

U.S. Citizenship
and Immigration
Services



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FILE: SRC 02 263 53302 Office: TEXAS SERVICE CENTER Date: JUL 19 2004

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 initially declared the petition abandoned due to a lack of response from the petitioner. On appeal, the petitioner stated that Citizenship and Immigration Services (CIS) had erred by putting an incorrect name of beneficiary on its request for further evidence and on its denial. The director then reopened the proceedings on a service motion, and subsequently rendered a new decision to deny the 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 horse breeding company that seeks to employ the beneficiary as a contract/import/export manager. 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 she determined that the proffered position is not a specialty occupation. On appeal, counsel asserts that the position is a specialty occupation. Counsel submits additional information on the Paso Fino show horse breed, and resubmits evidence with regard to the beneficiary's qualifications and the financial status of the petitioner.

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.

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, dated September 19, 2002; (3) the director's decision dated January 4, 2003 that determined that the application had been abandoned and then denied the petition; (4) a copy of the petitioner's letter that responds to the director's request, dated December 10, 2002; (5) the director's motion to reopen; (6) the director's decision to deny the petition, 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 contract/import/export manager. Evidence of the beneficiary's duties includes: the I-129 petition; the director's request for further evidence; and counsel's letter in response to the director's request for further evidence. According to the I-129 petition, the beneficiary would handle all contract, import, and export negotiations. These negotiations would involve contracts for the purchase, sale, breeding and other business related matters. The beneficiary would oversee the import and export of horses to and from Latin America, and would oversee the expansion of the farm and negotiate with financial institutions and contractors.

The director found that the proffered position was not a specialty occupation and referred to the classification of purchasing manager, buyers, and purchasing agents in the Department of Labor's (DOL) *Occupational Outlook Handbook (Handbook)*. Based on the *Handbook* information, the director determined that a baccalaureate degree in a specific specialty was not required for entry into the position. 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, counsel states that the director's decision was arbitrary and capricious. Counsel refers to the *Handbook* classification referenced by the director that stated employers prefer applicants who have completed a bachelor's degree with a business emphasis. Counsel further states that a degree in law in the United States is considered to be a minimum of a bachelor's degree in business. Counsel further identifies the petitioner as the largest and most prestigious horse breeding, sales and boarding operation in the Summerfield, Florida area. Counsel describes the petitioner's contract activities as involving horses that are valued from \$25,000 to over one million dollars. Counsel also states that the beneficiary would have to analyze contracts, determine the requirements for both the selling and purchasing countries in terms of contracts, and also the requirements of government agencies and export/import agencies. Counsel submits an article on the Paso Fino horse breed.

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. As correctly stated by the director, the *Handbook* is given considerable more weight in determining educational requirements and specific duties of a position than the Department of Labor (DOL) *Dictionary of Occupational Titles*. With regard to the proffered position, the petitioner described the proffered position as involving the negotiation of contracts involved in horse breeding, as well as the oversight of the expansion of the farm, and negotiation with financial instructions and contractors. The petitioner provided no breakdown of how much time would be spent in either contract negotiation or financial and contractor oversight. Nevertheless, to the extent that the position involves the negotiation of contracts, there is some similarity to the duties outlined in the *Handbook* for buyers or contract managers. As also correctly indicated by the director, the *Handbook* classification does not *require* a baccalaureate degree in a specific specialty. (Emphasis added.) Without more persuasive evidence, the petitioner has not established that a baccalaureate degree in a specific specialty is the minimum requirement for entry into the position.

With regard to parallel positions in similar businesses, the petitioner submitted no further documentation. The record also does not include any evidence from professional associations regarding an industry standard, or 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. The petitioner stated that the proffered position was new to the petitioner. Therefore the petitioner cannot this criterion.

Finally, the AAO turns to the criterion at 8 C.F.R. § 214.2(h)(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 of the proffered position lack specificity. While counsel provided assertions with regard to the financial value of breeding horses, and to the importance of the petitioner's business operations, these factors do not necessarily make the duties of the position either specialized or complex. In addition, the assertions of counsel do not constitute evidence. *Matter of Obaigbena*, 19 I&N Dec. 533, 534 (BIA 1988); *Matter of Ramirez-Sanchez*, 17 I&N Dec. 503, 506 (BIA 1980). The record lacks information as to the complexity or specialized nature of horse breeding contracts, the volume of said contracts by the petitioner during a breeding season, and any specific information on either import/export issues, such as importing horses or horse semen from a foreign country for purposes of horse breeding. In addition, as stated previously, the petitioner provided additional duties for the position that involved oversight of the expansion of the farm and contractors. The record is devoid of any evidence as to how much time these other duties would entail, and whether the nature of these duties is either specialized or complex. 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.

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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.