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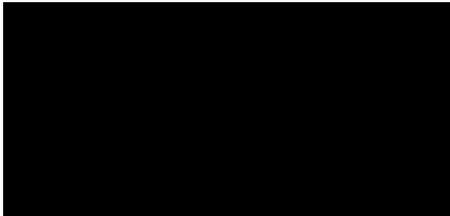
*Dr*

FILE: SRC 04 025 52368 Office: TEXAS SERVICE CENTER Date: DEC 22 2005

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 Texas 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 gasoline station and convenience store, employing three people. It seeks to hire the beneficiary as a general manager pursuant to section 101(a)(15)(H)(i)(b), 8 U.S.C. § 1101(a)(15)(H)(i)(b). The director denied the petition because she determined that the proffered position was not a specialty occupation.

The record of proceeding before the AAO contains: (1) Form I-129 and supporting documentation; (2) the director's request for evidence; (3) counsel's response to the director's request for evidence; (4) the director's denial letter; and (4) Form I-290B, with counsel's statement. The AAO reviewed the record in its entirety before reaching its decision.

The issue before the AAO is whether the petitioner's proffered position qualifies as a specialty occupation. To meet its burden of proof in establishing that its proffered position is a specialty occupation, a petitioner must establish that the job it is offering to the beneficiary meets the following statutory and regulatory requirements.

Section 214(i)(1) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1184(i)(1) defines the term "specialty occupation" as one 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.

The term "specialty occupation" is further defined at 8 C.F.R. § 214.2(h)(4)(ii) as:

An occupation which 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 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.

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 above criteria to mean not just any baccalaureate or higher degree, but one in a specific specialty that is directly related to the proffered position.

To determine whether a particular job qualifies as a specialty occupation, CIS does not simply rely on a position’s title. The specific duties of the proffered position, combined with the nature of the petitioning entity’s business operations, are factors to be considered. CIS must examine the ultimate employment of the alien, and determine whether the position qualifies as a specialty occupation. *Cf. Defensor v. Meissner*, 201 F. 3d 384 (5<sup>th</sup> Cir. 2000). The critical element is not the title of the position nor an employer’s self-imposed standards, but whether the position actually requires the theoretical and practical application of a body of highly specialized knowledge, and the attainment of a baccalaureate or higher degree in the specific specialty as the minimum for entry into the occupation, as required by the Act.

The petitioner states that it is seeking the beneficiary’s services as a general manager. Evidence of the beneficiary’s duties includes: the Form I-129; an October 17, 2003 letter of support from the petitioner; and counsel’s January 27, 2004 response to the director’s request for evidence.

The record indicates that the proffered position of general manager would require the beneficiary to:

- Be responsible for purchasing, and finances;
- Negotiate with vendors and pay vendors;
- Determine the demand for products and identify potential customers;
- Develop pricing strategies with the goal of maximizing profit while ensuring that customers are satisfied;
- Recommend cost savings methods, and monitor and analyze the monthly sales;
- Prepare daily accounts of sales and daily balance sheets;
- Prepare monthly inventory;
- Manage accounts for tax purposes;
- Hire, fire and supervise employees; and
- Report on the status of business and financing to the petitioner.

To make its determination whether the employment just described qualifies as a specialty occupation, the AAO turns to 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; and 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 considered by the AAO when determining these criteria include: whether the Department of Labor’s (DOL) *Occupational Outlook Handbook (Handbook)*, on which the AAO routinely relies for the educational requirements of particular occupations, reports 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)).

A review of the duties of the proffered position finds many of them to be closely aligned to the employment of general and operations managers, as discussed in the 2004-2005 edition of the DOL *Handbook*, pages 64-65 under the occupational title of top executives:

All organizations have specific goals and objectives that they strive to meet. Top executives devise strategies and formulate policies to ensure that these objectives are met. Although they have a wide range of titles . . . all formulate policies and direct the operations of businesses and corporations, nonprofit institutions, governments, and other organizations . . . .

...

In smaller organization, such as independent retail stores or small manufacturers, a partner, owner, or general manager often is responsible for purchasing, hiring, training, quality control, and day-to-day supervisory duties.

...

*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 . . . .

The petitioner has also indicated that the proffered position would require the beneficiary to perform duties that require a knowledge of accounting and finance, including preparing daily of accounts of sales and balance sheets, and managing its accounts for tax purposes. As described, these duties appear consistent with those carried out by bookkeepers, whose employment is discussed by the *Handbook* at page 437:

Bookkeeping, accounting, and auditing clerks are an organization’s financial recordkeepers. They update and maintain one or more accounting records, including those which tabulate expenditures, receipts, accounts payable and receivable, and profit and loss. They have a wide range of skills and knowledge from full-charge bookkeepers who can maintain an entire company’s books to accounting clerks who handle specific accounts . . . .

