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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 I Street, N.W.
Washington, DC 20536

[REDACTED]

File: LIN 02 074 51038 Office: NEBRASKA SERVICE CENTER Date: OCT 17 2003

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]

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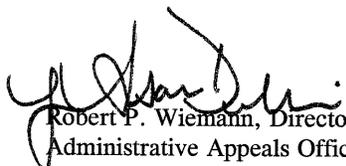
INSTRUCTIONS:

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, Nebraska Service Center, and the matter is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed.

The petitioner is a Chicago insurance company. It has four employees and a gross annual income of \$180,000. It seeks to temporarily employ the beneficiary as a manager 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 position is a specialty occupation and submits further documentation.

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.

The issue in this proceeding is whether the petitioner has established that the proffered position is a specialty occupation. In the original petition received by the Nebraska Service Center on December 31, 2001, the petitioner described the proffered position as a manager. The petitioner provided the following additional information on the position:

The position [that the beneficiary] will occupy has been needed for a while[;] however [it] is newly created. [The beneficiary] will oversee the aspects of our marine and research expedition insurance product development and evaluation of such claims. He will manage the entire portfolio of our clients including meetings and presentations. He will also used [sic] his science background and technical marine skills to evaluate claims and advice [sic] clients on safety issues that can assist with lowering premiums and quick processing of claims. He will manage the division and be responsible for implementing company decisions and policies that effect [sic] his department or division. He will bear full responsibility for developing other clients and marketing new products developed by him or under his supervision.

On February 27, 2002, the director asked for further information with regard to whether the proffered position was a specialty occupation. The director stated that the Department of Labor's (DOL) *Occupational Outlook Handbook (Handbook)* did not indicate that a baccalaureate degree in a specific specialty was required to perform the duties of a manager. The director requested more information on how the petition met any of the four criteria outlined in 8 C.F.R. § 214.2(h)(4)(iii)(A).

In response, counsel stated that the proffered position was not simply a manager or insurance executive position. Counsel stated that the position was a manager/business development analyst in a very specialized area of marine insurance. Counsel stated the following:

[The beneficiary will have oversight of the petitioner's marine and ocean expedition insurance and this will include both management operations and involve knowledge of complex scientific and technical terms and practices. [The beneficiary] will manage the entire portfolio including meetings, presentations and advising clients

on the nature of their business and adequate coverage for such operations. [The beneficiary] will be required to use significant technical skills to evaluate claims and advise clients on safety issues and to develop new products that will suit different clients. With a job description such as the one above, the petitioner has established that the position is so complex that it can only be performed by an individual with a degree in actuarial or other science and extensive knowledge of marine expedition.

Counsel also stated that the petition had a sister company, Sama International Business Systems, and the petitioner is the exclusive agent for the insurance business of its sister company. Counsel submitted a letter from Alex Meer Ali, General Manager, Sama International Business Systems, to further explain the relationship between the petitioner and Sama International, and the nature of the work done by Sama International. Counsel also submitted the following additional correspondence with regard to business activities of Sama International and of the petitioner:

1. A letter dated 1998 from Dr. M.M. Rabbani, Chief Scientist, National Institute of Oceanography, Karachi, Pakistan
2. A letter dated 1990 from S.H. Niaz Rizvi, Director General, National Institute of Oceanography, Karachi, Pakistan.
3. Undated correspondence from Syed A. Sheikh, Director of Marketing, Qualitron Corporation, Karachi, Pakistan
4. Documentation of various business activities of Sama International Business dating back to 1994.

On May 30, 2002, the director denied the petition. The director stated that petitioner, in its response to the director's request for further evidence, had submitted the same information on job duties. In addition, the director stated that none of the correspondence submitted by the petitioner provided any additional evidence that the proffered position required a baccalaureate degree in a specific specialty. The director examined both the manager and marketing manager classifications contained in the *Handbook* in reaching this determination.

On appeal, counsel asserts that Citizenship and Immigration Services (CIS) did not properly recognize the specific nature of the job, the unique characteristics of the position, or the beneficiary's qualifications for the proffered position. Counsel affirms that the proffered position is a highly specialized and narrowly defined position that requires a significant level of skills.

Upon review of the record, the petitioner has not articulated a sufficient basis for classifying the proffered position as a specialty occupation. In evaluating whether the proffered position is a specialty occupation, each of the four criteria listed at 8 C.F.R. § 214.2(h)(4)(iii)(A) will be considered separately below.

I. A baccalaureate or higher degree or its equivalent is normally the minimum requirement for entry into the particular position - 8 C.F.R. § 214.2 (h) (4) (iii) (A) (1) .

CIS often looks to the Department of Labor's (DOL) *Occupational Outlook Handbook (Handbook)* when determining whether a baccalaureate or higher degree or its equivalent is normally the minimum requirement for entry into a particular position. Upon review of the record, the proffered position appears to be that of a manager/insurance agent within a general purpose insurance company. Although the petitioner states that it specializes in marine insurance, it should be noted that the petitioner's letterhead clearly states that it is an automobile and home insurance agency, and also identifies renters, business, life, and health as other types of insurance coverage areas. The record is devoid of any documentation as to any specific international marine insurance business that has been brokered or negotiated by the petitioner, either on behalf of its sister company or any other company. The letter of appreciation from the Pakistani National Institute of Oceanography and other correspondence provided by the petitioner from foreign entities as to their knowledge of the petitioner as an insurance company is not viewed as probative evidence as to the petitioner's international marine insurance business activities. Without more persuasive testimony on this point, the proffered position, as previously stated, is that of a manager/insurance agent.

