U.S. Department of Homeland Security
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Washington, DC 20529

U.S. Citizenship and Immigration Services

D2

[redacted]

FILE: EAC 03 088 52560 Office: VERMONT SERVICE CENTER Date: AUG 0 3 2004

IN RE: Petitioner: [redacted]
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:

[redacted]

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.

Mari Johnson

for Robert P. Wiemann, Director
Administrative Appeals Office

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prevent clearly unwarranted invasion of personal privacy

DISCUSSION: The director of the service center 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 a car dealer that seeks to employ the beneficiary as a manager. The petitioner, therefore, 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 is not a specialty occupation. On appeal, counsel states that the proffered position qualifies as a specialty occupation.

Section 214(i)(l) of the Act, 8 U.S.C. § 1184(i)(l), 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.

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.

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) Form I-129 and supporting documentation; (2) the director's request for additional evidence; (3) the petitioner's response to the director's request; (4) the

director's denial letter; and (5) Form I-290B and supporting documentation. The AAO reviewed the record in its entirety before issuing its decision.

The petitioner is seeking the beneficiary's services as a manager. Evidence of the beneficiary's duties includes: the Form I-129; the attachments accompanying the Form I-129; and the petitioner's response to the director's request for evidence. According to this evidence, the beneficiary would perform duties that entail coordinating activities for car sales, establishing sales territories, quotas, and goals; analyzing sales and advertising techniques; analyzing sales statistics to formulate policies and promote sales; reviewing market reports to determine customer needs, volume potential, price schedules, and discount rates; developing sales campaigns; analyzing and controlling expenditures; preparing sales reports; directing staffing, training, and performance evaluations; coordinating multiple lots; controlling inventory and documenting cars; coordinating personnel who conduct research and testing; consulting with mechanics about repairs; assuring compliance with environmental regulations; pricing cars for resale; and processing paper work for releasing cars. The petitioner stated that the "usual minimum requirement for performance of the job duties is a [b]achelor's degree." The petitioner indicated that the beneficiary's possession of a bachelor's degree in administration qualified him for the proffered position.

The director found that the proffered position was not a specialty occupation because the petitioner failed to establish any of the criteria found at 8 C.F.R. § 214.2(h)(4)(iii)(A). Referring to the submitted evidence, an abstract of the Department of Labor's (DOL) *Occupational Outlook Handbook* (the *Handbook*) describing executive, administrative, and managerial occupations, the director stated that a manager is a professional position. The director mentioned that the proposed duties seemed to be performed by a manager, though he was not convinced that the beneficiary will perform the specific duties given the nature of the petitioning entity. Nor was the director convinced that the petitioner would require a full-time manager. Finally, the director stated that the evidence did not demonstrate that the nature of the duties was at the H-1B level.

On appeal, counsel states that the proffered position qualifies as a specialty occupation. Counsel maintains that similar companies require at least a college degree that is usually in management. To support this allegation counsel refers to the *Handbook's* abstract about executive, administrative, and managerial occupations; it states "a bachelor's or higher degree" is the source of training for this occupational area along with work experience. Counsel contends that the director overlooked the position's level of responsibility as depicted in the April 21, 2003 letter. According to counsel, the position is "so complex . . . that it can be performed only by an individual with a degree." Last, counsel maintains that the "managerial" field qualifies as a specialty occupation.

Upon review of the record, the petitioner has established none of the four criteria outlined in 8 C.F.R. § 214.2(h)(4)(iii)(A). Therefore, the proffered position is not a specialty occupation.

