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U.S. Citizenship
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Services

[Handwritten initials]

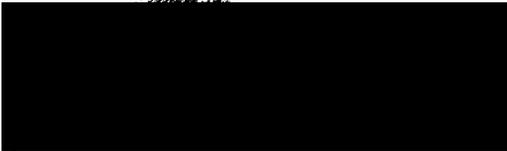


FILE: SRC 03 158 53490 Office: TEXAS SERVICE CENTER Date: OCT 17 2012

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:



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.

[Handwritten signature]

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 an optical consulting firm that seeks to employ the beneficiary as a managing dispensing optician. 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).

The director denied the petition on the basis that the proffered position was not a specialty occupation. On appeal, counsel submits a brief stating that the proffered position qualifies as a specialty occupation.

The issue to be discussed in this proceeding is whether the position offered to the beneficiary qualifies as a specialty occupation.

Section 101(a)(15)(H)(i)(b) of the Act, 8 U.S.C. § 1101(a)(15)(H)(i)(b), provides, in part, for the classification of qualified nonimmigrant aliens who are coming temporarily to the United States to perform services in a specialty occupation.

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.

The term "specialty occupation" is further defined at 8 C.F.R. § 214.2(h)(4)(ii) as:

[A]n occupation which requires theoretical and practical application of a body of highly specialized knowledge in fields of human endeavor including, but not limited to, architecture, engineering, mathematics, physical sciences, social sciences, medicine and health, education, business specialties, accounting, law, theology, and the arts, and which requires the attainment of a bachelor's degree or higher in a 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 are 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) the Form I-290B with counsel’s brief. The AAO reviewed the record in its entirety before issuing its decision.

The petitioner is seeking the beneficiary’s services as a managing dispensing optician. Evidence of the beneficiary’s duties includes the Form I-129 petition with attachment; and the petitioner’s response to the director’s request for evidence. According to this evidence the beneficiary would: negotiate contracts with suppliers; compare and test different types of equipment; compare and test different inventory tracking systems and set them up; develop and implement a marketing plan and negotiate marketing contracts; train staff in the use of low vision aid equipment; supervise staff; manage the day-to-day operations of the optical department; hire, fire, supervise, and evaluate staff; develop and structure wholesale agreements for optical lenses produced by the optical lab; establish quality control procedures and tracking systems for technical and staff performance; set up performance parameters for staff and suppliers; coordinate weekly meetings with all supervisors; develop and implement job descriptions and evaluations for each supervisor; implement cross training by each supervisor for each job description; educate and train staff in optimal multi-location efficiency; examine written prescriptions written by an ophthalmologist or an optometrist to determine lens specifications; work with patients to recommend eyeglass frames, lenses, and lens coatings after considering the prescription and determining the lifestyle needs of the patient; perform any necessary measurements and testing required to correctly fit and dispense corrective lenses; grind and insert lenses; adjust or reshape frames to accommodate patients’ comfort and maximize visual acuity; fit contact lenses; prepare work orders specifying the prescription, lens parameters, and type; and instruct patients on proper removal, insertion, and care of contact lenses. The petitioner requires a minimum of a bachelor’s degree in optical science for entry into the proffered position.

The AAO routinely consults the Department of Labor’s *Occupational Outlook Handbook (Handbook)* for information about the duties and educational requirements of particular occupations. The duties of the proffered position are varied, but essentially those noted for dispensing opticians with additional management responsibilities. The *Handbook* notes that employers usually hire individuals with no background as an optician or those who have worked as ophthalmic laboratory technicians. The employers then provide the required training. Most dispensing opticians receive training on the job or through apprenticeships lasting two or more years. It is, therefore, apparent that a baccalaureate or higher degree is not normally the minimum requirement for entry into employment as a dispensing optician.

It should further be noted that the proffered position also has management responsibilities. These additional responsibilities, however, do not elevate the position to that of a specialty occupation. On appeal counsel

asserts that the duties of the position are similar to those of a marketing manager, sales manager, and health services manager, all of which require a bachelor's degree. The formal education and experience of top executives, general or operations managers varies as widely as the nature of their responsibilities. Many top executives have a bachelor's or higher degree in business administration or liberal arts. Other executive positions, however, are filled by promoting experienced, lower level managers. Thus, it is possible to obtain a position as a general or operations manager without a college degree by promotion from within the organization based upon performance alone. It is apparent from the *Handbook* that a baccalaureate or higher degree, in a specific specialty, is not the minimum requirement for entry into general or operations management positions. When degrees are required for employment, the degree may come from a wide range of educational disciplines. The petitioner has failed to establish the first criterion of 8 C.F.R. § 214.2(h)(4)(iii)(A).

The petitioner asserts that a degree requirement is common to the industry in parallel positions among similar organizations. 8 C.F.R. § 214.2(h)(4)(iii)(A)(2). In support of this assertion the petitioner submitted copies of eight job advertisements. Eight advertisements are insufficient in scope to establish an industry wide educational standard for the proffered position. Furthermore, four of the advertisements indicate that a bachelor's degree is required, but do not require a degree in any specific specialty. One of the advertisements requires a bachelor's degree in an unspecified discipline "or" seven or more years of experience. One advertisement makes no mention of any educational requirements. Another advertisement requires a bachelor's degree in business administration but is not from an organization similar to that of the petitioner. The advertisements submitted do not satisfy the criterion at 8 C.F.R. § 214.2(h)(4)(iii)(A)(2).

The petitioner does not assert that it normally requires a degree or its equivalent for the proffered position, and offers no evidence in this regard. 8 C.F.R. § 214.2(h)(4)(iii)(A)(3). Even if this were the case, the proffered position still does not qualify as a specialty occupation. The performance of the duties of the position must involve the theoretical and practical application of a body of highly specialized knowledge. *Cf. Defensor v. Meissner*, 201 F.3d 388 (5th Cir. 2000). This position does not. As noted above, the duties of the position are routinely performed in the industry by individuals with educational backgrounds in a wide range of educational disciplines, as well as by those with no college degree at all. There is no requirement of a degree in any specific specialty.

Finally, the petitioner has not established that the duties of the offered position are so complex or unique that they can only be performed by an individual with a degree in a specific specialty, or that the duties are so specialized or complex that knowledge required to perform them is usually associated with the attainment of a baccalaureate or higher degree in a specific specialty. 8 C.F.R. § 214.2(h)(4)(iii)(A)(2) and (4). The duties described are routinely performed by managing dispensing opticians in the industry.

The petitioner has failed to establish that the offered position meets any of the criteria listed at 8 C.F.R. § 214.2(h)(4)(iii)(A). 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 and the appeal shall accordingly be dismissed.

ORDER: The appeal is dismissed. The petition is denied.