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



FILE: EAC 02-233-52121 Office: VERMONT SERVICE CENTER

Date: **MAR 03 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.

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 staffing and recruiting company. 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), so that it may employ him as a personnel recruiter.

The director denied the petition on two grounds: first, that the proffered position is not a specialty occupation; second, that the beneficiary is not qualified to serve in a specialty occupation.

Counsel submitted a timely Form I-290B on October 2, 2002 and thereon indicated that a brief and/or additional evidence would be submitted to the AAO within 30 days. As of this date, however, the AAO has not received any additional evidence into the record. Therefore, the record is complete.

Counsel's only comment on the director's decision is this statement on the Form I-290B about the reasons for the appeal:

The Center Director erred in finding that a personnel recruiter was not a "specialty occupation."  
The Center Director erred in finding that the evidence submitted with the petition did not support the submission [sic] that employers require a recruiter to possess a bachelor's degree.

Upon review of the record, the AAO has determined that there is only one issue on appeal, namely, whether the director acted erroneously in denying the petition on the specialty occupation basis.

The AAO has determined that the director's dismissal of the beneficiary qualification basis was erroneous, in that, as the director acknowledged in the decision, Citizenship and Immigration Services had not notified the petitioner of any deficiency regarding the beneficiary qualification criteria at 8 C.F.R. § 214.2(h)(4)(iii)(C). See 8 C.F.R. § 103.2(b)(8).<sup>1</sup> However, the issue is moot and no remand is necessary, because the director correctly denied the petition on the failure of the evidence to establish that the proffered position is a specialty occupation within the meaning of the Act and its implementing regulations.

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.

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<sup>1</sup> In accordance with 8 C.F.R. § 103.2(b)(8), a director must issue a request for evidence specifying any missing initial evidence of eligibility, and any regard in which evidence submitted by the petitioner either does not fully establish eligibility for the H-1B benefit or raises underlying questions regarding eligibility. Pursuant to 8 C.F.R. § 103.2(b)(8), the director shall allow the petitioner 12 weeks to respond to the evidence request, and then shall render a new decision based on the evidence then of record as it relates to the regulatory requirements for eligibility. If that decision is adverse to the petitioner, the director shall follow the usual regulatory procedures regarding such decisions and the petitioner's right to contest them.

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. This fact is central to both the director’s denial and the AAO’s decision here on appeal.

The record of proceeding before the AAO contains: (1) the petitioner’s Form I-129 and supporting documentation; (2) the director’s request for additional evidence (RFE); (3) counsel’s response to the RFE, including his additional submissions about the proffered position; (4) the director’s denial letter; and (5) the Notice of Appeal, Form I-290B, as annotated by counsel. The AAO reviewed the record in its entirety before issuing its decision.

As discussed below, review of the entire record reveals 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, and the director’s decision should not be disturbed.

The evidence of record does not satisfy the criterion at 8 C.F.R. § 214.2 (h)(4)(iii)(A)(1), that is, the proffered position’s being one whose normal minimum entry requirement is a baccalaureate or higher degree, or the equivalent, in a specific specialty related to the duties of the position.

The record indicates that the beneficiary’s main work activity would be recruiting and interviewing prospective employees for a wide spectrum of positions, such as preschool teachers, carpenters, outside machinists, shipfitters, ship pipefitters, shipwrights, cleaners, ship’s deck cadets, ordinary seaman, cooks, housekeepers, front desk clerks, lodging managers, plumbers, heating and air conditioning mechanics, welders, steelworkers, and glaziers. Also, counsel’s letter of reply to the RFE submits that “the screening of job applicant’s from Asian countries[,] more particularly[,] from Korea[,] will require a profound knowledge of Korean business practices, educational standards, and culture in order to determine whether the qualifications of the applicants meet American standards.”

This type of position – personnel recruitment for the type of positions presented in the record – is not identifiable as one that requires this criterion’s degree, or degree-equivalency, credentials in a specific specialty. The added fact that the targeted work pool is Asian does not put the proffered position in the company of such as those of accountant, medical doctor, architect, electrical engineer, to name a few positions that normally require the level of credentials cited in 8 C.F.R. § 214.2 (h)(4)(iii)(A)(1).

Next, the evidence of record has not satisfied the first prong of 8 C.F.R. § 214.2 (h)(4)(iii)(A)(2) by establishing that a degree requirement is common to the industry in parallel positions among similar organizations.

Factors often considered by CIS when determining this criterion include: whether the Department of Labor’s *Occupational Outlook Handbook (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)).

In making industry degree-requirement determinations, the AAO often consults the *Handbook* for its information about the duties and educational requirements of a wide range of occupations. Here, in conjunction with its consideration of all the information in the record about the proposed duties, the AAO consulted the 2002-2003 edition of the *Handbook*. As a result, the AAO found that the proposed duties substantially comport with those of the recruiter occupation described in the section “Human Resources, Training, and Labor Relations Managers Specialists.” However, the *Handbook* indicates that, while employers for entry-level recruiter positions generally require a college degree, they do not usually focus on any particular academic major. In other words, the employers do not usually require that the academic credentials be in a specific specialty.

Next, the record contains no evidence in the nature of affidavits from firms or individuals in the industry to attest that such firms "routinely employ and recruit only degreed individuals" in positions like the one proposed here.

Finally, the job vacancy advertisements that counsel presents have no persuasive impact. First, while most of them specify the need for a bachelor’s degree or equivalent experience, the advertisements do not indicate a commonly shared requirement for an academic major in any specific specialty. Second, the advertisements are too few to establish an industry-wide standard. For each of these reasons, the job vacancy advertisements do not satisfy the first prong at 8 C.F.R. § 214.2 (h)(4)(iii)(A)(2).

The AAO also found that the evidence of record does not qualify the proffered position under the second prong of 8 C.F.R. § 214.2 (h)(4)(iii)(A)(2), that is, as one that is so complex or unique that it can be performed only by an individual with a degree in a specific specialty. As noted earlier in this decision, the proffered position comports with the *Handbook*’s description of personnel recruiters in general, and entry into their occupation does not usually require educational credentials in a specific specialty.

Therefore, for the reasons discussed above, the petitioner has not established the criteria set forth at 8 C.F.R. § 214.2(h)(4)(iii)(A)(1) or (2).

The past-hiring-practice criterion at 8 C.F.R. § 214.2 (h)(4)(iii)(A)(3) is not significant. At the RFE stage, counsel presented evidence that the petitioner’s recruiter for Eastern Europe has taken Polish university

courses in Polish culture and Eastern European politics, and that she holds a bachelor's degree in political science and university certificates in international business, Slavic language, and Slavic culture. However, these credentials are not in a specific specialty. Furthermore, this one instance of hiring does not establish a significant, sustained hiring record.

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. The duties as related in the record appear no more complex or specialized than that normally met by personnel recruiters who are college-educated, but not necessarily in any specific specialty. Therefore, the evidence does not establish that the proffered position is a specialty occupation under 8 C.F.R. § 214.2(h)(4)(iii)(A)(4).

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 this proceeding 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.