

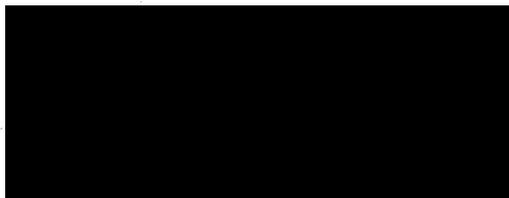
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U.S. Department of Homeland Security
20 Mass. Ave., N.W., Rm. A3042
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U.S. Citizenship
and Immigration
Services

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DJ

FILE: WAC 02 072 52685 Office: CALIFORNIA SERVICE CENTER Date: DEC 13 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 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 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 office equipment dealership that seeks to employ the beneficiary as a document management specialist 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 grounds that the petitioner failed to establish that the proposed position meets the definition of specialty occupation at 8 C.F.R. § 214.2(h)(4)(iii)(A). On appeal, the petitioner asserts that the nature of the duties of the proposed position is so unique and complex that it is usually associated with the attainment of a bachelor's or higher degree.

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 bachelor's or higher degree, but one in a specific field of study directly related to the proposed 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 with accompanying letter from the petitioner. The AAO reviewed the record in its entirety before issuing its decision.

The petitioner seeks the beneficiary's services as a document management specialist. Evidence of the beneficiary's duties includes Form I-129 with attachments and the petitioner's response to the director's request for evidence. According to this evidence, the beneficiary's duties would include: installing, customizing, supporting, and managing malfunctioning copiers and printers on a network; providing customer support for printing problems such as color calibration, color adjustment and correction on RGB and CMYK-based graphics; managing the company website with regular updates, performing fax broadcasts and target mailing; preparing marketing materials and illustrations, interacting with the company's sales representatives and briefing them on technical specifications, capabilities, and applications of new products; attending Ricoh University programs for higher training; and communicating with customers of ethnic background.

The director asked the petitioner to submit the following: a detailed description of specific job duties, including the percentage of time to be spent on each duty, level of responsibility, and types of employees supervised; evidence that the position was a specialty occupation; copies of the petitioner's present and past job announcements for the proposed position; and evidence that the beneficiary possesses the equivalent of a U.S. bachelor's or higher degree.

In response, the petitioner provided a more detailed description of the job duties, a copy of the announcement for the proposed position as it appeared in www.hotjobs.com, and seven responses to that announcement from other applicants for the job.

The director found that the proposed position failed to meet any of the required criteria for classification as a specialty occupation.

On appeal, the petitioner asserts that the proposed position meets the fourth criterion of the statutory definition of specialty occupation: that the nature of the specific duties of the position is so complex and unique that the knowledge required to perform the duties is usually associated with the attainment of a bachelor's or higher degree. The petitioner does not submit additional evidence to support this assertion.

Upon review of the record, the AAO concludes that the petitioner has failed to establish that its document management specialist position meets any of the four criteria outlined in 8 C.F.R. §214.2(h)(4)(iii)(A). Therefore, the proposed position is not a specialty occupation.

Factors often considered by CIS to determine whether these criteria have been met include: whether the Department of Labor's *Occupational Outlook Handbook (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/Baker Corp. v. Sava*, 712 F. Supp. 1095, 1102 (S.D.N.Y. 1989)).

To determine 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 bachelor's degree in a specific field of study as the minimum for entry into the occupation as required by the Act.

The AAO turns first to the criterion at 8 C.F.R. § 214.2(h)(4)(iii)(A)(I) - a bachelor's or higher degree or its equivalent is normally the minimum requirement for entry into the particular position. The AAO

routinely consults the *Handbook* for its information about the duties and educational requirements of particular occupations. After a careful review of the *Handbook*, the AAO finds that the duties of the proposed position fall within those noted for two occupations: office machine repairers and computer support specialists.

