

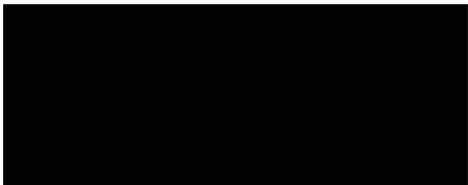
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U.S. Citizenship  
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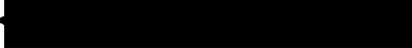
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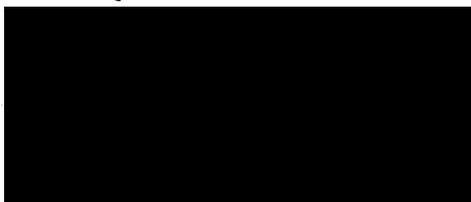
NOV 30 2004

FILE: SRC 03 002 50832 Office: TEXAS SERVICE CENTER Date:

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*

Robert P. Wiemann, Director  
Administrative Appeals Office

**DISCUSSION:** The director of the service center 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 fast food restaurant that seeks to employ the beneficiary as a security 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 the proffered position is not a specialty occupation. On appeal, counsel submits a brief and previously submitted and additional evidence.

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 director's request for additional evidence; (3) the petitioner's response to the director's request; (4) the

director's denial letter; and (5) 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 security manager. Evidence of the beneficiary's duties includes: the Form I-129; the attachments accompanying the Form I-129; the company support letter; and the petitioner's response to the director's request for evidence. According to this evidence, the beneficiary would perform duties that entail directing and supervising personnel in security policies and programs to promote safety and security at food service facilities; implementing procedures for fire prevention, traffic control, and security; directing workers in industrial safety training programs and building maintenance; and complying with the franchise's quality assurance requirements. The petitioner stated that a candidate for the proffered position must possess a bachelor's degree in business administration or a related field of study.

The director determined that the proffered position was not a specialty occupation because the petitioner never indicated that it required a bachelor's degree in a specific specialty. The director also found that the beneficiary was not qualified for the proffered position; he neither possessed a bachelor's degree nor had experience, training, and/or education considered the equivalent to a baccalaureate degree.

On appeal, counsel states that the proffered position is a specialty occupation, and that the *Dictionary of Occupational Titles (DOT)*, the *Occupational Information Network (O\*Net)*, and the posting from Rain Bird reveal that a baccalaureate degree is required for a security manager job. Counsel contends that the duties of the proffered position are unique and complex, requiring a bachelor's degree or its equivalent. Finally, counsel claims that the beneficiary is qualified to perform the duties of a security manager; that the petitioner had already submitted the beneficiary's educational credentials; and that the beneficiary's work experience and education are equivalent to a U.S. bachelor's degree in business administration with a major in human resources. Counsel submits a copy of the beneficiary's baccalaureate 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 will first discuss the director's conclusion that the proffered position is not a specialty occupation.

The AAO first considers 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)).

As previously mentioned, 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 its September 24, 2002 letter, the petitioner stated that a candidate must possess a “[b]achelor’s degree in [b]usiness [a]dministration or related field of study.” The petitioner’s July 14, 2003 letter contradicted this statement; it never indicated that a specific baccalaureate degree was required for the proffered position. For example, the petitioner stated “the position is one which at a minimum requires a [b]achelor’s degree,” and explained that “only an individual with a [b]achelor’s degree or equivalent” can successfully perform the duties of the proffered position. Doubt cast on any aspect of the petitioner’s proof may, of course, lead to a reevaluation of the reliability and sufficiency of the remaining evidence offered in support of the visa petition. It is incumbent upon the petitioner to resolve any inconsistencies in the record by independent objective evidence, and attempts to explain or reconcile such inconsistencies, absent competent objective evidence pointing to where the truth, in fact, lies, will not suffice. *Matter of Ho*, 19 I&N Dec. 582, 591-92 (BIA 1988). Thus, the AAO cannot determine whether the petitioner actually required a specific baccalaureate degree for the proffered position.

Moreover, as stated by the court in *Matter of Michael Hertz Assocs.*, 19 I&N Dec. 558, 560 (Comm. 1988), for a position to qualify as a specialty occupation:

A petitioner must establish that the position realistically requires knowledge, both theoretical and applied, which is almost exclusively obtained through studies at an institution of higher learning. The depth of knowledge and length of studies required are best typified by a degree granted by such institution at the baccalaureate level. It must be demonstrated that the position requires a precise and specific course of study which relates directly and closely to the position in question. Since there must be a close corollary between the required specialized studies and the position, the requirement of a degree of generalized title, such as business administration or liberal arts, without further specification, does not establish eligibility.