With regard to manager positions, the 2002-2003 edition of the *Handbook* indicates on page 28 that a wide range of educational backgrounds are suitable for entry into advertising, marketing, promotions, public relations, and sales managerial jobs, but many employers prefer those with experience in related occupations plus a broad liberal arts background. This range of educational possibilities clearly documents that a baccalaureate or higher degree or its equivalent in a specific specialty is not required for sales or marketing manager positions. With regard to persons working in the insurance business, and more particularly, as claims adjusters, appraisers, examiners, and investigators, the *Handbook*, on page 33, states the following with regard to the training or qualifications for such insurance jobs: "Training and entry requirement vary widely for claims adjusters, appraisers, examiners, and investigators. However, most companies prefer to hire college graduates. No specific college major is recommended. . . . Some claims adjusters and examiners who are professionals in their field might decide to use their expertise to adjust claims."

To the extent that the *Handbook* does not indicate that employers of insurance adjusters or managers require a bachelor's degree in a specific specialty for entry into these positions, it does not appear that a bachelor's degree in a specific specialty is the minimum requirement for entry into the manager/insurance agent field. Accordingly, the petitioner has not established this criterion of 8 C.F.R. § 214.2(h)(4)(iii)(A).

II. 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 - 8 C.F.R. § 214.1(h)(4)(iii)(A)(2).

A. Degree Requirement is Common to the Industry

Factors often considered by CIS when determining the industry standard include: 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." *Shanti, Inc. v. Reno*, 36 F.Supp.2d 1151, 1165 (D.Min. 1999) (quoting *Hird/Blaker Corp. v. Slattery*, 764 F.Supp. 872, 1102 (S.D.N.Y. 1991)).

The *Handbook's* conclusions about a degree requirement for a manager/insurance agent position were discussed in the previous section, and shall not be repeated here. In the instant petition, to establish the industry standard, counsel asserted that it is usually the industry standard to require a specific specialty in the field of marine insurance processing. However, counsel submitted no documentation to support this assertion. The assertions of counsel do not constitute evidence. *Matter of Obaigbena*, 19 I&N Dec. 533, 534 (BIA 1988), *Matter of Ramirez-Sanchez*, 17 I&N Dec. 503, 506 (BIA 1980).

In addition, the petitioner submitted no documentation that any professional insurance association has made a bachelor's degree a requirement for entry into the field, nor has it submitted letters or affidavits from firms or individuals in the industry which attest that such firms "routinely employ and recruit only degreed individuals." Accordingly the petitioner has not established that the degree requirement is common to the industry in parallel positions among similar organizations.

B. Complexity and Uniqueness of the Proffered Position

In the alternative, the petitioner may show that the proffered position is so complex or unique that it can be performed only by an individual with a degree. In the instant petition, the petitioner has asserted that the proffered position would involve duties that are complex and unique; however, no documentation was submitted to support this assertion. See *Matter of Treasure Craft*

of California, 14 I&N Dec. 190 (Reg. Comm. 1972). Without more persuasive evidence, the petitioner has not established this criterion.

III. The employer normally requires a degree or its equivalent for the position - 8 C.F.R. § 214.2(h) (4) (iii) (A) (3).

The petitioner stated that it had not hired anyone previously for the proffered position. Accordingly, the petitioner has not established this criterion.

IV. 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 - 8 C.F.R. § 214.2(h) (4) (iii) (A) (4).

To date the petitioner has placed no information on the record with regard to the specialized and complex nature of the proffered position. The job description in the original petition contained work duties that are similar to any insurance processor position. As noted previously, the petitioner has provided no documentation with regard to its present business activities in marine insurance processing for foreign companies, including the volume and variety of any such business, that would illustrate the complexity of such business activities. Without more persuasive evidence as to the specialized or complex nature of the duties of the manager/insurance agent position, the petitioner has not established the fourth criterion of 8 C.F.R. § 214.2(h) (4) (iii) (A).

The petitioner has failed to establish that any of the four criteria enumerated above 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 the proffered position. 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.

In reviewing the documentation submitted by the petitioner with regard to the beneficiary's qualifications for the proffered position, it is noted that the beneficiary has a bachelor of science degree in botany from the University of Karachi in Pakistan that appears to have been received following three years of university studies. The petitioner also submitted a letter from the beneficiary's former employer, a Pakistani insurance company. Without more persuasive evidence, the petitioner has not sufficiently established the beneficiary's qualifications to perform the proffered position.

First, although the educational equivalency document submitted by the petitioner states that the three years of studies are equivalent to a bachelor of science degree in botany from a U.S. accredited university, it is not possible to gauge the validity of this statement, without further explanation or documentation, such as the beneficiary's university transcripts and a copy of any diplomas. Second, it is not clear from the present documentation how a baccalaureate degree in botany would be considered sufficient preparation for the proffered position. Third, if the beneficiary's qualifications for the position are based on his combined education and work experience, the petitioner would have to provide much more substantive evidence with regard to the beneficiary's job responsibilities with his previous Pakistani employer and clarify any relationship these duties have to the duties of the proffered position. 8 C.F.R. § 214.2(h)(4)(iii)(D). As the appeal will be dismissed on other grounds, however, this issue will not be discussed further.

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.