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U.S. Citizenship
and Immigration
Services

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FILE: LIN 03 279 51851 Office: NEBRASKA SERVICE CENTER Date: JAN 05 2005

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.

Robert P. Wiemann, Director
Administrative Appeals Office

DISCUSSION: The service center 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 an international business development and consultancy company that seeks to employ the beneficiary as a training and development manager. 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).

The director denied the petition because the proffered position does not qualify as a specialty occupation, and because the beneficiary does not qualify to perform the duties of a specialty occupation. On appeal, counsel submits a brief and asserts that the offered position qualifies as a specialty occupation, and that the beneficiary is qualified to perform the duties of a specialty occupation.

The first issue to be discussed in this proceeding is whether the proffered position qualifies as a specialty occupation.

Section 101(a)(15)(H)(i)(b) of the Act, 8 U.S.C. § 1101(a)(15)(H)(i)(b), provides, in part, for the classification of qualified nonimmigrant aliens who are coming temporarily to the United States to perform services in a specialty occupation.

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:

[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 are so specialized and complex that knowledge required to perform the duties is usually associated with the attainment of a baccalaureate or higher degree.

Citizenship and Immigration Services (CIS) interprets the term “degree” in the criteria at 8 C.F.R. § 214.2(h)(4)(iii)(A) to mean not just any baccalaureate or higher degree, but one in a specific specialty that is directly related to the proffered position.

The record of proceeding before the AAO contains: (1) the Form I-129 and supporting documentation; (2) the director’s requests for additional evidence; (3) the petitioner’s response to the director’s requests; (4) the director’s denial letter; and (5) the Form I-290B with supporting documentation. The AAO reviewed the record in its entirety before issuing its decision.

The petitioner is seeking the beneficiary’s services as a training and development manager. Evidence of the beneficiary’s duties includes the Form I-129 petition with attachment and the petitioner’s response to the director’s request for evidence. According to this evidence the beneficiary would: design, plan, implement, and manage corporate training seminars, executive meetings and working retreats for managers and staff of international automotive and technology companies operating in the Great Lakes area; consult and advise human resource professionals and senior management at client and prospect companies; perform communications planning and consulting with program sponsors such as universities, international and local economic development organizations, consulates and embassies of European countries accredited in the United States, training providers and suppliers such as conference centers, restaurants, and caterers; provide financial planning and supervision/program evaluation for all projects managed; and perform research and planning of expanded programs and forums in designing new programs offered by the employer. The petitioner does not state that it requires a bachelor’s degree in any specific specialty for entry into the proffered position, but notes that the beneficiary is qualified for the position because she possesses the equivalent of a bachelor’s degree in hotel and restaurant management.

Upon review of the record, the petitioner has failed to establish that a baccalaureate or higher degree or its equivalent is normally the minimum requirement for entry into the offered position, or that a degree requirement is common to the industry in parallel positions among similar organizations, as asserted by counsel. Factors often considered by CIS when determining these criteria include: whether the Department of Labor’s *Occupational Outlook Handbook (Handbook)* reports that the industry requires a degree; whether an industry 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. Min. 1999) (quoting *Hird/Baker Corp. v. Slattery*, 764 F. Supp. 872, 1102 (S.D.N.Y. 1991)).

The AAO routinely consults the *Handbook* for information about the duties and educational requirements of particular occupations. The duties of the proffered position are essentially those noted for human resources, training, and labor relations managers and specialists in the *Handbook*. Because of the diversity of duties and levels of responsibility for these managers, their educational backgrounds vary considerably. For entry-level positions, many employers seek college graduates who have majored in human resources, personnel administration, or industrial and labor relations. Other employers look for college graduates with a technical or business background, or a well-rounded liberal arts education. It is clear, however, that a degree in a specific specialty is not required for entry into the position. A degree in a wide range of disciplines will suffice. The petitioner has not, therefore, established that a baccalaureate or higher degree, or its equivalent, is normally the minimum requirement for entry into the proffered position. 8 C.F.R. § 214.2(h)(4)(iii)(A)(1).

The petitioner asserts that a degree requirement is common to the industry in parallel positions among similar organizations, and in support of this assertion submits copies of three job advertisements. While each advertisement notes that a baccalaureate level education is required for the position advertised, none specify that a degree in any particular specialty is required. This is consistent with the educational requirements previously noted in the *Handbook*, that education in a wide range of disciplines will qualify an applicant for the proffered position. The petitioner has not, therefore, established its assertion and the regulatory criterion at 8 C.F.R. § 214.2(h)(4)(iii)(A)(2).

The petitioner does not assert that it normally requires a degree in a specific specialty, or its equivalent, for the proffered position, and offers no evidence in this regard. The regulatory criterion at 8 C.F.R. § 214.2(h)(4)(iii)(A)(3) has, therefore, not been established.

The petitioner contends that the duties of the proffered position are so complex or unique that they can be performed only by an individual with a degree in a specific specialty, or that they are so specialized or complex that knowledge required to perform them is usually associated with the attainment of a baccalaureate or higher degree in a specific specialty. In support of these contentions the petitioner submitted a position evaluation by [REDACTED] Associate Professor of Hotel Administration, Department of Management, Cornell University [REDACTED] opined that, based upon his education and experience, it is a general practice in the field of corporate event management for a company such as the petitioner to hire international corporate training and event program managers with bachelor's level training in hospitality management or a related area [REDACTED] does not, however, provide any basis for his opinion other than to refer to his education and experience. He does not cite or refer to any industry survey, study, or other source of information to corroborate his opinion. As such, the opinion shall be given little weight as it is contrary to the educational requirements of the position set forth in the *Handbook*. As previously noted, degrees in a wide range of specialties will qualify an individual to work in the proffered position. The education requirements are not limited to degrees in hospitality management or related areas as stated by Dr. Sturman. The petitioner has not established the referenced criteria at 8 C.F.R. § 214.2(h)(4)(iii)(A)(2) or (4).

The final issue to be considered is whether the petitioner is qualified to perform the duties of the proffered position. It has been determined that the offered position does not qualify as a specialty occupation, thus, there would be no regulatory requirement that the petitioner possess any specific level of education in order to qualify to perform the duties of that position. Suffice it to say that the petitioner deems the beneficiary qualified to perform the duties of the position based upon her past education, training, and experience. That

determination is one over which the petitioner has sole authority and discretion as the position does not qualify for H-1B status and is not subject to regulation by CIS.

The petitioner has failed to establish that the offered position meets any of the criteria listed at 8 C.F.R. § 214.2(h)(4)(iii)(A). Accordingly, the AAO shall 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 and the appeal shall accordingly be dismissed.

ORDER: The appeal is dismissed. The petition is denied.