Here, the evidentiary record is unclear as to whether the petitioner actually requires a specific bachelor’s degree, other than a degree in business administration without a specific field of concentration. Consequently, the director properly determined that the petitioner never clearly indicated that it required a bachelor’s degree in a specific specialty.

In determining whether a position qualifies as a specialty occupation, CIS looks beyond the title of the position and determines, from a review of the duties of the position and any supporting evidence, whether the position actually requires the theoretical and practical application of a body of highly specialized knowledge, and the attainment of a baccalaureate degree in a specific specialty as the minimum for entry into the occupation as required by the Act.

Counsel points to the *DOT* and *O\*Net* to state that the proffered position requires a bachelor’s degree. However, the *DOT* and the *O\*Net* are not persuasive sources of information regarding whether a particular job requires the attainment of a baccalaureate or higher degree in a specific specialty, or its equivalent, as a

minimum for entry into the occupation. The DOL has replaced the *DOT* with the *O\*Net*. Both the *DOT* and *O\*Net* provide only general information regarding the tasks and work activities associated with a particular occupation, as well as the education, training, and experience required to perform the duties of that occupation. The *Handbook* provides a more comprehensive description of the nature of a particular occupation and the education, training, and experience normally required to enter into and advance within the occupation. For this reason, CIS is not persuaded by a claim that the proffered position is a specialty occupation simply because of information in the *DOT* and *O\*Net*.

The *Handbook* reveals that the duties of the proffered position are performed by a security manager who supervises security guards who patrol and inspect property to protect against fire, theft, vandalism, terrorism, and illegal activity. The *Handbook* reports that many employers of unarmed guards do not have any specific educational requirements, and that security guards advance to security manager jobs. Because a security guard is not required to possess a bachelor's degree, naturally a security manager would also not be required to possess a bachelor's degree. Consequently, the petitioner cannot establish that a baccalaureate or higher degree or its equivalent in a specific specialty is the normal minimum requirement for entry into the particular position, security manager.

There is no evidence in the record that would establish the second criterion - that a specific degree requirement is common to the industry in parallel positions among similar organizations. The Rain Bird posting indicated that candidates must possess a bachelor's degree, but no specific specialty is stated.

Nor is there evidence that the proffered position is so complex or unique that it can be performed only by an individual with a degree or that the petitioner normally requires a degree or its equivalent for the position.

Finally, the petitioner fails to establish the fourth criterion under 8 C.F.R. § 214.2(h)(4)(iii)(A) whereby it is required to show that the nature of the specific duties is so specialized and complex that the knowledge required to perform the duties is usually associated with the attainment of a baccalaureate or higher degree in a specific specialty. Again, the petitioner never clearly indicated that it requires a specific bachelor's degree, and the *Handbook* reveals that the duties of the proffered position are performed by a security manager, a job that does not require a bachelor's degree.

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 on this ground.

The AAO will next discuss the director's conclusion that the beneficiary is not qualified to perform the proposed position.

Section 214(i)(2) of the Act, 8 U.S.C. § 1184(i)(2), states that an alien applying for classification as an H-1B nonimmigrant worker must possess full state licensure to practice in the occupation, if such licensure is required to practice in the occupation, and completion of the degree in the specialty that the occupation requires. If the alien does not possess the required degree, the petitioner must demonstrate that the alien has

experience in the specialty equivalent to the completion of such degree, and recognition of expertise in the specialty through progressively responsible positions relating to the specialty.

Pursuant to 8 C.F.R. § 214.2(h)(4)(iii)(C), to qualify to perform services in a specialty occupation, an alien must meet one of the following criteria:

- (1) Hold a United States baccalaureate or higher degree required by the specialty occupation from an accredited college or university;
- (2) Hold a foreign degree determined to be equivalent to a United States baccalaureate or higher degree required by the specialty occupation from an accredited college or university;
- (3) Hold an unrestricted state license, registration or certification which authorizes him or her to fully practice the specialty occupation and be immediately engaged in that specialty in the state of intended employment; or
- (4) Have education, specialized training, and/or progressively responsible experience that is equivalent to completion of a United States baccalaureate or higher degree in the specialty occupation, and have recognition of expertise in the specialty through progressively responsible positions directly related to the specialty.

The director also found that the beneficiary was not qualified for the proffered position; he neither possessed a bachelor's degree nor had experience, training, and/or education considered the equivalent to a baccalaureate degree. On appeal, counsel states that the beneficiary is qualified for the position.

Upon review of the record, the beneficiary is qualified to perform the proffered position. As previously discussed, the *Handbook* reveals that proffered position's duties are performed by a security manager; that many employers of unarmed guards do not have any specific educational requirements; and that security guards advance to security manager jobs. Because the proposed position does not require a baccalaureate degree, the beneficiary is qualified for the position.

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 on this ground.

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.