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U.S. Citizenship  
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APR 01 2005



FILE: WAC 04 010 54346 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:



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 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 an importer, wholesaler, and retailer of fine ceramics, tile, and stone for construction and decorating applications. In order to employ the beneficiary as a human resource 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 petitioner had failed to establish that the proffered position met the requirements of a specialty occupation.

The director opined that "the position of Human Resources Specialist would often qualify as a specialty occupation" where the employer "was rather large, had a specific department dedicated to human resources issues and the nature of the duties were such that only a person with a degree in Human Resources or a related field would be capable of performing the required duties." However, the director determined that the proffered position did not fall within this category:

In this case, the company is quite small and the duties appear to be routine type duties that are actually conducted either by the management staff, or a personnel clerk.

On appeal, counsel contends that the evidence of record clearly establishes that the proffered position is that of a human resources specialist, that such a position is a specialty occupation, and that the director's decision was arbitrary and capricious.

The petitioner has failed to establish that the proffered position is a specialty occupation. The AAO bases this determination on its review of the entire record, including: (1) the petitioner's Form I-129 and supporting documentation; (2) the director's request for additional evidence (RFE); (3) the materials submitted in response to the RFE; (4) the director's denial letter; and (5) the Form I-290B (with its addendum), and counsel's brief and attached documents. The appeal shall be dismissed, and the petition will be denied.

Section 101(a)(15)(H)(i)(b) of the Act, 8 U.S.C. § 1101(a)(15)(H)(i)(b), provides a nonimmigrant classification for 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.

Thus, it is clear that Congress intended this visa classification only for aliens who are to be employed in an occupation that requires the theoretical and practical application of a body of highly specialized knowledge that is conveyed by at least a baccalaureate or higher degree in a specific specialty.

Consonant with section 214(i)(1) of the Act, the regulation at 8 C.F.R. § 214.2(h)(4)(ii) states that a specialty occupation means an occupation

which [1] 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 [2] 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. [Italics added.]

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) has consistently interpreted 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. Applying this standard, CIS regularly approves H-1B petitions for qualified aliens who are to be employed as engineers, computer scientists, certified public accountants, college professors, and other such professions. These occupations all require a baccalaureate degree in the specific specialty as a minimum for entry into the occupation and fairly represent the types of professions that Congress contemplated when it created the H-1B visa category.

Counsel’s brief (at pages 5 and 6) presents five paragraphs from the petitioner’s reply to the RFE as establishing that the beneficiary would perform “the duties of a Professional Level Human Resources Specialist, justifying the Petitioner’s requirement that the Beneficiary have a Bachelor’s Degree.” These paragraphs discuss the following duties: conducting a study of the petitioner’s “employee or staff requirements and needs,” including analysis of expansion plans and present programs as they translate into

the need to augment staff and personnel; development of a strategy for “the hiring and engagement of additional staff and employees”; drafting and execution of employment contracts; interviewing and screening job candidates; coordinating with management on hiring actions; developing and implementing a program to monitor and document employee performance; maintaining and updating personnel files; implementing a system for rewarding positive performance; creating a system for disciplining employees; devising and training on programs or plans “for increase in employment productivity, morale boosting, improved inter-employee relationship and improved employer-employee relationship”; updating, improving, amending, and augmenting the petitioner’s personnel policies, rules, and regulations; ensuring compliance with state and federal labor laws; and monitoring “recent laws, jurisprudence and implementing rules and regulations pertaining to employment, labor and other related fields.”

This petitioner is proffering this HR position for the first time, “in anticipation of the increase in number of personnel” (pages 5 and 6 of the petitioner’s letter responding to the RFE).

The AAO does not concur with the director’s statement that HR specialist positions at large organizations often qualify as specialty occupation positions. HR positions are not *per se* specialty occupation positions. Rather, the validity of a specialty occupation claim for an HR position depends on the specific duties defining the particular position.

The AAO agrees with counsel that the director erred by misidentifying the proffered position as that of a personnel clerk. Clearly, the proposed duties exceed such a position. However, as discussed below, the decision to deny the petition is correct, for the duties of the proffered position do not comprise a specialty occupation. The AAO therefore is exercising its authority to affirm decisions which, though based on an incorrect finding, are correct on the basis of other findings that are supported by the evidence of record.

The petitioner has not satisfied the criterion at 8 C.F.R. § 214.2(h)(4)(iii)(A)(I), which assigns specialty occupation status to a position for which the normal minimum entry requirement is a baccalaureate or higher degree, or the equivalent, in a specific specialty closely related to the position’s duties.

The AAO consulted the Department of Labor’s *Occupational Outlook Handbook (Handbook)*, which it recognizes as an authoritative source on the duties and educational requirements of a wide variety of occupations, and found that the duties described in the record substantially accord with those of the HR generalist, identified as follows at page 47 of the *Handbook’s* 2004-2005 edition:

In a small organization, a *human resources generalist* may handle all aspects of human resources work, and thus require a broad range of knowledge. The responsibilities of human resources generalists can vary widely, depending on their employer’s needs.

However, as reflected in this excerpt from page 49, the 2004-2005 edition of the *Handbook* indicates that possession of at least a bachelor’s degree, or its equivalent, in a specific specialty is not a normal requirement for entry to HR positions:

Because of the diversity of duties and levels of responsibility, the educational backgrounds of human resources, training, and labor relations managers and specialists vary considerably. In filling entry-level jobs, many employers seek college graduates who have majored in human resources, personnel administration, or industrial and labor relations. Other employers look for college graduates with a technical or business background or a well-rounded liberal arts education.

