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



U.S. Citizenship
and Immigration
Services



FILE: WAC 02 253 50847 Office: CALIFORNIA SERVICE CENTER

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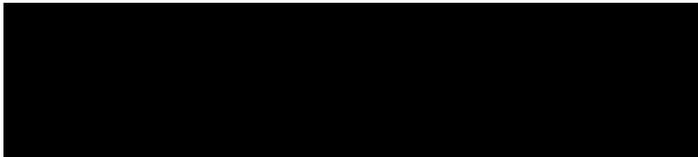
AUG 04 2004

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 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.

Robert P. Wiemann

to Robert P. Wiemann, Director
Administrative Appeals Office

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prevent clearly unwarranted
invasion of personal privacy**

DISCUSSION: The service center director denied the nonimmigrant visa petition and the matter is before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed. The petition will be denied.

The petitioner is a wholesale and retail stationary sales company. It seeks to employ the beneficiary as a store 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 he determined that the proffered position is not a specialty occupation. On appeal, counsel asserts that the position is a specialty occupation based on the specialized and complex nature of the duties of the position. Counsel submits no further documentation.

Section 214(i)(1) of 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.

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 petitioner's letter of support; (3) the director's request for additional evidence, dated February 7, 2003; (4) counsel's letter that responds to the director's request, dated April 23, 2003; (5) the director's denial letter;

and (6) 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 store manager. Evidence of the beneficiary's duties includes: the I-129 petition; the petitioner's letter of support; the director's request for further evidence; and counsel's letter in response to the director's request for further evidence. According to the job description submitted by the petitioner, the beneficiary's duties would involve sole authority in the hiring, firing, training, assignment, discipline, promotion, and remuneration of employees. The beneficiary would direct all activities of the San Jose store and would also meet with staff and regional managers to ensure that the corporate philosophy is understood and being implemented and would also ensure the highest quality of goods and the most reasonable prices for customers. In its response to the director's request for further evidence, counsel stated that the beneficiary would also devise and plan long-term objectives and goals for the petitioner's store; review procedures and protocols to ensure utmost efficiency and effectiveness in labor and capital expenditures. Counsel presented three more specific duties within the beneficiary's autonomy, namely, organizing and overseeing all business contracts and agreements with outside vendors; overseeing the design and implementation of local store marketing campaigns and special promotional events, and preparing and presenting a store budget with capital investment and profit projects. Counsel also stated that the petitioner preferred candidates with a degree in business, business administration, administration, or economics.

The director found that the proffered position was not a specialty occupation and referred to the classification of sales worker supervisor in the Department of Labor's (DOL) *Occupational Outlook Handbook (Handbook)*. Based on the *Handbook* information, the director determined that a baccalaureate degree in a specific specialty was not required for entry into the position. The director found further that the petitioner failed to establish any of the criteria found at 8 C.F.R. § 214.2(h)(4)(iii)(A).

On appeal, counsel states that the proffered position is not that of a sales worker supervisor, but rather than of a manager. According to counsel, the duties of such a position are both complex and specialized. Counsel submits no further documentation.

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 turns first to 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 routinely consults the *Handbook* for its information about the duties and educational requirements of particular occupations. With regard to the proffered position, although the position does contain managerial

elements, as correctly stated by the director, the *Handbook* describes such retail supervisory positions as sales worker supervisors. Counsel asserts that the position should be classified as manager. With regard to either classification, the *Handbook* does not indicate that a baccalaureate degree in a specific specialty is the minimum requirement for entry into the position. For example, the *Handbook* states that the educational background of such sales worker supervisors can vary widely, and that supervisors with postsecondary education often hold associate's or bachelor's degrees in liberal arts, social sciences, business, or management. With regard to the advertising, marketing, promotions, public relations and sales managers classification, a classification that emphasizes managerial responsibilities, the *Handbook* also notes that a wide range of educational backgrounds is suitable for entry into positions within this classification. Thus, the *Handbook* does not establish that a baccalaureate degree in a specific specialty is required for entry into the proffered position.

With regard to parallel positions in similar firms, the petitioner submitted four job vacancy announcements for store managers from the Internet. This documentation is not viewed as persuasive for two reasons. First, not all the vacancy announcements require a baccalaureate degree for entry in the position. For example, the Bose store manager position requires a bachelor's degree or equivalent along with substantial years of experience in retail sales. Second, all the vacancy announcements do not specify that a baccalaureate degree in a specific specialty is a minimum requirement for entry into store manager positions. For example, the Moffett Exchange and the AT& T Wireless job vacancy announcements only state that a four-year degree is required, with no specification as to any particular field of study. As previously stated, 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 also does not include any evidence from professional associations regarding an industry standard, or documentation to support the complexity or uniqueness of the proffered position. The petitioner has, thus, not established the criteria set forth at 8 C.F.R. § 214.2(h)(4)(iii)(A)(1) or (2).

The AAO now turns to the criterion at 8 C.F.R. § 214.2(h)(4)(iii)(A)(3) – the employer normally requires a degree or its equivalent for the position. The petitioner submitted no further documentation with regard to previously or currently hired store managers. Therefore the petitioner has not met this criterion.

Finally, the AAO turns to the criterion at 8 C.F.R. § 214.2(h)(iii)(A)(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. To the extent that they are depicted in the record, the duties of the position are varied; however, they are also routine for any retail store management position. Although counsel on appeal states that the duties are complex and specialized, it offers no further documentation to further substantiate this assertion. The assertions of the director, as well as of counsel, do not constitute evidence. *Matter of Ramirez-Sanchez*, 17 I&N Dec. 503, 506 (BIA 1980). *Matter of Obaigbena*, 19 I&N Dec. 534 (BIA 1988). Without more persuasive evidence, the petitioner has not established the fourth criterion of 8 C.F.R. § 214.2(h)(4)(iii)(A).

As related in the discussion above, the petitioner has failed to establish that the proffered position is a specialty occupation. Accordingly, the AAO shall not disturb the director's denial of the petition.

Beyond the decision of the director, the petitioner did not establish that the beneficiary is qualified to perform the duties of the position, if it had been determined to be a specialty occupation. The petitioner submitted an educational equivalency document prepared by the Foundation for International Services, Inc. This document stated that, based on his studies in Japan, the beneficiary has the equivalent of a bachelor's degree in law from a U.S. accredited educational institution. This particular degree does not appear related to the educational credentials required by the petitioner, or other employers of store managers. As previously stated, the petitioner preferred a candidate with a bachelor's degree in business, business administration, administration, or economics. 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.