The AAO first considers the criteria at 8 C.F.R. §§ 214.2(h)(4)(iii)(A)(*1*) and (*2*): a baccalaureate or higher degree or its equivalent is the normal minimum requirement for entry into the particular position; a degree requirement is common to the industry in parallel positions among similar organizations; or a particular position is so complex or unique that it can be performed only by an individual with a degree. Factors often

considered by CIS when determining these criteria 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." *See 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 AAO wishes to note that the record is unclear as to whether the petitioner actually requires that a candidate hold a bachelor's degree in a specific specialty to perform the duties of the offered position. For example, the petitioner's January 22, 2003 letter stated that a bachelor's degree is required, though the petitioner does not mention a specific specialty. In this letter the petitioner implicitly suggested that a bachelor's degree in administration qualified a candidate for the proffered position given that the beneficiary is considered "well qualified" to assume the position. However, the April 21, 2003 letter submitted in response to the request for evidence stated "we believe it is clear that the position [is] one requiring a minimum of a baccalaureate degree." This letter does not explicitly indicate a specific bachelor's degree requirement. Thus, whether the petitioner actually requires a specific degree is not answerable.

In determining whether a position qualifies as a specialty occupation, CIS looks beyond the title of the position and determines, from a review of the duties of the position and any supporting evidence, whether the position actually requires the theoretical and practical application of a body of highly specialized knowledge, and the attainment of a baccalaureate degree in a specific specialty as the minimum for entry into the occupation as required by the Act.

Counsel states that the petitioner has satisfied the first criterion at 8 C.F.R. § 214.2(h)(4)(iii)(A); namely, that the petitioner show that a baccalaureate or higher degree, or its equivalent, is normally the minimum requirement for entry into the proffered position.

The AAO routinely consults the DOL's *Career Guide to Industries* (*CGI*) for its information about the duties and educational requirements of particular occupations. A careful review of the *CGI* discloses that the proffered position would be a management job in the automobile dealership industry. These positions, *CGI* reports, often are filled by promoting workers with years of related experience. For example, most sales managers start as automotive salespersons. Sales managers hire, train, and supervise the dealer's sales force. They are the lead negotiators in all transactions between sales workers and customers. Most advance to their positions after success as salespersons. They review market analyses to determine consumer needs, estimate volume potential for various models, and develop sales campaigns. General and operations managers are in charge of all dealer operations. They need extensive business and management skills, usually acquired through experience as a manager in one or more of the dealer departments. Dealer performance and profitability ultimately are up to them. According to the *CGI*, requirements for many jobs vary from dealer to dealer. Consequently, the proffered position would not qualify as a specialty occupation because employers do not require a bachelor's degree in a specific specialty.

The submitted abstract from the *Handbook* about executive, administrative, and managerial occupations and the tax records fail to establish the first criterion for two reasons. The abstract described the duties of

communications, transportation, and utilities operations managers. It stated that these managers plan, organize, direct, control, or coordinate activities related to "transporting people or goods by air, highway, railway, water or pipleline." The proffered position's duty is to sell cars; it is not to transport people. More important, the abstract stated the "[m]ost significant source of training: Work experience plus bachelor's or higher degree." This does not demonstrate that employers require a bachelor's degree in a specific specialty for a manager position. The petitioner's tax records merely described its financial condition; they do not establish that a baccalaureate or higher degree, or its equivalent, is normally the minimum requirement for entry into the proffered position. Consequently, the petitioner fails to satisfy the first criterion.

The second criterion at 8 C.F.R. § 214.2(h)(4)(iii)(A) requires that the petitioner show that its degree requirement is common to the industry in parallel positions among similar organizations or, in the alternative, that the position is so complex or unique that it can be performed only by an individual with a degree in a specific specialty. No evidence in the record establishes this criterion.

The petitioner's April 21, 2003 letter stated that it had never employed anyone in the proffered position; accordingly, the petitioner cannot establish the third criterion at 8 C.F.R. § 214.2(h)(4)(iii)(A).

The fourth criterion requires that the petitioner show that the nature of the specific duties is so specialized and complex that the knowledge required to perform the duties is usually associated with the attainment of a baccalaureate or higher degree in a specific specialty. None of the submitted evidence establishes this criterion. Moreover, the *CGI* shows that the duties of the proffered position are performed by positions in management that do not require a bachelor's degree in a specific specialty. Accordingly, the petitioner fails to satisfy the fourth criterion.

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.

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