;" and "the duties as described are that of a specialty occupation as I understand the term as defined by the United States Citizenship and Immigration Services, which requires the attainment of a minimum of a Bachelor's Degree." [REDACTED] further opines: "it is standard for a company such as [the petitioner] to hire an Assistant Administrative Services Manager and require that individual to have attained at least a Bachelor's Degree," and "[v]arious growing small businesses with two employees regularly hire an Assistant Administrative Services Manager or someone in a similar professional position to oversee and handle company business operations, which in turn allows the other company employees to focus on their own designated tasks," and "these companies regularly require minimum attainment of a Bachelor's Degree for the position, as the advanced competence and expertise gained from a Bachelor's Degree program enables the Assistant Administrative Services Manager to perform effectively in the position."

The AAO will first consider the criterion at 8 C.F.R. § 214.2(h)(4)(iii)(A)(I), whether a baccalaureate or higher degree or its equivalent is the normal minimum requirement for entry into the particular position. The AAO routinely consults the Department of Labor's *Occupational Outlook Handbook (Handbook)* for information about the duties and educational requirements of particular occupations.

The 2008-2009 *Handbook* reports:

Administrative services managers coordinate and direct the many support services that allow organizations to operate efficiently. They perform a broad range of duties. They might, for example, oversee secretarial and reception services, administration, payroll, conference planning and travel, information and data processing, mail, materials scheduling and distribution, printing and reproduction, records management, telecommunications management, security, parking, energy consumption, and personal property procurement, supply, recycling, and disposal. They manage support services for organizations as diverse as insurance companies, computer manufacturers, and government offices.

Regarding the educational requirements for administrative services managers, the 2008-2009 *Handbook* reports:

Education and experience requirements for these managers vary widely, depending on the size and complexity of the organization.

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Specific requirements vary by job responsibility. For first-line administrative services managers of secretarial, mailroom, and related support activities, many employers prefer to hire people who have an associate degree in business or management, although a high school diploma may suffice when combined with appropriate experience.

Upon review of the totality of the record, the AAO does not find that the proffered position is a specialty occupation. The AAO turns first to the description of the proffered position and observes that the petitioner initially provided an overview of the duties the beneficiary will perform for the petitioner and expanded upon those duties on appeal. For example, the petitioner initially indicated that the incumbent in the proffered position would manage daily operations and later added that this duty included reviewing and managing the lease and other contract obligations, establishing effective working/interpersonal relationships with students, suppliers, and other personnel and maintaining all equipment including computer systems. These are the routine duties of an office manager. Likewise, the petitioner initially indicated that the incumbent would monitor and oversee facilities maintenance and custodial operations and later added that this included managing the business premises, assessing the quality of the amenities and services and planning the work space within the business premises. Again, this description corresponds more closely to the routine duties of an office manager. The AAO observes that the educational requirements to perform these types of routine office duties vary widely depending on the size and complexity of the organization. For example, the 2008-2009 edition of the *Handbook* under the heading Administrative Services Manager reports: "[i]n small organizations, experience may be the only requirement needed to enter a position as office manager."

Similarly, the petitioner initially indicated that the incumbent would prepare and review operational reports and schedules for accuracy and efficiency and later added that this duty included conducting a costs/benefits analysis, performing an analysis of products/services using statistical and financial modeling, and preparing, reviewing, and revising monthly and yearly operational reports. However, the petitioner does not provide evidence of specific projects, specific procedures, or specific problems in its two-person martial arts business that would require this type of analysis. 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)). In addition, the petitioner noted that recommending business solutions to the president included tasks such as analyzing risk and identifying synergies, leveraging marketing concepts and research and formulating forecasts based on market research and analysis, constructing memos, creating presentations, creating and implementing procedures to improve business operations and customer service, establishing goals and policies for the president's review, and facilitating marketing and market awareness for the company. However, the petitioner does not relate these generally described duties to the actual daily duties the incumbent would perform. When establishing a position as a specialty occupation, a petitioner must describe the specific duties and responsibilities to be performed by a beneficiary in relation to the petitioner's business interests. The broad statements provided present an overview of occupations such as a marketing manager, as well as those of an administrative services manager or perhaps an operational manager. The petitioner has not provided sufficient information substantiating the nature of the tasks and duties involved in making recommendations to the president to establish that this generic responsibility includes the theoretical and practical application of a body of highly specialized knowledge attained only through a four-year course of

study at the bachelor's degree level. Without such information, the AAO is unable to determine the tasks to be performed by the beneficiary on a day-to-day basis and, therefore, whether the proffered position's duties are of sufficient complexity and specialization to require the minimum of a baccalaureate degree or its equivalent in a directly related academic specialty.

