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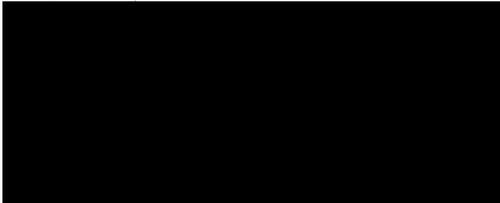


U.S. Citizenship
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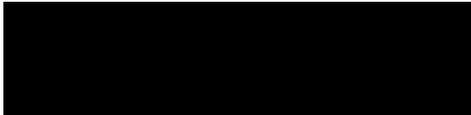
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APR 05 2005



FILE: WAC 03 267 50754 Office: CALIFORNIA 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 jewelry importer that seeks to employ the beneficiary as a human resource specialist. 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 and the petitioner has failed to establish that the beneficiary meets any of the listed criteria to qualify to perform services in the occupation. On appeal, counsel submits a brief 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 human resource specialist. 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 improving morale and productivity and minimizing job turnover; providing training opportunities for the employee so that they can effectively use their skills and training; providing the employer an input in recruiting, promotion, and termination recommendation; determining and improving firm's pay systems based on employee's merits and performance; reporting regularly and directly to the president of the company by preparing status reports and performance reports. The petitioner stated that it requests the services of the beneficiary based on her background and experience in human resources.

The director requested additional information about the proffered position. The petitioner responded and stated the ideal candidate will primarily be expected to direct, supervise, and coordinate work activities of subordinates and staff relating to employment, compensation, labor relations, and employee relations; formulating policies and procedures for recruitment, testing, placement, orientation, and benefits; negotiating bargaining agreements and resolving labor disputes.

The director determined that the proffered position was not a specialty occupation. The director found that the duties of the position as described by the petitioner, are primarily administrative in nature and could easily be handled by a personnel clerk. The director stated that the evidence submitted is insufficient to establish that the position being offered requires attainment of a baccalaureate or higher degree or its equivalent and is normally the minimum requirement for entry into the particular position; the degree requirement is common to the industry in parallel positions among similar organizations (seven employees); or that the position is so complex or unique that it can be performed only by an individual with a degree; or that the employer normally requires a degree or its equivalent for the position; or that 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.

On appeal, counsel states that the duties of the proffered position are significantly different from those of garden variety corporate administrative staff. Counsel refers to the U.S. Department of Labor Occupational Outlook Handbook (*Handbook*) which lists various human resources-related occupations and contends the proffered position is a human resources specialist. Counsel refers to the director's statement that "the position of Human Resources Specialist would often qualify as a specialty occupation." The director further adds "[i]n situations where a company 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" [sic]. Upon review of the record, the AAO agrees with the petitioner that the position as described is one of a human resources specialist. However, the AAO does not concur that the position of human resources specialist qualifies as a specialty occupation in this case.

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 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.Minn. 1999)(quoting *Hird/Blaker Corp. v. Sava*, 712 F. Supp. 1095, 1102 (S.D.N.Y. 1989)).

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 asserts that the *DOT* shows that a bachelor's degree would be required for a human resources specialist. However, the *DOT* is not a persuasive source 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 *Occupational Information Network (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 DOL's *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 it has a specific SVP rating in the *DOT*.

A thorough review of the *Handbook* discloses that the duties of the proffered position are performed by human resource clerks/specialists who recruit, evaluate and retain staff; perform management/employee liason; maintenance of company records including payroll; and development and maintenance of reports and recommendations.

The *Handbook* states that 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, 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. 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.

To establish the second criterion - that a specific degree requirement is common to the industry in parallel positions among similar organizations - or, in the alternative, an employer may show that this particular position is so complex or unique that it can be performed only by an individual with a degree. On appeal, counsel contends that the petitioner submitted sufficient documentation establishing that a baccalaureate or higher degree is normally required for entry into the position of a human resources specialist. The petitioner submitted internet job postings from a wide variety of companies which include employment agencies, a collection agency, and consumer products company.

This evidence fails to establish that a specific baccalaureate degree is common to the industry in parallel positions among similar organizations. Some postings state that the position requires a bachelor's degree without indicating a degree in a specific specialty. Other postings require a degree in business administration or specifically a degree in human resources. These postings confirm the *Handbook's* information that a wide variety of degrees would be acceptable for this position. Another deficiency in the postings is that the companies are dissimilar to the petitioner. For example, Administaff is an employer organization; GC Services is a teleservices and collections company. Consequently, the postings fail to establish that there is a specific baccalaureate degree that is a common industry-wide requirement.

Nor is there evidence in the record 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 petitioner indicated that it was a new company with seven employees. As it is a new position, the petitioner cannot establish that it 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. On appeal counsel contends "consistent with the industry trend, petitioner requires a baccalaureate degree for the position because the petitioner has determined that the nature of the position is so specialized and complex that knowledge required to perform the duties is usually associated with the attainment of a baccalaureate or higher degree." To the extent they are described in the record, the duties are not so specialized and complex that the knowledge required to perform them is usually associated in the attainment of a baccalaureate degree in a specific specialty. The *Handbook* reveals that the proffered position is performed by human resources, training and labor relations managers and specialists, occupations not requiring a bachelor's degree in a specific specialty.

The director also found that the beneficiary was not qualified to perform the duties of the proffered position because the beneficiary's education was not equivalent to a baccalaureate degree in a specialty required by the occupation. However, as the AAO is dismissing the appeal because the proffered position is not a specialty occupation, it need not discuss the beneficiary's qualifications.

As related in the discussion above, and by the statement from the *Handbook*, 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.