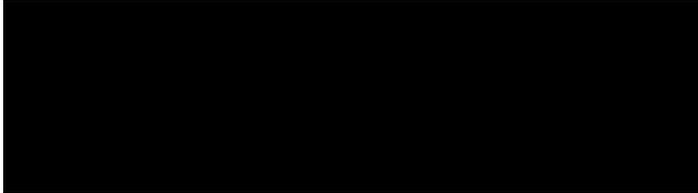


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**U.S. Citizenship
and Immigration
Services**

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FILE: WAC 04 185 52627 Office: CALIFORNIA SERVICE CENTER Date: DEC 05 2005

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: Self-represented

INSTRUCTIONS:

This is the decision of the Administrative Appeals Office in your case. All materials 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. The matter is now on appeal before the Administrative Appeals Office (AAO). The appeal will be dismissed. The petition will be denied.

The petitioner is a provider of residential and business construction, design, restoration, and insurance services. It seeks to employ the beneficiary as an operations manager and to classify him 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 ground that the proffered position does not qualify as 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.

As provided in 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 thereto; (4) the notice of decision; and (5) Form I-290B, an appeal letter, and supporting materials. The AAO reviewed the record in its entirety before issuing its decision.

In its initial submission, including Form I-129 and an accompanying letter, the petitioner described itself as a business in the field of construction, remodeling, design, restoration, and renovation that provides its clients with estimates, expertise, and reconstruction services in the event of fire, flood, and other events. The petitioner stated that it was established in 2000, had ten employees and gross annual income of \$800,000 at the time of filing, and proposed to hire the beneficiary as an operations manager to “plan, direct and coordinate the company’s activity and operations.” The duties of the position were described as follows:

The [beneficiary] will plan, direct and coordinate the company’s activities, responsible with [sic] the implementation of new information technology in the field of ORACLE financial database management and administration. He will also be responsible for formulating the company’s policies, responsible with [sic] the company’s finances and audits as well as the daily operation; will maintain a continuous contact with the clients and creditors, will supervise the schedule of our department’s managers (Marketing, Administration, Technical Development and H&R). The beneficiary will supervise the estimates for our jobs and will be the manager of our relations with our clients and the insurance companies. He will coordinate the joint activity between our company’s departments. [The beneficiary] will also explore and develop new business opportunities in California.

According to the petitioner, the minimum educational requirement for the job is a bachelor’s degree in the area of business management / business law. The record indicates that the beneficiary earned a diploma in economics management and business law in June 1998 from the University of Cluj-Napoca in Romania.

In response to the RFE the petitioner provided additional information about the duties of the proffered position and claimed that the position was similar to that of a financial manager, as described in the Department of Labor (DOL)’s *Occupational Outlook Handbook (Handbook)*:

The beneficiary will plan, direct and coordinate the company’s activities, being responsible with [sic] our financial policy, managing our investments and our finances; will be responsible for our company’s long term strategy; will analyze, choose and implement new and improved techniques (including information technology applications for business) with the aim of minimizing the costs and maximizing the profits. Will generate financial reports, will calculate and generate budgets, will be responsible for choosing the projects to be executed, will supervise the estimates for our labor jobs, will maintain a continuous contact with our company’s large account clients, creditors and debtors, contractors and insurance companies. The [beneficiary] will also perform the reconciliation of our accounts; will be responsible [for] estimating and planning the use of materials and human resources.

In his decision the director found that the duties of the proffered position reflect those of a general manager, as described in the DOL *Handbook, supra*. The director declared that the petitioner, in response to the RFE, had amended its original description of the duties and claimed the proffered position to be similar to that of a financial manager. The director cited authority that prohibits a petitioner from

materially changing its petition after filing and indicated that the instant petition would be adjudicated on the basis of the initial description of the proffered position. Drawing on information in the *Handbook*, the director determined that a baccalaureate degree in a specific specialty is not the normal minimum requirement for entry into a general manager position. The petitioner submitted no evidence that a degree requirement in a specific specialty is common to the industry in parallel positions among similar organizations, the director stated, and insufficient evidence that the proffered position is so complex and unique that it can only be performed by an individual with a baccalaureate degree in a specific field. The record did not show that the petitioner normally requires a degree or its equivalent in a specific specialty, the director stated, or that the duties of the position are so specialized and complex that the knowledge required to perform them is usually associated with a baccalaureate or higher degree in a specific specialty. The director concluded that the proffered position does not qualify as a specialty occupation under any of the criteria enumerated at 8 C.F.R. § 214.2 (h)(4)(iii)(A).

On appeal the petitioner reiterates its contention that the duties of the proffered position encompass those of an operations manager (as asserted in the original petition) and a financial manager (as asserted in response to the RFE). According to the petitioner, the beneficiary would manage ten or more employees. Additional documentation was submitted, including DOL literature about financial managers and general and operations managers, some testimonial letters from clients, and some photographs of the company's projects.

In determining whether a position meets the statutory and regulatory criteria of a specialty occupation, CIS routinely consults the DOL *Handbook*, *supra*, as an authoritative source of information about the duties and educational requirements of particular occupations. Factors typically considered are whether the *Handbook* indicates a degree is required by the industry; 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)). CIS also analyzes the specific duties and complexity of the position at issue, with the *Handbook's* occupational descriptions as a reference, as well as the petitioner's past hiring practices for the position. *See Shanti, Inc. v. Reno, id.*, at 1165-66.

The AAO determines that the job duties described by the petitioner in response to the RFE represent an expansion of the duties described in its original letter, but not a material change to the petition. The cumulative duties described in the two submissions are fundamentally those of an operations manager – the petitioner's own title for the position – not those of a financial manager.