To the extent that they are described in the record, the beneficiary's recordkeeping, taking incoming calls and correspondences with students and suppliers, tasks that include gathering complaints from students and parents and communicating with vendors, suppliers, lessors, and governmental authorities as well as information and data processing, are tasks that appear to be clerical or front-office duties, not the duties that would require the incumbent to have obtained a bachelor's degree or its equivalent.

The AAO notes that counsel compares negotiating with suppliers and students, planning and controlling budgets for equipment and supplies, reviewing contracts, and administering and finalizing contracts, and creating a curriculum to the duties of a contract administrator as described in the *Handbook*. Although the *Handbook* indicates that managers of highly complex services, such as contract administration, generally need a bachelor's degree in business, human resources, or finance, the *Handbook* does not further expound upon what constitutes highly complex services. In addition, the *Handbook* does not elaborate on the general requirement of such disparate degrees as those of business, human resources, or finance. It is not possible to conclude from the *Handbook's* brief discussion of contract administration or the education required for contract administrators that a baccalaureate or higher degree or its equivalent in a specific specialty is normally the minimum requirement for entry into the position of contract administrator. The *Handbook* does not provide a method, in and of itself, to conclude that a contract administrator is a position wherein a baccalaureate or higher degree in a specific discipline is normally the minimum requirement for entry into the particular position. Moreover, negotiating with suppliers and students, planning and controlling budgets for equipment and supplies and reviewing and finalizing contracts generated in a two-person martial arts center, and creating a curriculum are not substantively related to the occupation of a contract administrator as described in the *Handbook*.

The AAO acknowledges counsel's reference to the *O*NET* for the occupation of administrative services manager. The AAO finds however, that the *O*NET*, in addition to providing a broad overview of the occupation of administrative services manager, does not provide definitive information relating to the educational requirements, if any, necessary to perform the duties of an administrative services manager. The *O*NET* references work-related experience, on-the-job training and/or vocational training as part of the preparation necessary for individuals in these occupations, notes that many of these occupations involve coordinating, supervising, managing, or training others, as well as indicating that many of these occupations require a four year bachelor's degree, while some do not. The *O*NET* 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. A JobZone rating is meant to indicate only the total number of years of vocational preparation required for a particular occupation. It does not describe how those years are to be divided among training, formal education, and experience and it does not specify the particular type of degree, if any, that a position would require. The AAO does not find the *O*NET* to be 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 discipline.

The AAO has also considered the opinion of [REDACTED] regarding his evaluation of the proffered position. Dr. [REDACTED], although commenting on the size of the petitioner, does not further indicate that he has reviewed company information about the petitioner, visited the site, or interviewed the petitioner. While some administrative services manager positions in some organizations may require a bachelor's degree in business administration, [REDACTED] provides only general statements regarding the petitioner and the duties of the position and does not provide details of the complexity of the duties in relation to the petitioner's two-person martial arts studio to substantiate his conclusions. There is thus an inadequate factual foundation established to support the opinions. In addition, although [REDACTED] clearly indicates that it is his opinion that the minimum educational requirement for the occupation of an administrative services manager is a baccalaureate degree, the record does not establish his authority to speak to the national hiring practices of U.S. employers. [REDACTED]'s education and experience as a professor in management science is insufficient to demonstrate that he is knowledgeable about national hiring practices. The *Handbook*, which offers an overview of national hiring practices, draws 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 the nation's employment practices. [REDACTED]'s opinion is insufficient to overcome the *Handbook's* report that not all administrative services managerial positions require a bachelor's degree in a specific discipline. The AAO may, in its discretion, use advisory opinions 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).

