



U.S. Citizenship  
and Immigration  
Services

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[Redacted]

FILE: WAC 03 119 53067 Office: CALIFORNIA SERVICE CENTER Date:

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:

[Redacted]

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

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prevent identity theft

**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 sells exotic Persian/Oriental carpets. It seeks to employ the beneficiary as a retail office 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 states that the proffered position qualifies as a specialty occupation and submits previously submitted 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 retail office 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 planning, proposing, and implementing policies and procedures to ensure an efficient and profitable business; assisting the operations manager in establishing work schedules; directing and coordinating administrative activities; preparing payroll and maintaining accounts receivable and payable; preparing and controlling the office budget; reviewing activity reports for sales; reconciling commissions with advances; analyzing unit operations and practices, record keeping systems, forms, personnel and budget requirements, and performance standards and creating or revising systems; coordinating operating and personnel records; and developing and executing marketing strategies. The petitioner stated that a candidate for the proffered position must possess a bachelor's degree in a business or management related field.

The director determined that the proffered position was not a specialty occupation. Referring to the Department of Labor's (DOL) *Occupational Outlook Handbook* (the *Handbook*), the director stated that the duties of the proffered position are an amalgam of those performed by a sales worker supervisor/office manager, positions that do not require a bachelor's degree. The director found the submitted approval notices unpersuasive in establishing that the proffered position was a specialty occupation.

On appeal, counsel states that the director improperly failed to consider the duties of the proffered position. According to counsel, nowhere in the *Handbook* is there a position entitled "sales worker supervisor/office manager;" counsel states that the *Occupational Information Network (O\*Net)* seems to describe this position. Counsel stresses that there are few parallels between the beneficiary's duties and the duties of a sales worker supervisor/office manager. Counsel points out that a sales worker supervisor/office manager primarily supervises clerical-level employees, but the beneficiary will not perform this duty. Counsel contends that the submitted I-129 petitions illustrated that organizations similar to the petitioner employ persons in positions that are parallel to the proffered position.

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 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)).

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. The AAO routinely consults the *Handbook* for its information about the duties and educational requirements of particular occupations.

A careful review of the *Handbook* discloses that the duties of the proffered position resemble those performed by a sales worker supervisor in a small or independent company or retail store who not only directly supervises sales associates, but also is responsible for the operation of the entire company or store. This scope of responsibility would include the duties of the proffered position as described in the petitioner's March 4, 2003 letter.

According to the *Handbook*, a bachelor's degree is not required for a sales worker supervision position given that the educational backgrounds of sales worker supervisors vary widely. Supervisors who have postsecondary education often hold associate's or bachelor's degrees in liberal arts, social sciences, business, or management. Accordingly, 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 proffered position.

Counsel asserts that the beneficiary's duties are dissimilar from a sales worker supervisor/office manager because they do not involve supervising clerical-level employees. The *Handbook* reports that in small establishments, such as the petitioning entity, sales worker supervisors not only supervise sales associates, but they are also responsible for the operation of the entire business. Thus, this would include the duties of the proffered position as described in the petitioner's March 4, 2003 letter.

To establish the second criterion - that a specific degree requirement is common to the industry in parallel positions among similar organizations - counsel relies on four H-1B petitions submitted in prior H-1B cases. Counsel asserts that CIS has already determined that the proffered position is a specialty occupation since CIS has approved other, similar petitions in the past. This record of proceeding does not, however, contain all of the supporting evidence submitted to the California Service Center in the prior cases. In the absence of all of the corroborating evidence contained in these records of proceeding, the documents submitted by counsel are not sufficient to enable the AAO to determine whether the positions in the prior H-1B petitions are parallel to the position in the instant petition. Furthermore, each nonimmigrant petition is a separate proceeding with a separate record. *See* 8 C.F.R. § 103.8(d). In making a determination of statutory eligibility, CIS is limited to the information contained in the record of proceeding. *See* 8 C.F.R. § 103.2(b)(16)(ii).

No evidence is in the record that would show the proffered position is so complex or unique that it can be performed only by an individual with a degree.

Although the petitioner claims that its managers possess at least a baccalaureate degree, it never indicated whether their degrees are in a business or management related field. Nor did the petitioner submit evidence of the degrees. Consequently, the petitioner fails to establish the third criterion at 8 C.F.R. § 214.2(h)(4)(iii)(A): that the petitioner normally requires a degree or its equivalent for the position.

The fourth criterion at 8 C.F.R. § 214.2(h)(4)(iii)(A) requires that the petitioner establish 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. None of the responsibilities of the proffered position exceed the scope of those performed by a sales worker supervisor as described in the *Handbook*. The petitioner, therefore, fails to establish the fourth criterion at 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.