Financial managers, as explained in the *Handbook*, 2004-05 edition, at 39, "oversee the preparation of financial reports, direct investment activities, and implement cash management strategies." As further described in the *Handbook*: "The duties of financial managers vary with their specific titles, which include controller, treasurer or finance officer, credit manager, cash manager, and risk and insurance manager." *Id.* In addition, "[f]inancial managers play an increasingly important role in mergers and consolidations, and in global expansion and related financing." *Id.* at 40. According to the *Handbook*, a bachelor's degree in finance, accounting, economics, or business administration is the minimum educational degree for a financial manager. *See id.* The AAO is not persuaded by the evidence of record that the beneficiary would be performing the duties of a financial manager in the proffered position. The job duties described in the petitioner's response to the RFE provide no information about the types of

financial reports the beneficiary would oversee, the types of investment activities the beneficiary might direct, or the nature and complexity of the cash management strategies likely to be implemented. According to the petitioner, its business had ten employees and gross annual income of \$800,000 at the time of filing. The evidence of record does not demonstrate that the petitioner's financial operations are of such scale and complexity that the petitioner will employ the beneficiary as a financial manager. Simply going on record without supporting documentation does not satisfy the petitioner's burden of proof. See *Matter of Soffici*, 22 I&N Dec. 158, 165 (Comm. 1998) (citing *Matter of Treasure Craft of California*, 14 I&N Dec. 190 (Reg. Comm. 1972)). Thus, the petitioner has failed to establish that the beneficiary would be performing the services of a financial manager in the proffered position.

Based on the petitioner's cumulative description of the job duties, and consistent with the its title for the position, the AAO determines that the proffered position accords with the *Handbook's* description of a general or operations manager. The duties of that occupation, which is a sub-category of the *Handbook's* occupational category entitled "top executives," are described in the *Handbook*, 2004-05 edition, at 65:

General and operations managers plan, direct, or coordinate the operations of companies or public and private sector organizations. Their duties include formulating policies, managing daily operations, and planning the use of materials and human resources, but are too diverse and general in nature to be classified in any one area of management or administration, such as personnel, purchasing, or administrative services. In some organizations, the duties of general and operations managers may overlap the duties of chief executive officers.

The *Handbook* describes the educational background and experience of top executives, including general and operations managers, as follows:

The formal education and experience of top executives 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 Some top executives in the public sector have a background in public administration or liberal arts. Others might have a background related to their jobs Because many top executive positions are filled by promoting experienced, lower level managers when an opening occurs, many top managers have been promoted from within the organization. In industries such as retail trade or transportation, for instance, it is possible for individuals without a college degree to work their way up within the company and become managers. However, many companies prefer that their top executives have specialized backgrounds and, therefore, hire individuals who have been managers in other organizations.

Handbook, id., at 66. While the foregoing excerpt indicates that some general and operations manager positions may require baccalaureate or higher degrees in a specific specialty, it is not the normal minimum requirement for entry into such positions. Some general and operations managers may have degrees in fields unrelated to their positions, and some individuals with in-house experience may become general or operations managers with less than baccalaureate level education. The AAO concludes, therefore, that the proffered position does not meet the first alternative criterion of a specialty occupation under 8 C.F.R. § 214.2 (h)(4)(iii)(A)(I).

With respect to the second alternative criterion of a specialty occupation, at 8 C.F.R. § 214.2(h)(4)(iii)(A)(2), there is no evidence in the record that the requirement of a bachelor's degree in a specific specialty is common to the petitioner's industry in parallel positions among similar organizations. Nor does the record establish that the proffered position is so complex or unique that it can only be performed by an individual with a bachelor's degree in a specific specialty. The petitioner has submitted no evidence demonstrating the uniqueness of the position, or that its complexity exceeds that of other operations managers in the petitioner's line of business, such that a degree in a specific specialty would be required. Accordingly, the proffered position does not qualify as a specialty occupation under either prong of 8 C.F.R. § 214.2(h)(4)(iii)(A)(2).

With respect to the third alternative criterion of a specialty occupation, the operations manager is a newly created position and the petitioner has no hiring history for it. Thus, the petitioner cannot show that it normally requires a bachelor's degree in a specific specialty, as required for the position to qualify as a specialty occupation under 8 C.F.R. § 214.2(h)(4)(iii)(A)(3).

Lastly, though the petitioner asserts on appeal that the duties of the proffered position are so specialized and complex that baccalaureate level knowledge in the field of economics/management/administration is required to perform them, the evidence of record does not support of that claim. Based on the petitioner's description of the position, and the nature and scale of the business as reflected in the testimonial letters, photographs of the company's projects, and other business records, the AAO concludes that the duties of the operations manager could be performed by an experienced individual without baccalaureate level knowledge in a specific specialty. Accordingly, the proffered position does not meet the fourth alternative criterion of a specialty occupation at 8 C.F.R. § 214.2(h)(4)(iii)(A)(4).

For the reasons discussed above, the proffered position does not meet any of the qualifying criteria of a specialty occupation enumerated at 8 C.F.R. § 214.2(h)(4)(iii)(A). The petitioner has not established that the beneficiary will be coming temporarily to the United States to perform services in a specialty occupation, as required under section 101(a)(15)(H)(i)(b) of the Act, 8 U.S.C. § 1101(a)(15)(H)(i)(b).

The petitioner bears the burden of proof in these proceedings. *See* section 291 of the Act, 8 U.S.C. § 1361. The petitioner has not sustained that burden. Accordingly, the AAO will not disturb the director's decision denying the petition.

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