The AAO also observes that counsel has not furnished any evidence to establish that the facts of the instant petition are analogous to those in the unpublished decisions and while 8 C.F.R. § 103.3(c) provides that AAO precedent decisions are binding on all CIS employees in the administration of the Act, unpublished decisions are not similarly binding.

Based on the above discussion, the AAO determines that the petitioner has failed to establish the proffered position as a specialty occupation under the first 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.

To establish the proffered position as a specialty occupation under the second criterion at 8 C.F.R. § 214.2(h)(4)(iii)(A)(2), the petitioner must prove that a specific degree requirement is common to its industry in parallel positions among similar organizations or, alternately, that the proffered position is so complex or unique that it can be performed only by an individual with a degree. 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 AAO acknowledges the letters submitted by the petitioner to demonstrate that a specific degree requirement is common to the martial arts industry. However, these letters do not identify the administrative services managers employed by these organizations by name, nor adequately describe the duties they perform. Moreover, the letters are not supported by documentary evidence to establish the employment of these individuals or the degrees they hold. Going on the 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. at 165. The AAO notes counsel's assertion that the letters are

not frivolous or fraudulent but the record does not contain the documentary evidence necessary to support the information submitted in the letters. 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 Obaighbena*, 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 record does not contain adequate evidence demonstrating that martial arts studios "routinely employ and recruit only degreed individuals," in a specific discipline. Therefore, the petitioner has not established that the degree requirement is common to the industry in parallel positions among similar organizations.

The petitioner has also failed to describe any elements of the position that would distinguish the position as more complex or unique than similar, but non-degreed, employment, as required by the alternate prong of the second criterion. The description of duties establishes that the proffered position does not include duties that exceed the scope of a typical office or administrative services manager in a small organization. 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 or administrative services manager, occupations which are not so complex or unique that they can be performed only by an individual with a bachelor's or higher degree in a specific discipline. The petitioner has failed to establish the proffered position as a specialty occupation under the second criterion at 8 C.F.R. § 214.2(h)(4)(iii)(A)(2).

The AAO acknowledges counsel's indication that the petitioner has not previously hired an individual for this specific position. However, counsel also indicates that the petitioner's president, an individual with a high school education, had previously performed the duties of the position. Although the petitioner has not established an employment history for the proffered position, the AAO finds that the education of the individual previously performing the duties of the position comports with the *Handbook's* report on the educational requirements for the position. The AAO also notes that the petitioner's desire to employ an individual with a bachelor's degree does not establish that the position is a specialty occupation. If CIS was limited solely to reviewing a petitioner's self-imposed requirements, than 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. The petitioner has not provided evidence to establish the criterion at 8 C.F.R. § 214.2(h)(4)(iii)(A)(3).

The AAO now turns to the fourth criterion and whether the petitioner has established that the duties of the proffered position are sufficiently specialized and complex to require knowledge usually associated with the attainment of a baccalaureate degree in a specific discipline. Again, the record in this matter does not include sufficient information regarding the specific duties of the proffered position and how those duties relate to the petitioner's business to demonstrate that the tasks associated with the proffered position require the application of specialized and complex knowledge usually associated with the attainment of a baccalaureate degree or higher degree. The AAO acknowledges that some administrative services managerial positions may require a bachelor's degree in business administration; however in the matter at hand, the petitioner has not submitted a description that includes substantive details describing complex or specialized elements sufficient to elevate the proffered position to one that requires knowledge usually associated with the attainment of a bachelor's degree in a specific discipline.

The AAO has again reviewed ██████'s opinion and does not find that ██████ has supported his opinion with the results of formal surveys, research, statistics, or any other objective quantifying information. In addition, ██████ has failed to offer an analysis of each duty and an explanation of how these duties could not realistically be performed by individuals with less than a four-year bachelor's level education in a specific discipline. The AAO again finds that the opinion is not in accord with other information and does not accept the opinion as evidence. *Matter of Caron International*, 19 I&N Dec. at 791.

The petitioner has not established the criterion at 8 C.F.R. § 214.2(h)(4)(iii)(A)(4).

The petitioner, therefore, has not established that the position meets any of the requirements for a specialty occupation set forth at 8 C.F.R. § 214.2(h)(4)(iii)(A) and will not be approved.

The petition will be denied and the appeal dismissed for the above stated reason. 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.