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U.S. Citizenship
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FILE: ~~WAC~~ 04 009 52334 Office: CALIFORNIA SERVICE CENTER Date: DEC 13 2005

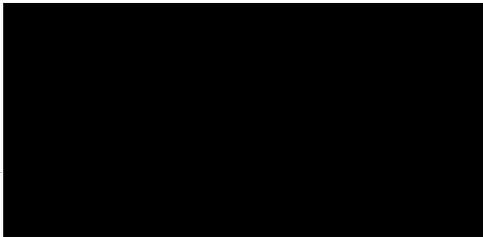
IN RE: Petitioner:

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:



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 moving and storage company with 27 employees 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. Additionally, the director found that the beneficiary was not qualified to perform the services in a specialty 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 maximizing strategic use of human resources and maintaining functions such as recruitment, corporate policies and regulatory compliance; analyzing existing policies of the petitioner and prevailing practice among similar organizations, to establish competitive benefits programs. The petitioner stated that the beneficiary would spend 70% of her time recruiting, interviewing and selecting employees to fill vacant positions; consulting with management on a variety of human resource related and business related issues on both strategic and operational levels; maintaining records of insurance coverage, pension plan, and personnel transactions, such as hiring promotions, transfers and terminations; conducting wage survey and meeting with employees and management to resolve grievances; managing compensation program; directing development and application of techniques of job analysis, job descriptions, evaluation, grading, and pricing; analyzing company compensation policies, government regulations concerning payment of minimum wages and overtime pay, prevailing rates in similar organizations and industries; administering and communicating the company's benefit program; planning modification of existing benefits programs. The petitioner indicated that the beneficiary would spend 30% of her time in planning and implementing employee involvement and relations programs, coordinating communications with customers and the public and managing special events for the business.

Counsel referred to the Department of Labor's *Occupational Outlook Handbook* (the *Handbook*) as stating "employer's prefer applicants who 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. . . ." The petitioner indicated that the beneficiary has the equivalent of a bachelor's degree in behavioral science.

The director requested evidence that the proffered position meets one or more of the above listed criteria. Additionally, the director requested a copy of the petitioner's line and block organizational chart with a brief description of the job duties and educational level of the employees employed under the direction of the proposed position. The director requested that the proposed position be clearly identified in the chart.

In response to the director's request, counsel referred to the *California Occupational Guide* for human resources specialists as indicating that the position normally requires a four-year college degree and that the preferred degree could vary from business administration with a human resources specialization to industrial relations or sociology. Additionally, counsel referred to a career website "America's Career Infonet" in support of his assertions. The petitioner submitted several internet job postings for the position of human resources specialist. The petitioner also submitted a letter from Mr. Eli Galam, President of Mr. Move, Inc. (an affiliated company to the petitioner), indicating that he requires a human resources person to have a bachelor's degree in order to perform the duties of the position. Further, counsel explained that the petitioner currently employs a human resources specialist and this employee has a bachelor's degree in behavioral sciences. Finally, counsel asserted that the proffered position requires skill and aptitude associated with knowledge acquired through formal study of a highly specialized field of endeavor and cannot be performed by one with a high school education or lesser experience. Counsel noted that the petitioner's organizational chart indicated that the proffered position serves as a member of the management team of the petitioner.

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 those of a human resources specialist. The director referred to the *Handbook* and noted that although many employers seek college graduates, it cannot be found that a baccalaureate degree is a normal industry-wide minimum requirement for entry into the occupation. The director found the use of the word "many" implies that this is merely a preference and not an absolute requirement as a minimum for entry into the field. The director found that the evidence of record does not show that the job offered could not be performed by an individual whose educational training falls short of a baccalaureate degree. The director stated that the evidence submitted is insufficient to establish that the position being offered requires the 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; 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. Additionally, the director found that the evidence was insufficient to establish that the beneficiary has the equivalent of the degree required by the occupation.

On appeal, counsel states that the proffered position does qualify as a specialty occupation because a baccalaureate degree or higher is normally the minimum requirement for entry into the field of Human Resources and counsel refers to the *Handbook* and the *California Occupational Guide* (the *Guide*) as evidence supporting his contentions. Additionally, counsel notes that the petitioner requires its human resources specialist to have a degree in the field. Counsel asserts that the director misinterpreted the *Handbook* and states that it indicates that all employers require a college degree. Counsel refers to the petitioner's current human resources specialist to establish that the employer normally requires a degree for the position of human resources specialist. Counsel notes that the current human resources specialist is the beneficiary of an approved H-1B petition and that CIS decided in that case that the petitioner's position of human resources specialist was a specialty occupation. Additionally, counsel asserts that the beneficiary is qualified to perform services in the specialty occupation based on her degree in behavioral sciences.

The petitioner noted that CIS approved another petition that had been previously filed by the petitioner for a similar position. The director's decision does not indicate whether he reviewed the prior approval of the other nonimmigrant petition. If the previous nonimmigrant petition were approved based on the same unsupported assertions that are contained in the current record, the approval would constitute material and gross error on the part of the director. The AAO is not required to approve applications or petitions where eligibility has not been demonstrated, merely because of prior approvals that may have been erroneous. See, e.g. *Matter of Church Scientology International*, 19 I&N Dec. 593, 597 (Comm. 1988). It would be absurd to suggest that CIS or any agency must treat acknowledged errors as binding precedent. *Sussex Engg. Ltd. v. Montgomery*, 825 F.2d 1084, 1090 (6th Cir. 1987), cert. denied, 485 U.S. 1008 (1988).

Furthermore, the AAO's authority over the service centers is comparable to the relationship between a court of appeals and a district court. Even if a service center director had approved the nonimmigrant petitions on behalf of the beneficiary, the AAO would not be bound to follow the contradictory decision of a service center. *Louisiana Philharmonic Orchestra v. INS*, 2000 WL 282785 (E.D. La.), aff'd, 248 F.3d 1139 (5th Cir. 2001), cert. denied, 122 S.Ct. 51 (2001).

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.

A thorough review of the *Handbook* discloses that the duties of the proffered position are performed by human resource specialists who recruit, evaluate and retain staff; perform management/employee liaison; 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. Although counsel refers to the *Guide* to support his contention, the AAO notes that the *Guide* generally states that the position normally requires a four-year degree, and does not specify a degree in a specific specialty. Accordingly, the petitioner has not established 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 manufacturing facility, a provider of recovery audit services and a consumer products company. The petitioner submitted a job posting for a company that provides storage facilities, but this company is not similar in scope to the petitioner's business as it operates in several states.

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, World Kitchen manufactures consumer bakeware and dinnerware; Pella Corporation is a window manufacturer. 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 currently employed a human resources specialist with a bachelor's degree in behavioral science. The petitioner's history of the employment of one person is insufficient to establish that the petitioner 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. 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 with 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.