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Washington, DC 20529



**U.S. Citizenship
and Immigration
Services**



JUL 0 8 2004

FILE: WAC 02 133 51400 **Office:** CALIFORNIA 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:
[Redacted]

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

for 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 shipping company who seeks to employ the beneficiary as a management operations officer. 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 proffered position was not a specialty occupation. On appeal, counsel submits a brief and additional information.

The issue to be discussed in this proceeding is whether the position offered to the beneficiary qualifies as a specialty occupation.

Section 101(a)(15)(H)(i)(b) of the Act, 8 U.S.C. § 1101(a)(15)(H)(i)(b), provides, in part, for the classification of qualified nonimmigrant 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.

The term "specialty occupation" is further defined at 8 C.F.R. § 214.2(h)(4)(ii) as:

[A]n occupation which requires theoretical and practical application of a body of highly specialized knowledge in field 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 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.

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 are 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) the Form I-290B with counsel’s brief. The AAO reviewed the record in its entirety before issuing its decision.

The petitioner is seeking the beneficiary’s services as a management operations officer. Evidence of the beneficiary’s duties includes: the I-129 petition with attachment, and the petitioner’s response to the director’s request for evidence. According to this evidence the beneficiary would: train new agents with regard to the company’s operations; communicate with agents on a weekly basis to monitor the status of production; prepare monthly reports detailing agents monthly production and the number of boxes per shipment; conceptualize and create advertising materials using computer applications such as [REDACTED] [REDACTED] proofread advertising materials from layout to print; coordinate and organize marketing events; instruct the marketing staff on marketing materials; prepare advertisements and press releases for the company; conduct preliminary interviews of job applicants and agents; attend to the needs and requests of agents and employees (forms, marketing materials, office supplies, etc.); supervise and coordinate staff meetings (accounting, marketing, and warehouse); monitor and review employee time cards; submit time cards to the accounting department; respond to customer complaints that cannot be remedied by the customer representative manager; report to the president on a weekly basis on new applicants/agents, agent production, new ideas for improving operations and increasing sales, and employee concerns; supervise company operations in the absence of the president; and implement a new database system. The petitioner does not state that a bachelor’s degree in any particular specialty is required for entry into the proffered position. The petitioner does indicate, however, that the beneficiary is qualified to perform the duties of the offered position in that she possesses the equivalent of a bachelor’s degree in business administration, with a major in management.

The director found that the offered position did not qualify as a specialty occupation and failed to meet any of the criteria of 8 C.F.R. § 214.2(h)(4)(iii)(A).

On appeal, counsel submits a brief and additional information, stating that the proffered position qualifies as a specialty occupation as it meets the criteria set forth at 8 C.F.R. § 214.2(h)(4)(iii)(A).

The AAO routinely consults the Department of Labor’s *Occupational Outlook Handbook (Handbook)* for information about the duties and educational requirements of particular occupations. The duties of the proffered position are varied, but essentially those noted for top executives/general and operations managers. The *Handbook* notes that the formal education and experience of top executives varies as widely as the nature of their responsibilities. Many top executives have a bachelor’s or higher degree in business administration or liberal arts. Other executive positions, however, are filled by promoting experienced, lower level managers.

Thus, it is possible to obtain a position as a general or operations manager without a college degree by promotion from within the organization based upon performance alone. It is apparent from the *Handbook* that a baccalaureate or higher degree, in a specific specialty, is not the minimum requirement for entry into the offered position. Positions requiring a college degree are filled from a wide range of educational disciplines. The petitioner has failed to establish the first criterion of 8 C.F.R. § 214.2(h)(4)(iii)(A).

The petitioner asserts that a degree requirement is common to the industry in parallel positions among similar organizations. 8 C.F.R. § 214.2(h)(4)(iii)(A)(2). In support of that assertion the petitioner submitted a position evaluation from ██████████ Professor of Management at the University of Georgia. It was ██████████ opinion that it is typical and customary for companies to require a baccalaureate level education in business administration, with a concentration in management, or its equivalent for entry into the proffered position. ██████████ bases his opinion on his years of experience as a professor in management and related areas. He does not state that the opinion is based on any particular study or research. The AAO does not find, however, that appropriate training for the offered position is limited to the fields of business administration, management, or related areas as stated by ██████████. The *Handbook* notes that general and operations managers/top executives are employed with degrees ranging from business administration to the liberal arts, or less than a baccalaureate level education for those promoted through the ranks based upon experience and performance. A degree in any number of disciplines will suffice for the proffered position, if indeed a degree is required at all.

The petitioner has not established that it normally requires a degree or its equivalent in a specific specialty for the offered position. 8 C.F.R. § 214.2(h)(4)(iii)(A)(3). Even if this were the case, the proffered position still does not qualify as a specialty occupation. The performance of the duties of the position must involve the theoretical and practical application of a body of highly specialized knowledge. *Cf. Defensor v. Meissner*, 201 F.3d 388 (5th Cir. 2000). This position does not. As noted above, the duties of the position are routinely performed in the industry by individuals with educational backgrounds in a wide range of educational disciplines, as well as by those with no college degree at all. There is no requirement of a degree in any specific specialty.

Finally, the petitioner has not established that the duties of the offered position are so complex or unique that they can only be performed by an individual with a degree in a specific specialty, or that the duties are so specialized or complex that knowledge required to perform them is usually associated with the attainment of a baccalaureate or higher degree in a specific specialty. 8 C.F.R. § 214.2(h)(4)(iii)(A)(2) and (4). The duties are routinely performed by general and operations managers/top executives in the industry.

The petitioner has failed to establish that the offered position meets any of the criteria listed at 8 C.F.R. § 214.2(h)(4)(iii)(A). 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 and the appeal shall accordingly be dismissed.

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