



U.S. Citizenship  
and Immigration  
Services

D2



FILE: SRC 02 141 55273 Office: TEXAS SERVICE CENTER Date: 11/14/14

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

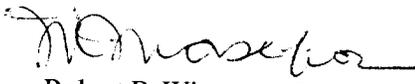
PETITION: Petition for a Nonimmigrant Worker Pursuant to Section 101(a)(15)(H)(i)(b) of the  
Immigration and Nationality Act, 8 U.S.C. § 1101(a)(15)(H)(i)(b)

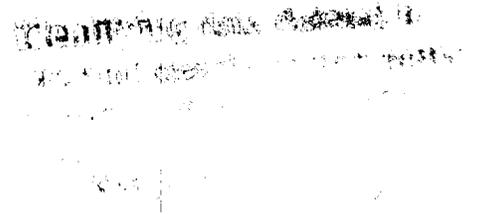
ON BEHALF OF PETITIONER:



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



**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 retail convenience store 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)(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 manager. Evidence of the beneficiary's duties includes, in part: the Form I-129; the March 22, 2002 letter 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 managing the daily operations of a convenience store that sells groceries; hiring, firing, training, coordinating and supervising employees; resolving customer complaints; establishing policies with wholesalers; working with banks, attorneys, accountants, advertisers, governmental agencies, and the Chamber of Commerce; and last, supervising payroll.

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 found that the duties of the proffered position resemble those performed by a retail manager, a position that does not require a bachelor's degree.

On appeal, counsel states that the director's decision to deny the petition is erroneous based on the facts and the law. Counsel contends that the regulations and other relevant legal resources do not support the director's decision. Counsel mentions that the petitioner's investors desire a person with a bachelor's degree and experience. According to counsel, every American community has a similar business. Last, counsel contends that the director has neither the authority nor qualifications to act in this area.

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)).

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. A review of the petitioner's statements seem to indicate that it does not require a bachelor's degree in a specific specialty for the proffered position. In the September 16, 2002 letter submitted in response to the request for evidence, the petitioner stated it required certain "exact minimum qualifications" of a candidate. But nowhere in this description of "exact minimum qualifications" did the petitioner declare that it required a bachelor's degree in a specific specialty. The letter continued to state:

A person who did not hold the beneficiary's degrees could successfully perform the duties of the position if he met the qualifications above described and the detailed degrees above described.

Although the petitioner claimed to have set forth "detailed degrees above described," no such description detailing degrees is set forth in the letter. And this claim of describing detailed degrees is inconsistent with the passage in the September 16, 2002 letter that plainly stated:

[W]e have no requirement of a specific degree for the applicant, we have no requirement of a specific degree as an industrial standard for this position other than the fulfillment of the job duties/functions and the minimum qualifications above set forth.

Although this passage referenced "minimum qualifications above set forth," as already discussed, nowhere in the "exact minimum qualifications" description did the petitioner attest that it required a bachelor's degree in a specific specialty. Because the petitioner's statements suggest that it does not require a bachelor's degree in a specific specialty, it fails to establish that a baccalaureate or higher degree or its equivalent in a specific specialty is the normal minimum requirement for entry into the proffered position.

Next, 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. The AAO routinely consults the *Handbook* for its information about the duties and educational requirements of particular occupations.

A careful review of the *Handbook* discloses that the duties of the proffered position are performed by general and operations managers, positions that do not require a bachelor's degree. Under the category of "grocery stores" in the DOL's Career Guide to Industries (CGI), general and operations managers are portrayed as responsible for the efficient and profitable operation of grocery stores. Working through their department managers, general and operations managers may set store policy, hire and train employees, develop merchandising plans, maintain good customer and community relations, address customer complaints, and monitor the store's profits or losses. These duties are similar to those of the proffered position. For example, "hiring, firing, training, coordinating and supervising employees' activities" and "settling complaints of customers" are two of the beneficiary's proposed duties.

The DOL reports that college graduates will fill most new management positions. Employers increasingly seek graduates of college and university, junior and community college, and technical institute programs in food marketing, food management, and supermarket management. In addition, entry-level workers may advance to management positions, depending on experience and performance. Opportunities for advancement to management jobs exist in both large supermarket chains and in small, independent grocery stores. Thus, based on this information, the petitioner fails to establish the first criterion: a baccalaureate or

higher degree or its equivalent is the normal minimum requirement for entry into the proffered position because employers accept graduates from junior and community colleges.

To establish the second criterion - that a specific degree requirement is common to the industry in parallel positions among similar organizations - counsel states that every American community has a similar business. Counsel's opinion is not relevant in establishing that a specific degree requirement is common to the industry in parallel positions among similar organizations. Moreover, the statements of counsel on appeal or in a motion are not evidence and thus are not entitled to any evidentiary weight. *See INS v. Phinpathya*, 464 U.S. 183, 188-89 n.6 (1984); *Matter of Ramirez-Sanchez*, 17 I&N Dec. 503 (BIA 1980). Thus, the petitioner fails to establish the second criterion.

No evidence is in the record that would show the proffered position is so complex or unique that it can be performed only by an individual with a degree. Nor is there evidence in the record to establish the third criterion at 8 C.F.R. § 214.2(h)(4)(iii)(A): that the petitioner normally requires a degree or its equivalent for the position.

The fourth criterion at 8 C.F.R. § 214.2(h)(4)(iii)(A) requires that the petitioner establish 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. As already discussed, the duties of the proffered position are performed by general and operations managers, positions that do not require a specific bachelor's degree. Therefore, the petitioner fails to establish the fourth criterion.

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.

The AAO wishes to note the following about counsel's statements on appeal. Not one scintilla of evidence is submitted to substantiate counsel's claims that the director has neither authority nor qualifications to act in this area and that the regulations and other relevant legal resources do not support the director's decision. The statements of counsel on appeal or in a motion are not evidence and thus are not entitled to any evidentiary weight. *INS v. Phinpathya, id; Matter of Ramirez-Sanchez, id.* Finally, the desire on the part of investors to employ a person possessing a bachelor's degree and experience is not relevant in this proceeding.

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.