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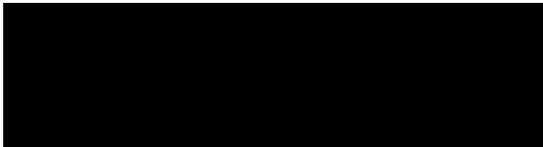
DEC 14 2004

FILE: SRC 03 226 51385 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:



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 corporation engaged in the construction business. In order to employ the beneficiary as a director of administrative operations, 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 on the basis that the petitioner had failed to establish that the proffered position met the requirements of a specialty occupation.

On appeal, counsel contends that the director's decision ignores decisive facts in the record and relevant law.

The director's decision to deny the petition was correct. The AAO based this determination upon its consideration of the entire record of proceeding before it, which includes: (1) the petitioner's Form I-129 and the supporting documentation filed with it; (2) the director's request for additional evidence (RFE); (3) the matters submitted in response to the RFE; (4) the director's denial letter; and the (5) the Form I-290B and counsel's brief with its appended documentary exhibits. The letter submitted on appeal by the beneficiary's relative does not present matters that the AAO may consider.

Section 101(a)(15)(H)(i)(b) of the Act, 8 U.S.C. § 1101(a)(15)(H)(i)(b), provides a nonimmigrant classification for aliens who are coming temporarily to the United States to perform services in 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.

Thus, it is clear that Congress intended this visa classification only for aliens who are to be employed in an occupation that requires the theoretical and practical application of a body of highly specialized knowledge that is conveyed by at least a baccalaureate or higher degree in a specific specialty.

Consonant with section 214(i)(1) of the Act, the regulation at 8 C.F.R. § 214.2(h)(4)(ii) states that a specialty occupation means an occupation "which [1] requires *theoretical and practical application of a body of highly specialized knowledge* in fields of human endeavor including, but not limited to, architecture, engineering, mathematics, physical sciences, social sciences, medicine and health, education, business specialties, accounting, law, theology, and the arts, and which [2] requires *the attainment of a bachelor's degree or higher in a specific specialty*, or its equivalent, as a minimum for entry into the occupation in the United States." (Italics added.)

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) has consistently interpreted 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. Applying this standard, CIS regularly approves H-1B petitions for qualified aliens who are to be employed as engineers, computer scientists, certified public accountants, college professors, and other such professions. These occupations all require a baccalaureate degree in the specific specialty as a minimum for entry into the occupation and fairly represent the types of professions that Congress contemplated when it created the H-1B visa category.

According to the petitioner’s July 24, 2003 letter of support that it submitted with the Form I-129, the beneficiary’s duties and responsibilities will be to:

[P]lan, direct, coordinate and oversee the activities of personnel responsible for our organization’s administrative support services such as bookkeeping, insurance, job site personnel/equipment availability, payroll, documentation and contract administration, etc.

The letter indicated that the beneficiary would oversee the activities of 36 staff members who have been responsible for producing a gross income of up to \$6,000,000. It also asserted that the director of administrative operations “must have at the very least a Bachelor’s in Business Administration, Management, or [a] similar discipline.”

In its letter of response to the RFE, the petitioner provided the following expanded information about the proffered position:

The Director of Administrative Operations directs, controls, and coordinates the functions of seven middle/supervisory management personnel to insure that their sections within the company structure operate smoothly and efficiently for the attainment of the company goals.

Responsible directly to the President/CEO, the Director's duties include:

- 1.) Timely preparation of monthly reports based upon data supplied by section management.
- 2.) Assist CEO in formulation and implementation of medium and long-term company goals.
- 3.) Daily administration of current contracts, compilation and distribution of Critical Path Analyses relative to each contract to ensure the timely arrival on site of equipment, materials, and personnel.
- 4.) Assist the CEO in the negotiations [sic], purchase, and administration of contracts for procurement of equipment, material, and insurance coverages.
- 5.) Assist [the] CEO in the process of hiring and firing of personnel, administration of labor, safety, and environmental laws and regulations, and general employee welfare.
- 6.) Submission of required regulatory reports, and liaison with external agencies, such as auditors, etc.

Of the seven management personnel referred to above, all but two hold at least a bachelor's degree. Their sections are data entry/payroll, data entry/insurance, estimation/project management, data entry/controller, and building coordinator. The other two field supervisory managers have Associate's degrees plus ample experience in their area of expertise.

The petitioner has not satisfied the criterion at 8 C.F.R. § 214.2(h)(4)(iii)(A)(I), which assigns specialty occupation status to a position for which the normal minimum entry requirement is a baccalaureate or higher degree, or the equivalent, in a specific specialty closely related to the position's duties.

The AAO recognizes the *Handbook* as an authoritative source on the duties and educational requirements of a wide variety of occupations. Accordingly, the AAO consulted the current, 2004-2005 edition of the *Handbook* for information relevant to the proffered position, and it determined that, to the extent it is described in the record of proceeding, the proffered position generally comports with the administrative services manager occupation as described at pages 21 to 23 of the 2004-2005 edition. For purposes of the criterion at 8 C.F.R. § 214.2(h)(4)(iii)(A)(I), the critical piece of information, at page 22 of the *Handbook*, is that educational requirements for these managers "vary widely, depending on the size and complexity of the organization," and that those who manage "highly complex services, such as contract administration, generally need at least a bachelor's degree in business, human resources, or finance."

