



U.S. Citizenship
and Immigration
Services

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FILE: SRC 03 179 53116 Office: TEXAS SERVICE CENTER Date:

AUG 16 2004

IN RE: Petitioner: [Redacted]
Beneficiary: [Redacted]

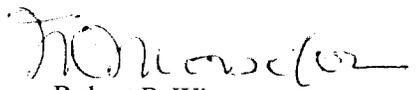
PETITION: Petition for a Nonimmigrant Worker Pursuant to Section 101(a)(15)(H)(i)(b) of the
Immigration and Nationality Act, 8 U.S.C. § 1101(a)(15)(H)(i)(b)

ON BEHALF OF PETITIONER:



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, Director
Administrative Appeals Office

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prevent identity compromise

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 company that provides verification services. It seeks to employ the beneficiary as a vice-president of operations. 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)(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 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 vice-president of operations. Evidence of the beneficiary's duties includes in part: the Form I-129; the attachments accompanying the Form I-129, including the petitioner's support letter; and the petitioner's response to the director's request for evidence. According to this evidence, the beneficiary would perform duties that entail planning, directing, and coordinating the company's operations; implementing new lien and title verification systems; making monthly presentations to the board of directors and management; addressing client complaints and developing ways to serve them; expanding the client base; and hiring and training employees. Counsel's June 25, 2003 letter claimed that candidates must possess a bachelor's degree in business administration with a concentration in finance.

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 Department of Labor's (DOL) *Occupational Outlook Handbook* (the *Handbook*), the director stated that it explains that a baccalaureate degree in a focused, job-related field is usually not needed for most top executive positions. The director also stated that the petitioner has not demonstrated that it or the industry normally requires a bachelor's degree as the minimum requirement for the proffered position. According to the director, the petitioner had not shown that the beneficiary would manage professionals or that the proffered job would require the services of a candidate with a bachelor's degree in a focused, job-related field. Citing *Matter of Shin*, 11 I&N Dec. 686 (D.D. 1966), the director noted that a position does not qualify as a specialty occupation if the only reason for requiring a bachelor's degree is to acquire a higher-caliber employee.

On appeal, counsel states that the proffered position requires a person with a bachelor's degree in business administration. According to counsel, the job duties are business-related, requiring analytical and problem solving abilities that are associated with the attainment of a bachelor's degree in business administration. Counsel contends that the submitted advisory opinion of Global Education Group, Inc. states that the proffered position requires an "applicant to hold a minimum of a U.S. Bachelor's degree in [B]usiness [A]dministration." Counsel stresses that the director failed to review the job duties. The position, counsel states, requires the theoretical and practical application of a body of highly specialized knowledge and that the beneficiary acquired this knowledge after attaining a baccalaureate and master's degree in business administration. Finally, counsel states that the director mistakenly relied on the *Handbook* to find that the position is not a specialty occupation because the "formal education and experience of top executives varies as widely as the nature of their responsibilities." Counsel contends that the *Handbook* also states:

some top executives in the public sector have a background in public administration or liberal arts. Other might have a background related to their jobs. For example, a health commissioner might have a graduate degree in health services administration or business administration.

Counsel maintains that the proffered position is business-related; consequently, the minimum requirement for the position would be a baccalaureate degree in business administration.

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 in a specific specialty is the normal minimum requirement for entry into the particular position; a specific 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)).

As previously discussed, 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. Based on the evidence in the record, the petitioner has never explicitly stated that a candidate must possess a baccalaureate degree in a specific specialty. In the petitioner's June 5, 2003 letter, it merely stated:

We are very impressed with [the beneficiary's] high level of education and past work experience, and we feel he has the qualifications to assist in the continued growth

The letter continued:

[The beneficiary] was also awarded his [m]aster's [d]egree in [b]usiness [a]dministration from the Florida International University (FIU) and his bachelor[s] degree of [sic] [b]usiness [a]dministration from the "Universidad del Norte" in Columbia.

On appeal, counsel also states that a bachelor's degree is required for the proffered position, though counsel does not consistently state that the baccalaureate degree must be in a specific specialty. Counsel's June 25, 2003 letter plainly stated a "bachelor's degree in business administration with a concentration in finance is the minimum academic preparation for the position." Nevertheless, nowhere in the record does the petitioner confirm counsel's assertions that a specific baccalaureate degree is required for the proffered position. 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). Consequently, besides counsel's unsubstantiated assertions, the record shows that the petitioner never asserted that candidates for the position of vice-president of operations must possess a bachelor's degree in a specific specialty. Therefore, based on the evidence in the record, the petitioner fails to establish the first criterion of 8 C.F.R. §§ 214.2(h)(4)(iii)(A).

In addition, a degree in business administration alone without a specialty does not qualify a job as a specialty occupation because business administration is not a specialized field of study. A position must realistically require knowledge, both theoretical and applied, which is almost exclusively obtained through studies at an institution of higher learning. The depth of knowledge and length of studies required are best typified by a degree granted by such institution at the baccalaureate level. It must be demonstrated that the position requires a precise and specific course of study which relates directly and closely to the position in question. Since there must be a close corollary between the required specialized studies and the position, the requirement of a degree of generalized title, such as business administration or liberal arts, without further specification, does not establish eligibility. *Matter of Hertz Assoc.*, 19 I&N Dec. 558, 560 (Comm. 1988).

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. As previously discussed, the record reveals that the petitioner does not require a bachelor's degree in a specific specialty. Accordingly, the petitioner will not be able to establish that it has a degree requirement that is common to the industry or that its position is so complex or unique that it can be performed only by an individual with a degree in a specific specialty.

The third criterion requires that the employer establish that it normally requires a bachelor's degree or its equivalent in a specific specialty for the position. Because the petitioner does not require a bachelor's degree in a specific specialty, it fails to establish the third criterion at 8 C.F.R. § 214.2(h)(4)(iii)(A).

The fourth criterion of 8 C.F.R. §§ 214.2(h)(4)(iii)(A) 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. The record evinces that the petitioner has not established this criterion because the knowledge required to perform the duties of the proffered position is not associated with the attainment of a baccalaureate or higher degree in a specific specialty. Once again, the petitioner does not require that a candidate possess a bachelor's degree in a specific specialty to perform the duties of the offered position.

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.