



U.S. Citizenship  
and Immigration  
Services

07



FILE: SRC 03 032 50236 Office: TEXAS SERVICE CENTER Date: AUG 31 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.

*Mari Johnson*

Robert P. Wiemann, Director  
Administrative Appeals Office

identifying data deleted to  
prevent clearly unwarranted  
invasion of personal privacy

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**DISCUSSION:** The service center director 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 steamship agency that seeks to extend its authorization to employ the beneficiary as an assistant operations manager/traffic inspector. The petitioner endeavors to classify the beneficiary as a nonimmigrant worker in a specialty occupation pursuant to § 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 and the beneficiary is not qualified to perform a specialty occupation. On appeal, counsel submits a brief.

The AAO will first address the director's conclusion that the position is not 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 assistant operations manager/traffic inspector. Evidence of the beneficiary's duties includes the I-129 petition 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 petitioner's transportation operations. Although not explicitly stated, it appears that the petitioner requires a baccalaureate degree or its equivalent in marine transportation for the proffered position.

The director found that the proffered position was not a specialty occupation. Citing to the Department of Labor's (DOL) *Occupational Outlook Handbook, Online Edition, 2002-2003* edition, the director noted that the minimum requirement for entry into the position was not a baccalaureate degree or its equivalent in a specific specialty. 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, in part, that the proffered position is now that of a Port Manager, which combines the duties of a Marine Cargo Inspector and a Transportation Manager, as described in the *Handbook*, and submits excerpts from the DOL's *O\*Net*. Counsel further states that the record contains an opinion and letters from industry experts to demonstrate that the proffered position requires the minimum of a baccalaureate degree in marine transportation. Counsel further states that the highly complex duties, which include, in part, conducting inspections, scheduling, safety assurance and compliance, and business development, are clearly consistent with a specialty occupation.

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. The AAO does not concur with counsel that the proffered position, which is similar to that of a transportation inspector, is a specialty occupation. A review of the Transportation Inspector job description in the *Handbook*, 2004-2005 edition, at page 662, finds that the most significant source of education or training is work experience in a related occupation. No evidence in the *Handbook* indicates that a baccalaureate or higher degree, or its equivalent, is required for a transportation inspector job.

Counsel's statement on appeal that the beneficiary "is now offered a promotion to a higher management position, Port Manager, a specialty occupation akin to Operations/Branch Manager" is noted. The proffered position on the petition and on the labor condition application, however, is that of an "Assistant Operations Manager/Traffic Inspector." The purpose of the request for evidence is to elicit further information that

clarifies whether eligibility for the benefit sought has been established. 8 C.F.R. 103.2(b)(8). When responding to a request for evidence, a petitioner cannot offer a new position to the beneficiary, or materially change a position's title or its associated job responsibilities. The petitioner must establish that the position offered to the beneficiary is a specialty occupation. *See Matter of Michelin Tire Corp.*, 17 I&N Dec. 248, 249 (Reg. Comm. 1978). If significant changes are made to the initial request for approval, the petitioner must file a new petition rather than seek approval of a petition that is not supported by the facts in the record.

It is also noted that counsel indicates that the beneficiary will be the [REDACTED] office. This information conflicts with the information reflected on the petitioner's labor condition application, which specifies the beneficiary's work location as Houston. There is no explanation for this discrepancy. 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).

Counsel's reference to and assertions about the relevance of information from *O\*Net* and the *DOT* are not persuasive. Neither the *DOT's* SVP rating nor a [REDACTED] category indicates that a particular occupation requires the attainment of a baccalaureate or higher degree, or its equivalent, in a specific specialty as a minimum for entry into the occupation. An SVP rating and Job Zone category are meant to indicate only the total number of years of vocational preparation required for a particular position. Neither classification describes how those years are to be divided among training, formal education, and experience, nor specifies the particular type of degree, if any, that a position would require.

The record contains an opinion from [REDACTED] a consultant at Business and [REDACTED] Communication, who states, in part, that the position of Port Manager qualifies as a specialty occupation. In support of this statement [REDACTED] provides an investigative report that he authored entitled "Occupational Investigative [REDACTED] for Ship Agency." In this investigative report, [REDACTED] discusses the position of "Port Manager" and concludes that this position requires a "four-year college degree." Dr. [REDACTED] comments are noted. Again, as the proffered position was not originally described as that of a Port [REDACTED] opinion carries no weight in this proceeding.

Regarding parallel positions in the petitioner's industry, the petitioner submitted the following: a letter from [REDACTED] CEO of Sealift Inc. and owner of 11 U.S. Flag vessels, who asserts, in part, that the position of an "Agency Port Manager" requires a bachelor's degree or an equivalent thereof; and an email from Ken [REDACTED] c., who states, in part, that the job of Port Manager is becoming more complex. Neither of these documents, however, demonstrates that the proffered position is a specialty occupation because neither writer provides evidence in support of his assertions. Simply going on record without supporting documentary evidence, however, 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).

As the record indicates that the instant petition is a request to extend previously approved employment, it is also noted that the AAO is not required to approve applications or petitions where eligibility has not been demonstrated, merely because of prior approvals that may have been erroneous. *See, e.g., Matter of Church Scientology International*, 19 I&N Dec. 593, 597 (Comm. 1988). It would be absurd to suggest that CIS or any agency must treat acknowledged errors as binding precedent. *Sussex Engg. Ltd. v. Montgomery*, 825 F.2d 1084, 1090 (6th Cir. 1987), *cert. denied*, 485 U.S. 1008 (1988).

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. On appeal, counsel submits documents describing the educational background and related employment experience of the petitioner's port managers. The record, however, does not contain any evidence of the petitioner's past hiring practices and therefore, the petitioner has not met its burden of proof in this regard. See *Matter of Treasure Craft of California*, 14 I&N Dec. 190 (Reg. Comm. 1972).

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 do not appear so specialized and complex as to require the highly specialized knowledge associated with a baccalaureate or higher degree, or its equivalent, in a specific specialty. Therefore, the evidence does not establish that the proffered position is a specialty occupation under 8 C.F.R. § 214.2(h)(4)(iii)(A)(4).

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 will now address the director's conclusion that the beneficiary is not qualified to perform the duties of a specialty occupation. As stated previously, a review of the Transportation Inspector job description in the *Handbook* finds that the most significant source of education or training is work experience in a related occupation. The record indicates that the beneficiary has maritime training and related employment experience, including five years of employment as a "Traffic Inspector/Assistant Operations Manager," and, therefore, qualifies for the proffered position. The record cannot be approved, however, because the proffered position is not a specialty occupation.

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.