The evidence of record is too generalized and generic to support counsel's summary description of the proffered position as one involving "highly complex services." Even if the position fit that category,

however, it could not be accurately characterized as one for which the normal minimum entry requirement is a baccalaureate or higher degree, or the equivalent, in a specific specialty. This is because the *Handbook* identifies a generalized bachelor's in business administration (BBA) as one of the qualifying degrees and the petitioner has also identified the BBA as an acceptable degree (*see* the petitioner's letter of support filed with the Form I-129 and its letter of reply to the RFE).

Contrary to counsel's view, the director was correct to apply *Matter of Ling*, 13 I&N Dec. 35 (Reg. Comm. 1968). Because it was published as a precedent decision, *Matter of Ling* is binding upon CIS employees in their administration of the Act, in accordance with 8 C.F.R. § 103.3(c). Furthermore, a more recent precedent decision, *Matter of Michael Hertz Associates*, 19 I&N Dec. 558 (Comm. 1988), also directly supports the principle that the requirement of a degree with a generalized title, such as business administration or liberal arts, without further specification, does not establish the position as a specialty occupation, because such a broad degree does not establish a close corollary between the required specialized studies and the position. Because the record in this proceeding indicates the acceptability of a generalized degree in business administration without a major or concentration in a particular business specialty, the specialty degree requirement of 8 C.F.R. § 214.2(h)(4)(iii)(A)(1) has not been met.

Counsel's reliance upon *Tapis International v. INS*, 94 F. Supp. 2d 172 (2000) is misplaced. This case addressed a factual situation materially different than the present petitioner's. In addition to one of several degrees that included a BBA, the position litigated in *Tapis* required *specialized experience in a specific specialty, namely, design*. That is not the situation here.

Counsel's RFE reply's references to the *O\*Net* SVP rating and Indiana career information have little probative value. As clearly indicated in the *O\*Net*'s description of this measure, an SVP rating is meant to indicate only the total number of years of vocational preparation required for a particular position. It does not describe how those years are to be divided among training, formal education, and experience, and it does not specify the particular type of degree, if any, that a position would require. The Indiana information does no more than corroborate the *Handbook*'s information about the general range of qualifying educational credentials for administrative service manager positions.

Because the evidence of record does not establish that a bachelor's degree, or its equivalent, in a specific specialty is normally the minimum requirement for the proffered position, the petitioner has not satisfied the criterion at 8 C.F.R. § 214.2(h)(4)(iii)(A)(1).

Also, the petitioner has not satisfied either of the alternative prongs of 8 C.F.R. § 214.2(h)(4)(iii)(A)(2).

The first alternative prong assigns specialty occupation status to a proffered position with a requirement for at least a bachelor's degree in a specific specialty that is common to the petitioner's industry in positions that are both (1) parallel to the proffered position and (2) located in organizations that are similar to the petitioner.

In determining whether there is such a common degree requirement, factors often considered by CIS 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 just discussed, the evidence does not establish the proffered position as one for which the *Handbook* reports a degree requirement in a specific specialty. Also, there are no submissions from professional associations, individuals, or firms in the petitioner's industry. The Internet documents promoting business degree programs offered at various educational institutions do nothing to establish that a BBA is a degree in a specific specialty. Therefore, they have little probative value for the first prong of 8 C.F.R. § 214.2(h)(4)(iii)(A)(2) or any other criterion of 8 C.F.R. § 214.2(h)(4)(iii)(A).

Next, the petitioner has not satisfied the second alternative prong of 8 C.F.R. § 214.2 (h)(4)(iii)(A)(2). This provides that, as an alternative to proving a common degree requirement in the industry, "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." The proffered position can be characterized as complex because it involves a variety of distinct duties. However, as reflected in the sections of the record quoted earlier in this decision, the generalized nature of the duty descriptions does not convey the level of complexity required by the regulation, nor does it convey that that the proffered position is unique from administrative service management positions in general, for which the *Handbook* reports no requirement for at least a bachelor's degree in a specific specialty.

Next, the record indicates that this is the petitioner's initial offering of the position in question. Therefore, the criterion at 8 C.F.R. § 214.2(h)(4)(iii)(A)(3) - a position for which the employer has a history of requiring at least a baccalaureate degree in a specific specialty - is not a factor in this proceeding.

Finally, the petitioner has not satisfied the criterion at 8 C.F.R. § 214.2(h)(iii)(A)(4) for positions with specific duties so specialized and complex that their performance requires knowledge that is usually associated with the attainment of a baccalaureate or higher degree in a specific specialty. In fact, the record does not establish that the duties are more specialized and complex than those that should be expected in administrative service management positions for which the *Handbook* reports no requirement of at least a bachelor's degree in a specific specialty.

Beyond the decision of the director, it is noted that the evidence of record also has not established that the beneficiary holds the equivalent of a bachelor's degree in a specific specialty as required by 8 C.F.R. §§ 214.2(h)(4)(iii)(C) and (D). Under specific provisions of these regulations on the evaluation of education and experience, an educational equivalency evaluation by a foreign degree evaluations service is recognized only for its evaluation of formal education. Therefore, in this proceeding, the evaluation of Foreign Credential Evaluations, Inc. establishes only that the beneficiary has attained the equivalent of one semester of study in business administration at a U.S. college. Furthermore, the evidence of record about the beneficiary's experience does not meet the specific standards that these regulations set for CIS to recognize college credit based upon experience. For this reason also the petition must be denied.

As the petitioner has failed to establish that the proffered position qualifies as a specialty occupation under any criterion of 8 C.F.R. § 214.2(h)(4)(iii)(A), the director's decision shall not be disturbed.

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. Accordingly, the appeal will be dismissed.

**ORDER:** The appeal is dismissed. The petition is denied.