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U.S. Citizenship
and Immigration
Services



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FILE: WAC 02 106 50136 Office: CALIFORNIA SERVICE CENTER Date **JUL 23 2004**

IN RE: Petitioner:
Beneficiary:

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.

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 moving and storage company that seeks to employ the beneficiary as a human resources specialist. 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 he determined that the proffered position is not a specialty occupation. On appeal, counsel asserts that the position is a specialty occupation and that the beneficiary is qualified to perform the duties of the position. Counsel submits additional 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 March 20, 2002; (4) counsel's and the petitioner's letters that responded to the director's request; (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 specialist. Evidence of the beneficiary's duties includes: the I-129 petition; the petitioner's letter of support; the director's request for further evidence; and counsel's and the petitioner's letters in response to the director's request for further evidence. According to the job description submitted by the petitioner, the beneficiary would be responsible for all human resource activities for the petitioner. This responsibility would include providing advice, assistance and follow-up on company policies, procedure sand documentation, as well as coordinating the resolution of specific policy-related and procedural problems and inquiries. In its response to the director's request for further evidence, the petitioner divided up the time that the beneficiary would spend in various activities in the following manner: 70 percent of the beneficiary's time would be spent on specific human resources areas, including recruiting applicants for work, and coordinating training and recruiting, among other areas; 30 percent of the beneficiary's time would be spent in efforts to improve operations, decrease turnaround times and to streamline work processes; and 15 percent of the beneficiary's time would be spent on special projects as assigned by management. The petitioner stated that it required candidates for the position to possess a baccalaureate degree in psychology, behavioral sciences, human resources or other relevant courses.

The director found that the proffered position was not a specialty occupation and referred to the classification of human resources manager 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, the petitioner states that the position of human resources specialist is a specialty occupation based on the job duties. Counsel resubmits documentation previously submitted in response to the director's request for further evidence and then submits additional job vacancy announcements for human resources managers, taken from the Internet. Counsel also submits a letter from Margarita Ordiales, Operations Manager, CSI Professionals, Inc., Los Angeles, California. According to Ms. Ordiales, her company is a staffing agency for professionals and it has experience in placing human resource specialists with businesses similar to the petitioner's. Ms. Ordiales states that employers prefer to hire individuals for human resource specialist positions who possess a bachelor's degree.

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. With regard to the proffered position, there is no evidence in the record that the beneficiary would be supervising subordinate human resources specialists, so the more analogous position appears to be human resources specialist. As correctly stated by the director, there is a range of academic backgrounds that employers will consider for human resources specialist employees. Entry-level human resources specialists can have academic backgrounds in areas such as personnel administration, industrial and labor relations and liberal arts. Thus, the proffered position does not require a baccalaureate degree in a specific specialty. 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. Since employers hire entry-level employees in a range of fields, the proffered position is not considered a specialty occupation.

With regard to parallel positions in similar moving companies, the petitioner submitted five job vacancy announcements in its response to the director's request for further evidence, as well as 18 additional job vacancy announcements on appeal. This documentation is not viewed as persuasive. For example, only six of the 18 job vacancy announcements submitted on appeal name a specific baccalaureate degree that is required for entry into the position. The remainder of the announcements merely states that a baccalaureate degree is required. Furthermore, the vacancy positions that do identify a specific degree cover a range of academic fields, such as business, psychology, human resources, organizational development, or business administration. With regard to the letter submitted by [REDACTED], one letter is not sufficient to establish an industry-wide standard. In addition, [REDACTED] does not identify a baccalaureate degree in a specific specialty that is required for entry into the position. [REDACTED] letter only states that a baccalaureate degree is necessary for entry into a position similar to the proffered position. 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. In its letter of support, the petitioner stated that its policy was to hire individuals with bachelor's degrees in psychology, behavioral science, human resources or other relevant courses to perform the complex duties of a human resource specialist. However, the petitioner did not submit any documentation with regard to the academic credentials of any current or previous employees hired as human resource specialists. In addition, the range of academic disciplines identified by the petitioner would not establish that the proffered position requires a baccalaureate degree in a specific specialty. Therefore the petitioner has not met 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 position appear routine to any human resource specialist position. The petitioner provided no further detail as to any specialized or complex duties that the beneficiary would perform as a human resources specialist for a moving and storage company. 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.

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.