



U.S. Citizenship  
and Immigration  
Services

[REDACTED]

FILE: [REDACTED] Office: VERMONT SERVICE CENTER Date: 4/13/2014

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:

[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

**DISCUSSION:** The director of the service center denied the nonimmigrant visa petition on May 21, 2004. The Administrative Appeals Office (AAO) incorrectly rejected the appeal as untimely filed. On August 3, 2004, the AAO reopened the matter on its own motion and provided the petitioner an additional 30-day period in which to supplement the appeal. As of this date, nothing further has been received. The matter is now before the AAO on appeal. The appeal will be dismissed. The petition will be denied.

The petitioner provides beauty enhancement services and products. It seeks to employ the beneficiary as an operations 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 an operations 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 implementing industry-specific software for recordkeeping, organizing information, and billing; directing, planning, and implementing policies and objectives in keeping with the business plan; directing business activities; analyzing operations and evaluating company performance to determine cost reductions, investment needs, and other improvements; directing and coordinating financial and budget activities to fund operations, maximize investments, and increase efficiency; assigning responsibilities to subordinates, and overseeing production, sales, pricing, and distribution of products; supervising non-merchandising activities such as advertising, purchasing, credit, and accounting; recruiting, supervising, and aligning staff with core business needs; and participating in marketing managing risk exposure. The petitioner stated that the beneficiary was qualified for the proffered position based on her baccalaureate degree in hotel, restaurant, and tourism administration with majors in accounting and human resources management.

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). The director stated that the excerpt from the Department of Labor's (DOL) *Career Guide to Industries* about management and public relations positions was inapplicable; it pertained to consulting services, whereas the beneficiary will be the proprietor of a salon and spa. The director found more relevant the *Occupational Outlook Handbook's* (the *Handbook*) description of personal appearance workers who operate and manage salons, and stated that the *Handbook* reported that a bachelor's degree in a specific specialty is not required for a personal appearance worker. The director found unpersuasive [REDACTED] statement that the proffered position qualified as a specialty occupation. According to the director, CIS considers an evaluation of a person's foreign education as an advisory opinion; however, whether a position qualifies as a specialty occupation is determined according to the law. The director also found unpersuasive the submitted job postings: the positions in the postings were not comparable to the proffered position, some of the positions did not require a specific baccalaureate degree, and the companies differed from the petitioning entity. The director stated that the petitioner neither established that the proffered position required the minimum of a baccalaureate degree in a specific study nor that the industry required such a degree. Last, the director mentioned that the proffered position's duties were not so specialized and complex that knowledge required to perform them is usually associated with the attainment of a baccalaureate degree.

On appeal, counsel states that the director incorrectly applied the law and failed to consider the evidence. Counsel delineates the proffered position's duties and also describes the *Occupational Information Network's* (*O\*Net*) definition of a general and operations manager. Counsel contends that the proffered position's management duties include marketing, research, analysis, and promotional services as well as the theoretical and practical application of specialized knowledge such as business and management accounting, finances,

organizational behavior and planning, and principles of economics. Counsel emphasizes that the beneficiary will control and manage the business. Counsel states that the qualifications of the evaluator, [REDACTED] complied with the regulations, and counsel furthermore states that [REDACTED] evaluation discussed in detail the proffered position's duties and the coursework required for successful performance of them. Counsel stresses that the proffered position is at the executive management level, and will not entail delivery of beauty services or direct sales. Counsel contends that although the *Career Guide to Industries* excerpt pertains to outside consultants and independent contractors, it illustrated the functions, responsibilities, and training requirements routinely required for most management jobs. Counsel points out that the excerpt stated that entry-level positions in management require a bachelor's degree if workers have little managerial responsibility. Counsel claims that the excerpt stated that in most management positions where workers begin as consultants, they usually hold graduate degrees, and counsel claims that the beneficiary's duties resemble those of a management consultant holding a graduate degree. Counsel explains that the submitted job postings showed that operations managers perform similar duties and functions and are required to possess basic core skills. The operational and managerial aspects of the position, counsel states, are not diminished because the business relates to beauty services and the distribution of products. Referring to the *O\*Net's* description of an operations manager, counsel states that it mentions that the duties of the position are too diverse and general for classification in any one functional area of management or 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 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)).

Counsel refers to the *O\*Net's* definition of a general and operations manager to establish that the proffered position qualifies as a specialty occupation. However, the *O\*Net* provides only general information regarding the tasks and work activities associated with a particular occupation, as well as the education, training, and experience required to perform the duties of that occupation. The *Handbook* provides a more comprehensive description of the nature of a particular occupation and the education, training, and experience normally required to enter into and advance within the occupation.

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.

A careful review of the *Handbook* discloses that the duties of the proffered position are indeed performed by general and operations managers who plan, direct, or coordinate the operations of companies. Their duties include formulating policies, managing daily operations, and planning the use of materials and human resources. The *Handbook* reports:

The formal education and experience of top executives varies as widely as the nature of their responsibilities. Many top executives have a bachelor's or higher degree in business administration or liberal arts.

