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U.S. Department of Homeland Security

Citizenship and Immigration Services

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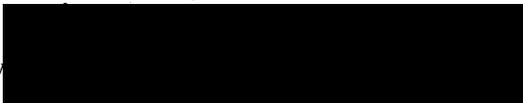
ADMINISTRATIVE APPEALS OFFICE
CIS, AAO, 20 Mass, 3/F
425 Eye Street, NW
Washington, D.C. 20536



FILE: SRC 99 015 51741 Office: TEXAS SERVICE CENTER

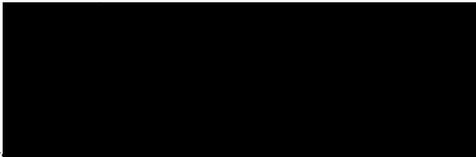
Date: DEC 16 2003

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:



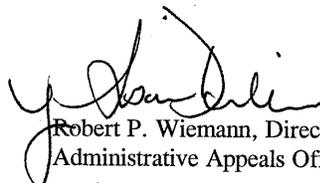
INSTRUCTIONS:

This is the decision 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.

If you believe the law was inappropriately applied or the analysis used in reaching the decision was inconsistent with the information provided or with precedent decisions, you may file a motion to reconsider. Such a motion must state the reasons for reconsideration and be supported by any pertinent precedent decisions. Any motion to reconsider must be filed within 30 days of the decision that the motion seeks to reconsider, as required under 8 C.F.R. § 103.5(a)(1)(i).

If you have new or additional information that you wish to have considered, you may file a motion to reopen. Such a motion must state the new facts to be proved at the reopened proceeding and be supported by affidavits or other documentary evidence. Any motion to reopen must be filed within 30 days of the decision that the motion seeks to reopen, except that failure to file before this period expires may be excused in the discretion of Citizenship and Immigration Services (CIS) where it is demonstrated that the delay was reasonable and beyond the control of the applicant or petitioner. *Id.*

Any motion must be filed with the office that originally decided your case along with a fee of \$110 as required under 8 C.F.R. § 103.7.


Robert P. Wiemann, Director
Administrative Appeals Office

DISCUSSION: The nonimmigrant visa petition was denied by the Director, Texas Service Center, and the matter is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed.

The petitioner is a janitorial commercial cleaning company. It employs three people and was a new company at the time of filing; therefore, it had no gross annual income. It seeks to temporarily employ the beneficiary as the executive director/president for a period of three years. The director determined that the petitioner had not established that the proffered position was a specialty occupation.

On appeal, counsel asserts that the director erred in determining that the position is not a specialty occupation.

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:

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.

The position description submitted by the petitioner states that the beneficiary would:

[R]eview all activity and performance reports of the workers to determine and monitor the company's progress. Based on the company's financial reports he will review and analyze the company's loss and profits, corporate assets, benefits, investment opportunities as well as try to resolve any contractual violations or corporate problems. As president/executive director he will negotiate all new contracts, review short and long range forecasts as well as approve monthly/annual budget. This executive position also entails the selection, purchase and acquisition of the most modern cleaning equipment and machinery as well as planning, developing and implementing new programs, methods and ideas to promote productivity to obtain optimum efficiency of employees, total satisfaction of customers and maximize profits for corporation [sic].

The Department of Labor's 2002-2003 *Occupational Outlook Handbook* (*Handbook*) states on page 87, under the description for top executives:

The formal education and experience of top executives varies as widely as the nature of their responsibilities. Many top executives have a bachelor's or higher degree in business administration or liberal

arts. . . . Since many top executive positions are filled by promoting experienced, lower level managers when an opening occurs, many are promoted from within the organization. . . . Many companies prefer, however, that their top executives have specialized backgrounds and hire individuals who are managers in other organizations."

The Act defines the term "specialty occupation" as an occupation that requires "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." Section 214(i)(1)(B) of the Act, 8 U.S.C. § 1184(i)(1). (Emphasis added).

According to the *Handbook*, there is no absolute requirement for a degree for top executives and clearly, no requirement for a degree in a specific specialty exists. Neither counsel nor the petitioner has submitted any evidence that the position qualifies as a specialty occupation under the second or third criteria above.

The petitioner claims, "The job duties affiliated with this executive position are complex and require autonomous application of an individual's professional experience in administration combined with theoretical and practical knowledge." There is no evidence in the record to support this statement or 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. Simply going on record without supporting documentary evidence is not sufficient for purposes of meeting the burden of proof in these proceedings. *Matter of Treasure Craft of California*, 14 I&N Dec. 190 (Reg. Comm. 1972).

The petitioner failed to establish that any of the four criteria enumerated in 8 C.F.R. § 214.2(h)(4)(iii)(A) are present in this proceeding. Accordingly, it is concluded that the petitioner has not demonstrated that the offered position is a specialty occupation within the meaning of the regulations.

Beyond the decision of the director, the evidence on the record is not persuasive that the beneficiary is qualified to perform the duties of a specialty occupation. Pursuant to 8 C.F.R. § 214.2(h)(4)(iii)(C), to qualify to perform services in a specialty occupation, the alien must meet one of the following criteria:

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.

Counsel submitted an educational equivalency assessment, which states that the beneficiary has "as a result of his employment experiences (3 years of experience = 1 year of university-level credit) an educational background the equivalent of an individual with 2 1/3 years of university-level credit (an associate's degree) from an accredited college or university in the United States." The evaluator states that the assessment is based on the beneficiary's employment experience, but the evaluator does not meet the requirements of the regulations for making such a determination. The National Association for Foreign Attorneys is not qualified to prepare an evaluation of this sort as it does not: "[Have] authority to grant college-level credit for training and/or experience in the specialty at an accredited college or university which has a program for granting such credit based on an individual's training and/or work experience," as required by the regulation. 8 C.F.R. § 214.2(h)(4)(iii)(D)(1).

In addition, even if the evaluation were accepted, the beneficiary would not qualify for employment in a specialty occupation as the regulations clearly require a baccalaureate degree or its

equivalent, while the beneficiary only possesses the equivalent of an associate's degree.

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. Accordingly, the appeal will be dismissed.

ORDER: The appeal is dismissed.