

**PUBLIC COPY**

**identifying data deleted to  
prevent clearly unwarranted  
invasion of personal privacy**



U.S. Department of Homeland Security  
20 Mass, Rm. A3042, 425 I Street, N.W.  
Washington, DC 20536

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



FILE: EAC 02 248 52894 Office: VERMONT SERVICE CENTER Date: **MAR 11 2004**

IN RE: Petitioner: [Redacted]  
Beneficiary: [Redacted]

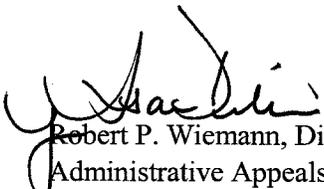
PETITION: Petition for a Nonimmigrant Worker Pursuant to Section 101(a)(15)(H)(i)(b) of the  
Immigration and Nationality Act, 8 U.S.C. § 1101(a)(15)(H)(i)(b)

ON BEHALF OF PETITIONER:

SELF-REPRESENTED

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 corporation which sells, services, and sells parts for trucks. 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 coordinator, service relations representative.

The director denied the petition because the petitioner had failed to establish that the proffered position is a specialty occupation. On appeal, the petitioner submits a letter from its president and copies of job vacancy advertisements from other firms.

Section 214(i)(1) of the Immigration and Nationality Act (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.

It is important to note that 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.

In reaching its decision on the appeal, the AAO considered the entire record of proceeding, which contains: (1) the petitioner's Form I-129 and supporting documentation; (2) the director's request for additional evidence (RFE); (3) the matters submitted in response to the RFE; (4) the director's denial letter; and (5) the Form I-290B, the letter from the petitioner's president to explain the appeal, and copies of job vacancy announcements from other firms.

As discussed below, the AAO determined that the evidence of record did not satisfy any of the criteria at 8 C.F.R. § 214.2(h)(4)(iii)(A). The director's decision to deny the petition was correct and should not be disturbed.

The evidence of record does not develop the duties of the proffered position in concrete terms (such as, for instance, specific tasks, the type of data and other material involved in the tasks, particular knowledge that the tasks require, and quantifiable aspects of the workload). Instead, the petitioner presents the proffered position in terms that are too broad to illuminate whatever specialized knowledge the beneficiary would have to bring to bear to satisfactorily perform his job. The lack of meaningful detail is evident in this description of the proffered position, from petitioner's president's letter of reply to the RFE:

Responsible for coordinating truck sales programs and implementing policies with dealer organization; establish an effective counseling and advisory role with dealer management regarding performance objectives, finance, and increase [in] parts and services sales[-] related matters. Establishes achievable but challenging short and long term goals designed to promote and increase market penetration. Consult with management regarding truck sales activities and inventory practices (planning). Manages assigned areas and account responsibilities from a total service and parts support perspective. Monitors and administers warranty and policy matters in the field from a fair and equitable perspective in such a way that it will create goodwill and future sales. Tracks and reports trends, business and account status which will affect future sales. Resolve customers concerns and complaints in a timely manner. Identify product requirements within the market area; assist in training and developing dealer personnel; make customer calls with dealer personnel and provide required assistance in closing sales.

The record also contains other firms' job vacancy announcements that have no evidentiary significance, as will be discussed below.

In analyzing the evidence, the AAO first applied the specialty occupation criterion at 8 C.F.R. § 214.2 (h)(4)(iii)(A)(1) for positions in which a baccalaureate or higher degree or equivalent is normally a minimum requirement for entry.

As depicted in the record, the position appears to be a sales management position. The AAO recognizes the Department of Labor's *Occupational Outlook Handbook (Handbook)* as an authoritative source of information on the duties and educational requirements of a wide variety of occupations. The *Handbook's* 2002-2003 edition indicates that employers do not usually require a bachelor's degree or higher for sales management positions, and there is no evidence in the record that indicates that the *Handbook's* assessment should not apply to the proffered position. Therefore, the petitioner has not satisfied the criterion at 8 C.F.R. § 214.2 (h)(4)(iii)(A)(1).

Next, the AAO determined that the evidence of record did not qualify the proffered position as a specialty occupation under either of the two prongs of 8 C.F.R. § 214.2 (h)(4)(iii)(A)(2).

With regard to the *first* prong, the evidence of record did not establish that the proffered position has a degree requirement that is common to the industry in parallel positions among organizations similar to the petitioner.

Factors often considered by CIS when determining this criterion 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)).

As already noted, the *Handbook* does not report an industry-wide degree requirement for sales management positions. Also, there are no submissions from professional organizations or from individuals or firms in the petitioner's industry to support the petitioner's contention that there is an industry-wide degree requirement.

As earlier indicated in this decision, the AAO discounted the job-vacancy announcements. For the sake of argument the AAO will assume that all of the advertised positions are parallel to the proffered position and in organizations similar to the petitioner. Even so, the evidence still does not qualify the proffered position as a specialty occupation under the second prong of 8 C.F.R. § 214.2 (h)(4)(iii)(A)(2). The advertisements do not reflect a uniformly shared requirement, as they differ on whether a specific major is required. This is critical because, as related early in this decision, for specialty occupation qualifying purposes, CIS requires that degrees be in a specific specialty that is related to the proffered position. In any event, the job vacancy announcements are too few to establish an entire industry's hiring practice.

In summary, the evidence of record does not qualify the proffered position under the first prong of 8 C.F.R. § 214.2 (h)(4)(iii)(A)(2), that is, as a position for which a bachelor's or higher degree is a common industry requirement.

The AAO also found that the evidence of record does not qualify the proffered position by the *second* prong of 8 C.F.R. § 214.2 (h)(4)(iii)(A)(2). The generalized terms in which the position is described in the record do not show this particular position as so complex or unique that it can be performed only by an individual with a bachelor's or higher degree. Therefore, this criterion was not satisfied.

After finding that the petitioner had not met the criteria at 8 C.F.R. §§ 214.2(h)(4)(iii)(A)(1) or (2), the AAO turned next 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.

As this criterion relates only to the hiring history of the proffered position, the petitioner has not satisfied it by its president's assertion, "I require that my other management level employees have bachelor degrees in my Sales and Leasing Departments." Furthermore, simply going on record without supporting documentary evidence is not sufficient for the purpose of meeting the burden of proof in these proceedings. *Matter of Treasure Craft of California*, 14 I&N Dec. 190 (Reg. Comm. 1972). Finally, the president's language suggests that he is overlooking the decisive facts that, to qualify a position as a specialty occupation, a degree requirement must be: (1) for a bachelor's or higher degree in specific specialty related to the position, and (2) necessitated by the performance demands of the proffered position.

Finally, the AAO turned to the criterion 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 record lacks specific details about the actual tasks that would engage the beneficiary in the particular exercise of his general duties. Because the duties are depicted in broad terms that do not convey any particular complexity or specialization, 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 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.