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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

OCT 23 2003

File: SRC 02 196 51174 Office: TEXAS SERVICE CENTER

Date

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:

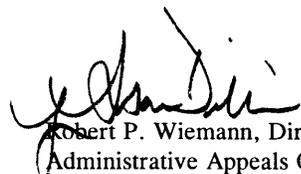
**INSTRUCTIONS:**

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 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 which 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 entertainment services for the general public. It has two employees and a projected gross annual income of approximately \$200,000. The petitioner seeks to employ the beneficiary as a general manager for a period of three years. The director denied the petition on the ground that the proffered position failed to qualify as a specialty occupation.

On appeal, counsel submits a brief. Counsel asserts that the proffered position qualifies as a specialty occupation, and that the beneficiary is qualified to perform the duties associated therewith.

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.

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.

The AAO does not simply rely on a position's title when determining whether a particular job qualifies as a specialty occupation. The specific duties of the offered position,

combined with the nature of the petitioning entity's business operations, are factors that the AAO considers. The duties of the proffered position were detailed as follows with the filing of the I-129 petition:

Directs and coordinates activities. Plans and develops organization policies and goals. Directs and coordinates promotion for company's services. Allocates operating budget. Hires and fires personnel. Reviews activity, operating[, ] and sales reports to determine changes required. Oversees day to day operation of the company.

Subsequent to the filing of the I-129 petition, the director requested additional evidence from the petitioner. Specifically, the director asked that the petitioner provide the following information: the number of general managers previously employed by the petitioner; evidence that a baccalaureate degree for the proffered position is a standard requirement in the industry; the name of the United States employer that will supervise the beneficiary; copies of the petitioner's quarterly tax returns and proof of tax payments to the Internal Revenue Service; photographs of the petitioner's business facility; and the petitioner's tax identification number.

In response to the director's request for evidence, counsel stated that the offered position requires a bachelor's degree because of the complexity of the duties involved. Counsel then asserted that the position's duties are those of a management/market analyst, and that the beneficiary's duties would include: analyzing sales and financial data; implementing promotional strategies; conducting market research to determine public preference of entertainment, performers and music; conducting international market research to determine the taste and preference of international tourists; making determinations of which product to promote and the kind of advertising to be used; and forecasting trends. Counsel further provided additional information requested by the director.

The purpose of the request for evidence is to elicit further information that clarifies whether eligibility for the benefit sought has been established. 8 C.F.R. § 103.2(b)(8). When responding to a request for evidence, a petitioner cannot offer a new position to the beneficiary, or materially change a position's title or its associated job responsibilities. The petitioner must establish that the position that was 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 "general 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 response to the request for evidence, however, significantly changes the duties of the proffered position as well as the title. Counsel seeks to qualify the beneficiary now as a market or management analyst. Neither counsel nor the petitioner may now change the title of the position or duties associated with it while the petition is pending.

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 petitioner has not met any of the above requirements to qualify the offered position as a specialty occupation. The proffered position, as detailed with the filing of the I-129 petition, requires 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 top executive 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, (Handbook)* at 87. The petitioner has, therefore, failed to establish the first criterion listed above.

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

The petitioner has failed to establish that any of the four factors enumerated above are present in this proceeding. It is, therefore, concluded that the petitioner has not demonstrated that the offered position is a specialty occupation within the meaning of the regulations.

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.