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U.S. Citizenship
and Immigration
Services

D2

DEC 08 2004

FILE: SRC 03 215 51554 Office: TEXAS SERVICE CENTER Date:

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:

SELF-REPRESENTED

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 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 retail gasoline and food service company that seeks to employ the beneficiary as a general and operations manager. The petitioner 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, the petitioner submits a statement.

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 general and operations manager. 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 operations of the company; formulating short-term and long-term policies; managing daily operations; planning the use of human resources and material; controlling inventory; purchasing and ensuring stocking of merchandise; hiring, training, and retaining staff; negotiating with vendors; engaging in fiscal planning; complying with corporate and payroll tax requirements; and managing the daily administration of the company. The petitioner indicated that a qualified candidate must have a bachelor's degree in business.

The director found that the proffered position was not a specialty occupation. Citing to the Department of Labor's *Occupational Outlook Handbook (Handbook)*, 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, the petitioner resubmits documentation to establish that a bachelor's degree is an industry standard for the proffered position. The petitioner also submits a letter from a competitor stating that it requires a bachelor's degree for individuals in the same position.

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 position of operations manager is included in the top executives job description. A review of the duties of an operations manager in the *Handbook* confirms the accuracy of the director's assessment that the job duties parallel those responsibilities of the proffered position. No evidence in the *Handbook* indicates that a baccalaureate or higher degree, or its equivalent, in a specific specialty is required for an operations manager job. The *Handbook* does indicate that a bachelor's degree is normally required for top executives, however, that degree could be in a wide range of specialties. As noted above, CIS interprets the degree requirement to mean not just any baccalaureate or higher degree, but one in a specific specialty that is directly related to the proffered position.

Regarding parallel positions in the petitioner's industry, the petitioner submitted information from three Internet sites (Circle K, 7-Eleven, and ExxonMobil). The listing for a store manager with Circle K did not state the qualifications required, but in reviewing the website, the AAO notes that the educational requirements for this position include a high school diploma or GED. The position with 7-Eleven is not comparable to the proffered position. The listing states that the position of field consultant involves running a \$10 million business with 100 or more employees and overseeing the operation of eight to ten 7-Eleven stores. In addition, while the information states that a bachelor's degree is required, it does not state that the degree must be in a specific specialty. Finally, the listing for ExxonMobil indicates that it hires college graduates in a wide variety of disciplines, and that includes in the marketing and business fields. The petitioner did not, however, establish that any of these positions are parallel to the proffered position. On appeal, the petitioner submitted a letter from a competitor. No evidence was submitted to establish that this company is similar to the petitioner or that the duties of its manager are similar to the proffered position. Finally, the company provided no documentary evidence regarding its hiring practices. 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. In its response to the director's request for evidence, the petitioner stated that it has "traditionally employed only college graduates with Bachelor[']s degrees in Business to manage our locations," but the record does not contain any documentary 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)(4)(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 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.