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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 N.W.
Washington, D.C. 20536



File: SRC 02 074 50129 Office: TEXAS SERVICE CENTER

Date: DEC 17 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:

SELF REPRESENTED

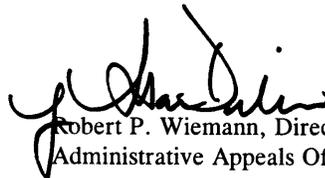
INSTRUCTIONS:

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 which 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. The matter is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed.

The petitioner is a corporation that provides landscaping and fencing services to the general public. It has one employee, a gross annual income of \$172,000, and seeks to employ the beneficiary as a manager. The director determined that the proffered position did not qualify as a specialty occupation.

On appeal, the petitioner provides a new job title, and new duties not previously detailed for the offered position.

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), 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.

The issue to be discussed in this proceeding is whether the position offered to the beneficiary qualifies as 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 field 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.

When determining whether a particular job qualifies as a specialty occupation, the AAO considers the specific duties of the offered position, combined with the nature of the petitioning entity's business operations. The duties of the proffered position were detailed as follows, with the filing of the I-129 petition:

To manage the company, interview, hire and fire employees/independent contractors. Administrate the work teams, accountant, Web Site programming and buying supplies.

Subsequent to the filing of the I-129 petition, the director requested additional evidence from the petitioner. Specifically, the director requested evidence that: the beneficiary holds the equivalent of a United States baccalaureate degree; and the proffered position qualifies as a specialty occupation.

In response to the director's request, the petitioner stated that the beneficiary had relevant work experience with two previous employers: (1) Norvido-Nordeste Vidros S.A. - Two years and two months as logistic and computer manager; (2) Devidro Industry and Commerce, Ltda. - Three years and eight months as a sales manager. The petitioner also provided the following statement with regard to the beneficiary's proposed duties:

I need a Manager who will act as a Computer Administrator, Web Site Developer, Sales Manager and as a General Manager. I didn't know that the title would affect [the beneficiary's] classification with INS [now Citizenship and Immigration Services (CIS)]. [The beneficiary] fits my needs and has the abilities to

help me grow my company. Most part [sic] of my clientele come [sic] from my Website page. Half of our business is done in the computer area. If it is necessary I can change the classification with [the] Labor Department to one in the Computer area.

In denying the petition, the director held that the petitioner failed to establish that the proffered position met any of the criteria set forth in 8 C.F.R. § 214.2(h)(4)(iii)(A), and accordingly denied the petition.

On appeal, the petitioner provides new duties for the offered position and a new job title:

[The beneficiary] will organize the present data into a usable formate [sic] and then maintain all information. He will also maintain and update their [sic] Website. [The beneficiary] will be a project designer, utilizing [sic] various programs to create a 3D view of the finished landscape job. [The beneficiary] speaks Portuguese, Spanish, and English. Information for this company will have to be in all three of these languages, making one person who speaks all three languages a money-saving assest [sic] to Mac Lawn Landscaping. In addition to programming, updating, and maintaining the computer system, [the beneficiary] will also perform duties in the departments of accounting and purchasing. Upon further investigation into the position that [the beneficiary] will hold with Mac Lawn Landscaping, you can see that he will have the job title of Information Systems Manager.

The job responsibilities and title tendered by the petitioner on appeal are substantially different from the title and duties set forth with the filing of the I-129 petition and in the petitioner's response to the director's request for evidence. The petitioner must establish that the position offered to the beneficiary at the time the I-129 petition was filed is a specialty occupation. See *Matter of Michelin Tire*, 17 I&N Dec. 248,249 (Reg. Comm. 1978). If significant changes are made to the initial request for approval, the petitioner must file a new petition rather than seek approval of a petition that is not supported by the facts in the record.

The I-129 petition classified the proffered position as a "manager," and the labor condition application referenced that title as well. Indeed, the duties detailed at the time the petition was filed are indicative of a general managerial position. The job title and duties detailed on appeal, however, significantly changes the nature of offered position. The petitioner now seeks to qualify the beneficiary as an Information Systems Manager. The petitioner may not change the title of the position or duties associated with it while the petition is pending.

The petitioner has failed to qualify the proffered position as a specialty occupation. The job duties set forth by the petitioner are so general in nature that it is virtually impossible to determine precisely what duties the beneficiary would perform in the course and scope of his employment. They appear, however, to be general managerial duties.

The petitioner has not met any of the regulatory requirements to qualify the offered position as a specialty occupation. The proffered position, as detailed with the filing of the I-129 petition, appears to require general managerial skills, and those skills do not arise from any particular specialty. Indeed, it appears that any number of work experiences or educational pursuits would suffice. Many management positions are filled by promoting experienced, lower level managers from within an organization. A college degree is not a minimum requirement for entry into the field of management. See *Occupational Outlook Handbook*, 2002-03 edition, (*Handbook*) at 87. The petitioner has, therefore, failed to establish the first criterion of 8 C.F.R. § 214.2(h)(4)(iii)(A).

The petitioner has also failed to establish any of the remaining criteria. The record does not indicate that a degree requirement is common to the industry in parallel positions among similar organizations, that the position is so complex or unique that it can be performed only by individuals with a degree, that the petitioner normally requires a degree for the position, or that the nature of the specific duties is so specialized and complex that knowledge required to perform them is usually associated with the attainment of a baccalaureate or higher degree.

The petitioner has failed to establish that any of the four criteria enumerated 8 C.F.R. § 214.2(h)(4)(iii)(A) are present in this proceeding. It is, therefore, concluded that the petitioner has not established that the offered position qualifies as a specialty occupation.

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.