Many colleges and universities have programs leading to a degree in personnel, human resources, or labor relations. Some offer degree programs in personnel administration or human resources management, training and development, or compensation and benefits. Depending on the school, courses leading to a career in human resources management may be found in departments of business administration, education, instructional technology, organizational development, human services, communication, or public administration, or within a separate human resources institution or department.

Because an interdisciplinary background is appropriate in this field, a combination of courses in the social sciences, business, and behavioral sciences is useful. Some jobs may require a more technical or specialized background in engineering, science, finance, or law, for example. Most prospective human resources specialists should take courses in compensation, recruitment, training and development, and performance appraisal, as well as courses in principles of management, organizational structure, and industrial psychology. Other relevant courses include business administration, public administration, psychology, sociology, political science, economics, and statistics. Courses in labor law, collective bargaining, labor economics, labor history, and industrial psychology also provide a valuable background for the prospective labor relations specialist. As in many other fields, knowledge of computers and information systems also is useful.

The additional evidence that the petitioner submitted into the record does not refute the *Handbook's* information to the effect that a bachelor's degree or its equivalent is not normally required for the type of position proffered here.

The job advertisements from other employers display a wide spectrum of acceptable educational credentials --- including only a preference for a bachelor's degree, and a general requirement for a bachelor's degree that specifies no particular major or area of concentration. This is not indicative of employers normally requiring at least a bachelor's degree or its equivalent in a specific specialty.

The letters from other firms in the business do not assert that their hiring practices are normal for the industry, and these letters are too few to establish an industry-wide practice.

The printout from America's CareerInfoNet Internet site is not persuasive, as it reports a "Bachelor's degree" as the "Typical Educational/Training Level." This is not evidence of a normal requirement for a bachelor's

degree or its equivalent in a specific specialty, which is the measure of the Act and 8 C.F.R. § 214.2(h)(4)(iii)(A)(1).

As the evidence of record does not establish that a bachelor's degree, or its equivalent, in a specific specialty is normally a minimum entry requirement for the proffered position, the petitioner has not satisfied the criterion at 8 C.F.R. § 214.2(h)(4)(iii)(A)(1).

The petitioner has not satisfied either of the alternative prongs of 8 C.F.R. § 214.2(h)(4)(iii)(A)(2).

The first alternative prong assigns specialty occupation status to a proffered position with a requirement for at least a bachelor's degree, in a specific specialty, that is common to the petitioner's industry in positions that are both (1) parallel to the proffered position and (2) located in organizations that are similar to the petitioner.

In determining whether there is such a common degree requirement, factors often considered by CIS 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.Minn. 1999) (quoting *Hird/Blaker Corp. v. Sava*, 712 F. Supp. 1095, 1102 (S.D.N.Y. 1989)).

As discussed above, the petitioner has not established that its proffered position is one for which the *Handbook* reports an industry-wide requirement for a bachelor's degree in a specific specialty.

The job advertisements are not persuasive. They are too few to establish an industry-wide standard, and they are comprised of employers outside the petitioner's industry. Also, these job advertisements mirror the *Handbook's* information: they indicate too wide a range of acceptable baccalaureate degrees to be indicative of an industry-wide requirement for a degree in a specific specialty.

The letters of support from the two competitor firms are not persuasive. Both letters tersely state that "our hiring requirement for this position is a Bachelor's Degree or its equivalent in the same field to perform the job duties of the position." These letters are not persuasive. They are unaccompanied by documentary evidence to corroborate their assertion and to establish that the stated hiring requirement accurately represents the firms' recruiting and hiring histories. Also, the letters provide no factual basis by which to judge whether the stated hiring requirement is a function of a job-performance need for highly specialized knowledge, as opposed to an employer's preference for general attributes associated with a college education.

The evidence of record does not qualify the proffered position under the second alternative prong of 8 C.F.R. § 214.2 (h)(4)(iii)(A)(2), which qualifies a position that is so complex or unique that it can be performed only by an individual with at least a bachelor's degree in a specific specialty. The evidence of record does not demonstrate this performance requirement, as it fails to establish that the proffered position is unique from or so much more complex than human resources positions that do not require such a degree.

As the position is being offered for the first time, the criterion at 8 C.F.R. § 214.2(h)(4)(iii)(A)(3), for a position for which the employer normally requires at least a baccalaureate degree or its equivalent in a specific specialty, is not a factor.

Finally, the petitioner has not satisfied the criterion at 8 C.F.R. § 214.2(h)(iii)(A)(4) for positions with specific duties so specialized and complex that their performance requires knowledge that is usually associated with the attainment of a baccalaureate or higher degree in a specific specialty. The petitioner has not demonstrated that the proposed duties are any more specialized and complex than those usually performed by human resource generalists without a degree in a specific specialty, and the record lacks evidence to otherwise establish that the proposed duties require knowledge that is usually associated with the attainment of a baccalaureate or higher degree in a specific specialty.

As the petitioner has failed to establish that the proffered position qualifies as a specialty occupation under any criterion of 8 C.F.R. § 214.2(h)(4)(iii)(A), the director's decision to deny the petition shall not be disturbed.

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. Accordingly, the appeal will be dismissed.

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