The *Handbook* continued:

Because many top executive positions are filled by promoting experienced, lower level managers when an opening occurs, many top managers have been promoted from within the organization. In industries such as retail trade or transportation, for instance, it is possible for individuals without a college degree to work their way up within the company and become managers. However, many companies prefer that their top executives have specialized backgrounds and, therefore, hire individuals who have been managers in other organizations.

Thus, the *Handbook* explains that candidates for general and operations manager positions are not required to hold a bachelor's degree in a specific specialty. The petitioner therefore 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 of operations manager.

Referring to the evaluation by [REDACTED] counsel contends that the operations manager position qualifies as a specialty occupation because [REDACTED] opined that a bachelor's degree in business or a business-related discipline would be required as the minimum requirement for entry into the position. In the evaluation, [REDACTED] described the duties of the proffered position, assigning to each duty a specific study and training area. [REDACTED] evaluation concluded by stating that a candidate must possess a bachelor's degree in business to perform the duties of the proffered position. However, [REDACTED] failed to provide independent evidence that would corroborate and support his conclusion. Simply going on record without supporting documentary evidence is not sufficient for the purpose of meeting the burden of proof in these proceedings. *Matter of Treasure Craft of California*, 14 I&N Dec. 190 (Reg. Comm. 1972).

Other than assigning a specific study and training area to each of the proffered position's duties, in the evaluation [REDACTED] never explained why the proffered position required a person with a bachelor's degree in a business-related field. Nor does [REDACTED] expound on why the proffered position could not be performed by a person without formal education. After all, [REDACTED] conceded in the evaluation that operations manager positions:

[R]equire a person with management capabilities attained either through years of experience or formal education. Ideally, anyone occupying an operations management position should have a minimum of a bachelor[’s] degree in a business discipline.

Thus, the evaluation fails to establish the first criterion at 8 C.F.R. §§ 214.2(h)(4)(iii)(A).

Another of counsel’s assertions is that, although the excerpt from the *Career Guide to Industries* pertains to outside consultants and independent contractors, it illustrated the functions, responsibilities, and training requirements for most management jobs. Counsel points out that the excerpt stated that entry-level managerial positions require a bachelor’s degree, and claims:

In the context of the [p]etitioner’s business, the beneficiary will perform duties typical to those of a management consultant requiring the attainment of a graduate degree as outlined in the excerpt.

Counsel further claims that the operational and managerial aspects of the proffered position are not diminished because the business relates to beauty services and the distribution of products.

Counsel’s assertions are not persuasive. The description and educational requirements of management and public relations services positions in the *Career Guide to Industries* differs dramatically from the proffered position. The beneficiary will not work for a consulting firm that provides services to various clients such as state, local and federal governments, hospitals, universities, unions, and foreign governments and businesses. Nor does the petitioner require a graduate degree for the proffered position.

The director properly found that the job postings failed to establish the second criterion - that a specific degree requirement is common to the industry in parallel positions among similar organizations. None of the postings has a parallel position in a similar organization to the petitioning entity. Most of the positions in the postings do not have the same degree requirement as the petitioner. For example, Solix Systems, a provider of enterprise solutions, prefers but does not require a bachelor’s degree. J&B Software, a provider of check/lockbox processing services, requires either a bachelor’s degree or equivalent experience. Checkcare Systems’ posting does not disclose the nature of the company. Scholastic Book Fairs, a provider of books, does not require a bachelor’s degree in a specific specialty. Stryker Corporation develops, manufactures and sells surgical and medical products. Management Recruiters International (MRI) requires a bachelor’s degree in engineering for the operations manager of a power plant, and its duties differ fundamentally from the proffered position. Another MRI posting for an operations manager does not require a bachelor’s degree in a specific specialty. Mosaic Sales Solutions is a marketing company. Interface Data Systems, a manufacturer of membrane switches, requires a bachelor’s degree in operations, engineering, materials management, or a related field and APICS certification. Maybelline sought a candidate with a bachelor’s degree; however, it did not require a specific specialty. L’Oreal USA Corporate did not require a bachelor’s degree for the manager of general services, and the duties of its position are dramatically different from the proffered position. Finally, New Moon Foundation, a non-profit, provides education and land restoration.

Contrary to counsel's statement, that the job postings demonstrate that operations managers perform similar duties and functions and are required to possess basic core skills, the AAO finds that operations managers perform diverse duties, depending on the needs of the company. For example, the duties of the operations manager of a power plant differ dramatically from those of an operations manager in a beauty shop.

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. Other than [REDACTED] evaluation, which the AAO has already discussed, there is no evidence in the record that would establish the fourth criterion. The petitioner's certificate of incorporation, financial and licensing records, insurance policy, lease agreement, bill of sale, magazine article, brochures, and photographs do not establish that the nature of the position's duties are so specialized and complex that the knowledge required to perform the duties is usually associated with the attainment of a baccalaureate degree. Consequently, the petitioner fails to establish the fourth criterion at 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.

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.