



U.S. Citizenship
and Immigration
Services

23



FILE: SRC 03 043 52780 Office: TEXAS SERVICE CENTER Date: 4/11/2011

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.

Mari Johnson

for Robert P. Wiemann, Director
Administrative Appeals Office

Identifying data deleted to
prevent disclosure of information
that is exempt from public release

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 software development and sales company that seeks to employ the beneficiary as a vice president of sales and marketing. 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 and submits additional evidence.

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 sales and marketing. Evidence of the beneficiary's duties includes, in part: 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 analyzing business or operating procedures to devise the most efficient methods of accomplishing work; organizing and documenting findings of studies and preparing recommendations for implementing new systems and products; developing sales and distribution channels programs; developing and managing strategic alliances; and developing marketing programs and marketing communications to support partner programs. The petitioner stated in its October 15, 2002 letter:

The usual minimum requirements for performance of the job duties as a Vice President of Sales [and] Marketing include a bachelor's degree. Our company also requires management and business development skills experience in addition to a bachelor's degree. Only a person with a bachelor's degree and relevant work experience as a consultant in management, business development, and other specialties would be able to perform successfully in the position of Vice President of Sales [and] Marketing.

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 *Occupational Outlook Handbook* (the *Handbook*), the director stated that there is no requirement of a bachelor's degree for a position as a manager. Furthermore, the director stated that the background needed for a sales representative job varies by product line and market. The director found that the petitioner failed to show a past practice of requiring a bachelor's degree in a specific specialty or an industry-wide requirement of a bachelor's degree in parallel positions among similar organizations.

On appeal, counsel stated that this is an executive sales and marketing position and the *Handbook* states that most top executive positions require a bachelor's or higher degree. Counsel contends this also proves an industry-wide requirement of a bachelor's degree. Referring to the petitioner's June 25, 2002 letter to the general manager of L.K. Jordan & Associates, counsel claims that it demonstrated that the petitioner requires a bachelor's degree. Finally, counsel contends the position's duties are complex, requiring a bachelor's degree.

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 mentioned, 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 petitioner's October 15, 2002 and June 25, 2002 letters did not state that candidates are required to hold a bachelor's degree in a specific specialty. In the appeal brief, counsel refers to the petitioner's June 25, 2002 letter to establish a bachelor's degree requirement. In this letter, the petitioner mentioned the following about the proposed position:

[W]e would expect the candidate to be [g]raduate status, but since we have very different degree names and structures in Europe, we will leave it to [you] to define what education requirements and type of degree should be used in the selection criteria. For example, in Europe we would expect a minimum of Baccalaureate or 'A' Levels, plus a First or Second Class Honours.

The quoted passage in the letter does not establish that a bachelor's degree in a specific specialty is required by the petitioner. Nor did the petitioner's October 15, 2002 letter establish a specific baccalaureate degree requirement. The record of proceeding shows, unquestionably, that candidates for the position of vice president of sales and marketing are not required to possess a bachelor's degree in a specific specialty. Accordingly, the petitioner fails to establish the first criterion at 8 C.F.R. § 214.2(h)(4)(iii)(A).

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. Consequently, 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 degree or its equivalent for the position. Because the record discloses that 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 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 position is not associated with the attainment of a baccalaureate or higher degree in a specific specialty. Again, the petitioner does not require that candidates possess a bachelor's degree in a specific specialty to perform the proffered position.

The AAO wishes to note that the job description provided by the petitioner in the June 25, 2002 letter differs dramatically from the description provided in the October 15, 2002 letter and the description provided by counsel in the response to the request for evidence. Doubt cast on any aspect of the petitioner's proof may, of course, lead to a reevaluation of the reliability and sufficiency of the remaining evidence offered in support of the visa petition. It is incumbent upon the petitioner to resolve any inconsistencies in the record by independent objective evidence, and attempts to explain or reconcile such inconsistencies, absent competent objective evidence pointing to where the truth, in fact, lies, will not suffice. *Matter of Ho*, 19 I&N Dec. 582, 591-92 (BIA 1988).

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 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.