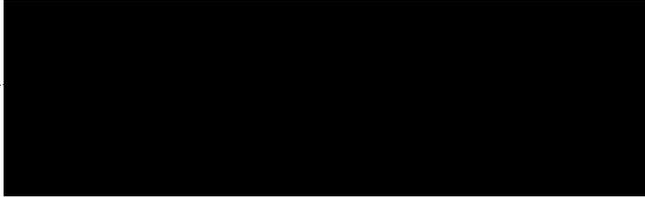




U.S. Citizenship
and Immigration
Services

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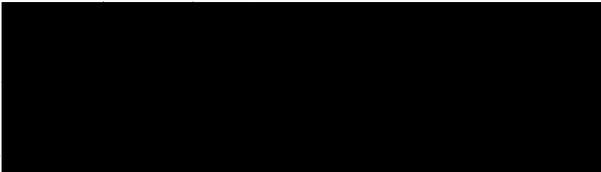


FILE: WAC 03 069 51584 Office: CALIFORNIA SERVICE CENTER Date: **SEP 30 2004**

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 an importer, wholesaler, and retailer of sterling silver jewelry, and seeks to employ the beneficiary as a human resources specialist. 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 proceedings 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 human resource specialist. 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: conduct a study of the staff requirements and needs of the petitioner relating to expansion plans; determine and impose a plan, program, or method for the hiring of additional staff; monitor the performance of all employees concentrating on output, work ethic, attendance, speed, and efficiency; conduct training sessions or seminars to improve productivity, employee morale, and employer/employee relationships; insure the implementation of the petitioner's policies and procedures for all employees; and ensure compliance with applicable labor law. The petitioner requires a minimum of a bachelor's degree in human resource management, psychology, or business administration for entry into the proffered position.

The director found that the offered position did not qualify as a specialty occupation and failed to meet any of the criteria of 8 C.F.R. § 214.2(h)(4)(iii)(A).

On appeal, counsel submits a brief, stating that the proffered position qualifies as a specialty occupation as it meets the criteria set forth at 8 C.F.R. § 214.2(h)(4)(iii)(A).

Upon review of the record, the petitioner has failed to establish that the proffered position qualifies as a specialty occupation. The AAO routinely consults the *Handbook* for information about the duties and educational requirements of particular occupations. The duties of the proffered position are essentially those noted for human resources managers. The *Handbook* notes that because of the diversity of duties and level of responsibility associated with these positions, the educational backgrounds of individuals filling them varies considerably. When filling entry level jobs, employers usually seek college graduates. Many prefer applicants who have majored in human resources, personnel administration, or industrial and labor relations. Others look for college graduates with a technical or business background, or a well-rounded liberal arts education. It is, therefore, apparent that a bachelor's degree in a specific specialty is not required for entry into the position. A degree in any number of disciplines will suffice. The petitioner has failed to establish the first criterion of 8 C.F.R. § 214.2(h)(4)(iii)(A).

The petitioner has also failed to establish that a degree requirement in a specific specialty 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 statements from three other companies involved in the jewelry industry, and copies of job advertisements. Each company statement indicated that it required a bachelor's degree for its human resource specialist or similar positions. Only one of the statements specified that it required a degree in any particular specialty, with that being a bachelor's degree in human resources. The other two simply stated that they required a bachelor's degree without specifying that the degree be in any particular specialty. This, of course, is in keeping with the statements contained in the *Handbook* indicating that degrees in any number of educational disciplines are suitable for human resource management positions. The statements are of little evidentiary value, however, as they do not detail the duties of the positions that are the subject of their statements. It is, therefore, impossible to compare those positions to the proffered position and it cannot be determined that they are parallel positions to that offered to the beneficiary. The petitioner also submitted copies of four job advertisements to establish an industry educational standard for human resource management positions. Four advertisements are insufficient in scope to establish an industry standard. The petitioner has not established the criterion at 8 C.F.R. § 214.2(h)(4)(iii)(A)(2).

The petitioner has not established that it normally requires a degree or its equivalent for the proffered position, as the position is newly created. 8 C.F.R. § 214.2(h)(4)(iii)(A)(3). Even if the petitioner established that it had previously employed only degreed individuals in the offered position, however, the position still does not qualify as a specialty occupation as performance of the position's duties does not require the theoretical and practical application of a body of highly specialized knowledge. The duties are routinely performed in the industry by employees having degrees in a multitude of educational disciplines.

Finally, the duties of the proffered position are routine for human resource managers/specialists in the industry. They are not so complex or unique that they can be performed only by an individual with a degree in a specific specialty. Nor are they so specialized or complex that knowledge required to perform them is usually associated with the attainment of a baccalaureate or higher degree. 8 C.F.R. § 214.2(h)(4)(iii)(A)(2) and (4).

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.