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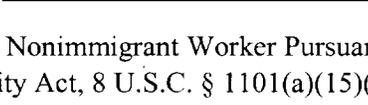
U.S. Citizenship
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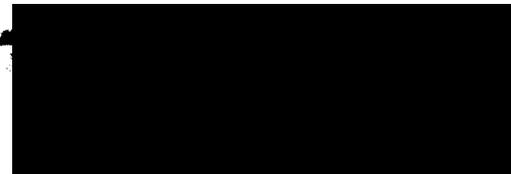
DA **DEC 29 2004**

FILE: WAC 03 194 54706 Office: CALIFORNIA SERVICE CENTER Date:

IN RE: Petitioner: 
Beneficiary: 

PETITION: Petition for a Nonimmigrant Worker Pursuant to Section 101(a)(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 and the matter is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be sustained. The petition will be approved.

The petitioner is a corporation that operates a chain of beauty and hair care stores in Southern California. In order to employ the beneficiary as an area manager over its Northern California 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 ground that the evidence did not establish that the proffered position qualified as a specialty occupation in accordance with any of the criteria at 8 C.F.R. § 214.2(h)(4)(iii)(A). In part, the director classified the proffered position as that of a marketing manager, and he observed that the Department of Labor's *Occupational Outlook Handbook (Handbook)* indicates that employers do not normally require their marketing managers to hold a minimum of a bachelor's degree in a specific specialty. On appeal, counsel submits a brief and five exhibits to support the position that the director erred by not recognizing the proffered position as a specialty occupation. Counsel contends that the director misinterpreted the *Handbook's* information about the educational requirements for the marketing manager occupation; failed to consider decisive evidence favorable to the petitioner, including the complexity of the proposed duties, the extent to which they exceed those of a typical marketing manager, and the educational requirements presented in an advisory opinion.

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.

It has been noted that the record of proceeding includes two decisions by the director that denied a change of nonimmigrant status for the beneficiary. The first denial, issued July 24, 2003, cited an arrest for soliciting a lewd act and loitering with the intent to solicit prostitution. The second decision, issued on August 24, 2003, the date of the decision here under appellate review, was based on the denial of the petition. In the last section of his brief, counsel asserts that a change of status was neither requested nor required. However, the AAO will not comment upon this issue, as directors’ change of status denials are not subject to AAO review. 8 C.F.R. § 248.3(g).

Upon consideration of the entire record of the proceeding, the AAO has determined that the petitioner has satisfied two of the specialty occupation criteria set forth 8 C.F.R. § 214.2(h)(4)(iii)(A), namely, the criteria at the second alternative prong of 8 C.F.R. § 214.2(h)(4)(iii)(A)(2) and at 8 C.F.R. § 214.2(h)(4)(iii)(A)(4).

The director was correct in determining that the proffered position does not qualify as a specialty occupation under the criterion set forth at 8 C.F.R. § 214.2(h)(4)(iii)(A)(1), 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.

As it recognizes the *Handbook* as an authoritative source on the duties and educational requirements of a wide variety of occupations, the AAO considered the *Handbook* information provided in the record, and it also consulted the *Handbook*’s 2004-2005 edition for additional relevant information.

The director was correct in determining that the *Handbook* does not report that marketing manager positions normally require a degree in a specific specialty. Furthermore, in light of the authoritative nature of the *Handbook*, the AAO discounted the contrary advisory opinion rendered by the professor who is the chair of the management department at Seattle University’s school of business. CIS may, in its discretion, use as

advisory opinions statements submitted as expert testimony. However, where an opinion is not in accord with other information or is in any way questionable, CIS is not required to accept or may give less weight to that evidence. *Matter of Caron International*, 19 I&N Dec. 791 (Comm. 1988).

However, while the proffered position contains marketing manager elements, it is more extensive and complex than that occupation, and it also comports substantially with the duties of general or operations managers as described in the 2004-2005 *Handbook's* section on top executives. Still, because the *Handbook* indicates that there is no normative educational and experiential background for such positions, the criteria at 8 C.F.R. § 214.2(h)(4)(iii)(A)(1) is not met.

Based on the lack of relevant evidence, the director was also correct in determining that the petitioner had not met the criterion of the first of the two alternative prongs of 8 C.F.R. § 214.2(h)(4)(iii)(A)(2). This provision assigns specialty occupation status to a position with a requirement for at least a bachelor's degree in a specific specialty that other employers similar to the petitioner commonly require for positions in the industry that are parallel to the proffered position. 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)). The record contains no such information. Also, as earlier discussed, the AAO accorded little weight to the professor's advisory opinion about a common educational requirement for marketing managers.

The petitioner also has not met the criterion at 8 C.F.R. § 214.2(h)(4)(iii)(A)(3) for a position for which the employer normally requires at least a baccalaureate degree or its equivalent in a specific specialty. In light of the statutory and regulatory definitions of a specialty occupation, this criterion has several evidentiary elements. First, the petitioner must demonstrate that it has an established history of hiring for the proffered position only persons with at least a bachelor's degree or equivalent. Second, this bachelor's degree or equivalent must be in a specific specialty that is characterized by a body of highly specialized knowledge. Third, the petitioner must also establish that both the nature and the level of highly specialized knowledge that the bachelor's degree or equivalent signifies are actually necessary for performance of the proffered position. Counsel's argument that the petitioner satisfied this criterion by citing the degrees held by three local managers is not persuasive. The only currently held degrees cited in the petitioner's letter of reply to the RFE are undifferentiated business degrees with no area of concentration in any business specialty, and CIS does not recognize such as degrees in a specific specialty as required by a specialty occupation. Also, the petitioner provided no diplomas and academic transcripts to substantiate its assertion of the degrees held.

However, the descriptions of the proffered position and its duties, in the petitioner's June 11, 2003 letter of support and the June 26, 2003 letter replying to the director's request for additional evidence (RFE), establish a specialty occupation by virtue of the complexity and specialization that they demonstrate. The proffered position is for an area manager who would be relatively remote from headquarters oversight and substantially more independent and responsible than the other area managers. The extent and detail of the responsibilities described establish that the position is so complex that it can be performed only by an individual with at least a master's degree in a specific business specialty (in satisfaction of the second alternative criterion of 8 C.F.R. § 214.2(h)(4)(iii)(A)(2)). This evidence also establishes that the specific duties are so specialized and complex that their performance requires knowledge that is usually associated with a baccalaureate or higher degree in a

specific specialty (as required to meet the criterion of 8 C.F.R. § 214.2(h)(4)(iii)(A)(4)). The professor who provided the advisory opinion aptly characterized the proffered position as including marketing management duties, “finance responsibilities (supervising area-wide budget, recruiting the accounting staff, preparing financial statements, and conducting financial analysis for future expansions operations),” and “significant operations management duties.” The totality of the evidence about the position and its duties substantiates the assertion by the petitioner’s president, in his June 11, 2003 letter of support, that the position “requires an individual to apply the theoretical knowledge, skills, and abilities gained through the attainment of the minimum of a Master’s of Business Administration degree (MBA) or the equivalent.”

The AAO also finds that the beneficiary’s MBA in business management from Pepperdine University qualifies the beneficiary to serve in the specialty occupation offered here.

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 sustained that burden.

ORDER: The appeal is sustained. The petition is approved.