

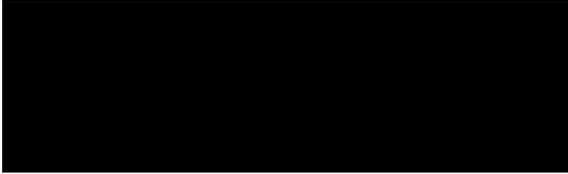
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U.S. Citizenship
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Services

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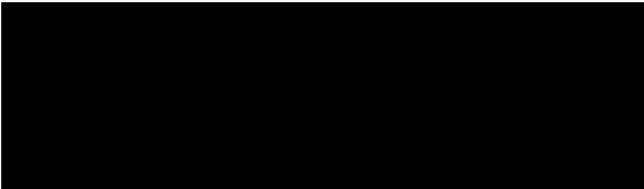


FILE: WAC 03 104 52982 Office: CALIFORNIA SERVICE CENTER Date: 03/20/04

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 service center director denied the nonimmigrant visa petition. 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 wholesaler and retailer of cellular phones and services company that seeks to employ the beneficiary as a human resource generalist. 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 position is not a specialty occupation. On appeal, counsel states that the position is a specialty occupation. Counsel resubmits documentation.

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 petitioner's letter of support; (3) the director's request for additional evidence, dated July 9, 2003; (4) a letter submitted by previous counsel that responds to the director's request, dated September 24, 2003; (5) the

director's denial letter; and (6) 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 human resources generalist. Evidence of the beneficiary's duties includes: the I-129 petition; the petitioner's letter of support; and the petitioner's letter in response to the director's request for further evidence. According to the letter of support, the beneficiary would develop, implement, manage, train and monitor the human resource information systems (30 per cent of his time); support all phases of the recruitment and selection process (20 per cent of his time); research, analyze and resolve unusual problems, such as employee leave, tax-sheltered annuities, and worker's compensation (15 per cent of his time); assist in the development of training manuals and materials; (30 per cent of his time); and design and develop a human resource management system that will be available to other human resource specialists (five per cent of the beneficiary's time). The petitioner indicated it required a candidate for the position to have a baccalaureate degree and also work experience in the field of human resources.

The director denied the petition and referred to the Department of Labor's (DOL) *Occupational Outlook Handbook (Handbook)* classification of human resource specialists. The director noted that the *Handbook* indicated that the educational backgrounds of human resources, training, and labor relations managers and specialists vary considerably. The director further noted that while the *Handbook* established a baccalaureate degree was a minimum requirement for entry into a human resource specialist position, it did not establish that a degree was an industry-wide standard. The director also determined 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 that the position is a specialty occupation and the *Handbook* classification establishes that employers usually seek college graduates for entry-level human resource positions. Counsel also resubmits an excerpt from the State of California Employment Development Department entitled "Labor Market Information, Human Resources Specialists and Managers, California Occupational Guide Number 135." This article states that "entry-level professional positions in human resources normally require a four year college degree." It also states that the preferred baccalaureate degree could vary from business administration with a human resources specialization to industrial relations or sociology. The article finally notes that some employers may look for a well-rounded background and choose liberal arts graduates.

Upon review of the record, the petitioner has established none of the 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 *Handbook* clearly establishes that a baccalaureate degree is the minimum requirement for entry into a human resources specialist position. While the director stated that the *Handbook* did not establish an industry-wide standard, the second criterion of 8 C.F.R. § 214.2(h)(4)(iii)(A) actually examines industry standards. More importantly, the *Handbook* establishes that a range of baccalaureate degrees, including liberal arts, could be appropriate for entry-level positions in the human resource field. As previously stated, 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. Thus, the *Handbook* does not establish that the proffered position requires a baccalaureate degree in a specific specialty for entry into the position.

With regard to parallel positions in similar businesses, counsel provided no further documentary evidence. The state of California career guide to human resource specialist positions submitted by the petitioner only states that a college degree is a necessary credential for human resource specialists. It does not establish that a baccalaureate degree in a specific specialty is required throughout the human resource specialist community nation- or state-wide. The petitioner also did not provide documentation from professional associations or individuals in the industry as to whether a baccalaureate degree in a specific specialty is required for entry into the profession. The petitioner also did not provide sufficient 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. In its response to the director's request for further evidence, the petitioner's president stated that it was a company policy to only employ individuals with a bachelor's degree in its human resource specialist position. However, the petitioner provided no further documentary evidence to establish the academic credentials of any of its previous human resource personnel, or any current human resource personnel. The petitioner also indicated that its business was expanding and that it now required personnel with a college degree to handle the human resource functions. This suggests that the proffered position is a new one. Therefore the petitioner cannot meet this criterion.

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 majority of duties of the position appear routine to the operations of any business human resources activities. The petitioner provided a detailed breakdown of the beneficiary's duties, and it also stated that a human resource manager would supervise the beneficiary. Many of the duties, such as assisting in the development of training manuals and materials, do not appear complex or specialized. Without more persuasive evidence, the petitioner has not established the fourth criterion of 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.

Beyond the decision of the director, the petitioner has not established that the beneficiary is qualified to perform the duties of the position, if it had been determined to be a specialty occupation. The beneficiary's diploma is for a bachelor of arts, with a major in the humanities and a minor in Japanese studies. The educational equivalency document prepared by [REDACTED] International Services, Inc., Bothell, Washington, states that the combination of the beneficiary's university studies and his work experience in human resources is the equivalent of a baccalaureate degree in human resources management from an accredited U.S. university or college. However, the regulatory criterion outlined in 8 C.F.R. § 214.2(h)(4)(iii)(D)(3) is used only to evaluate the education of the beneficiary, not his work experiences. While the AAO accepts [REDACTED] evaluation of the beneficiary's baccalaureate degree in the humanities, it does not accept her determination with regard to the beneficiary's combined university studies and work experience. Therefore, the petitioner has to meet the regulatory criteria outlined in 8 C.F.R. § 214.2(h)(4)(iii)(C)(4) and in 8 C.F.R. § 214.2(h)(4)(iii)(D).

Pursuant to 8 C.F.R. § 214.2(h)(4)(iii)(D)(2), the petitioner can submit an evaluation from an official who has authority to grant college-level credit for training and/or experience in the specialty at an accredited college or university which has a program for granting such credit based on an individual's training and/or work experience. The evaluation provided by [REDACTED] is not sufficient to establish this criterion. The record is devoid of any information that [REDACTED] is affiliated with a university that has a program to grant college credit for work experience, and that this same university presently gives her the authority to grant such credit. The petitioner also has not provided sufficient documentation to satisfy the criteria outlined in 8 C.F.R. § 214.2(h)(4)(iii)(D)(4). For this additional reason, the petition may not be approved.

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.