The *Handbook* explains that office machine repairers work on photocopiers, and other office machines and that common malfunctions include paper misfeeds and poor-quality copy. The *Handbook* notes that new office machinery increasingly includes computerized components. Regarding the educational requirements for these positions, the *Handbook* notes that:

Knowledge of electronics is necessary for employment as a computer, automated teller, or office machine repairer. Employers prefer workers who are certified as repairers or who have training in electronics who are certified as repairers or who have training in electronics from associate degree programs, the military, vocational schools, or equipment manufacturers. . . . Employers may send experienced workers to training sessions to keep up with changes in technology and service procedures. . . . Experienced workers may become specialists who help other repairers diagnose difficult problems. . . [and] may move into management positions responsible for supervising other repairers.

The *Handbook* explains that computer support specialists troubleshoot to provide technical assistance, support, and advice to customers and other users. They interpret problems and provide technical support for hardware, software, and systems. They answer telephone calls, analyze problems using automated diagnostic programs, and resolve recurrent difficulties. Regarding the educational requirements for these positions, the *Handbook* notes that:

While there is no universally accepted way to prepare for a job as a computer support specialist, many employers prefer to hire persons with some formal college education. A bachelor's degree in computer science . . . is a prerequisite for some jobs; however, other jobs may require only a computer-related associate degree. . . . Completion of a certification training program, offered by a variety of vendors and product makers, may help some people to qualify for entry-level positions. Relevant computer experience may substitute for formal education.

The petitioner fails to establish the first criterion because the *Handbook* indicates that, although most employers require electronics-related or computer-related degrees or training, they do not always require bachelor's degrees but will accept associate's degrees, training certificates, and relevant computer experience as a substitute for formal education. Accordingly, the petitioner failed to establish that a bachelor's degree in a specific field of study is normally the minimum requirement for entry into the proposed position.

The AAO turns next to the first alternative prong of the second criterion at 8 C.F.R. § 214.2(h)(4)(iii)(A)(2) - the degree requirement is common to the industry in parallel positions among similar organizations. The petitioner does not assert and the record does not contain evidence of an industry-wide requirement for a bachelor's degree in a specific field of study for parallel positions among companies of similar size and scope.

The AAO turns next to the second alternative prong of the second criterion at 8 C.F.R. § 214.2(h)(4)(iii)(A)(2) - a particular position is so complex or unique that it can be performed only by an individual with a degree in a specific field of study and the fourth prong at 8 C.F.R. § 214.2(h)(4)(iii)(A)(4) - 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 bachelor's or higher degree in a specific field of study. As noted above, the duties of the proposed position are of a copy machine repairer/computer support specialist, positions that do not require a bachelor's degree. First, the petitioner asserts that, given the multifaceted nature of today's office equipment, the duties of this particular position are complex enough to require a bachelor's degree. Throughout the record, the petitioner repeats that it requires a bachelor's degree but does not specify that it requires that degree be in a specific field of study. Second, on appeal, the petitioner states that it does not believe it is "necessary or relevant" to provide a "detailed technical explanation" of the duties of the proposed position "because these are technical terms related to our specific business." The petitioner does not explain how these duties are distinguishable from the duties of other copy machine repairers/computer support specialists. Nor does it explain why these duties are so complex that they can only be performed by a person with a bachelor's degree in a specialty as opposed to by a person who obtained the knowledge from practical experience or on-the-job training, as indicated in the *Handbook*. The petitioner's description of the job duties is not sufficiently specific to establish the referenced criteria. Going on record without supporting documentary evidence is not sufficient for purposes of meeting the burden of proof in these proceedings. *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)).

Finally, the AAO turns to the third criterion at 8 C.F.R. § 214.2(h)(4)(iii)(A)(3) - the employer normally requires a bachelor's degree or its equivalent for the position. The petitioner states that the proposed position is relatively new for an office equipment dealership and that it requires a bachelor's degree for this position. As the petitioner cannot offer proof of past hiring practices for the position, the petitioner has not met its burden of proving this criterion.

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 failed to sustain that burden and the appeal shall accordingly be dismissed.

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