In small establishments, bookkeeping clerks handle all financial transactions and recordkeeping. They record all transactions, post debits and credits, produce financial statements, and prepare reports and summaries for supervisors and managers . . . . They also may handle payroll, make purchases, prepare invoices, and keep track of overdue accounts.

In that the duties of the proffered position appear to combine the work of a general/operations manager with that of a bookkeeper, the AAO turns to the *Handbook's* discussion for information on whether either occupation normally requires a baccalaureate or higher degree, or its equivalent, for entry-level employment.

The *Handbook*, at page 66, reports the following educational requirements for those seeking employment as a general/ operations manager:

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 . . . .

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.

The educational background needed for employment as a bookkeeper is described at page 434:

Most financial clerks are required to have at least a high school diploma. However, having completed some college is becoming increasingly important, particularly for those occupations requiring knowledge of accounting. For occupations such as bookkeepers, accounting clerks, and procurements clerks, an associate's degree in business or accounting often is required. Some financial clerks have bachelor's degrees in business, accounting, or liberal arts. Although a degree is rarely required, many graduates accept entry-level clerical positions to get into a particular company or to enter the finance or accounting field with the hope of being promoted to professional or managerial positions. Some companies have a set plan of advancement that tracks college graduates from entry-level clerical jobs into managerial positions. Workers with bachelor's degrees are likely to start at higher salaries and advance more easily than those without degrees.

In that the *Handbook* indicates that neither the beneficiary's managerial or accounting duties would impose a specific degree requirement on individuals seeking employment, the petitioner cannot establish that its proffered position would require the beneficiary to hold a baccalaureate or higher degree, or its equivalent. Accordingly, it cannot establish its proffered position as a specialty occupation under the first criterion at 8 C.F.R. § 214.2(h)(4)(iii)(A).

On appeal, counsel contends that the proffered position is more than that of a general manager, that it includes the duties typically performed by a financial manager or market analyst and that the petitioner has demonstrated that the duties associated with the proffered position are complex and require the application of highly specialized knowledge and skills. He asserts that the instant case raises comparable issues to those addressed by the findings in *Matter of Sun* 12 I&N Dec. 535 (DD 1966). The AAO does not agree.

The employment described by the petitioner is not that of a financial manager or market analyst. While the petitioner has indicated that the beneficiary would be required to perform duties that would require him to have some financial, accounting and marketing knowledge, these responsibilities do not establish the proffered position as similar to either occupation. The duties listed by the petitioner do not reflect the range and complexity of the work performed by financial managers who, in addition to preparing financial reports, direct investment activities and implement cash management strategies for the businesses employing them. (*Handbook*, page 39). Neither do they encompass the responsibilities that characterize the occupation of market research analysts who conduct original research and analysis to develop their marketing and pricing recommendations. (*Handbook*, page 173). Further, the AAO does not find *Matter of Sun*, which addresses whether an individual employed as a hotel manager was eligible for classification as a member of the professions under the third of the preferences then controlling numerically-limited immigration to the United States, to be relevant to the issues raised by the instant nonimmigrant petition.

The AAO now turns to a consideration of whether the petitioner, although unable to establish its proffered position as a specialty occupation under the first criterion, may qualify it under one of the other alternate criteria at 8 C.F.R. § 214.2(h)(4)(iii)(A): a degree requirement is the norm within the petitioner's industry or the position is so complex or unique that it may be performed only by an individual with a degree; the petitioner normally requires a degree or its equivalent for the position; or 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.

A review of the record finds the petitioner has submitted no evidence to establish the duties of the proffered position as identifiable with an industry-wide educational standard or that the proffered position is distinguishable, by its unique nature or greater complexity, from a similar but nondegreed position. Neither has the petitioner attempted to qualify the proffered position as a specialty occupation based on its normal employment practices. Accordingly, it cannot establish the proffered position as a specialty occupation under either the second or third criterion at 8 C.F.R. § 214.2(h)(4)(iii)(A).

On appeal, counsel asserts that the duties of the proffered position are both complex and specialized and require the beneficiary to apply knowledge and skills that are generally acquired through a baccalaureate degree, the requirements necessary to satisfy the fourth criterion. However, the record does not support counsel's assertions. The AAO does not find the duties of the proffered position, as described by the petitioner, to indicate that the proffered position would require the beneficiary to have greater knowledge or skill than that normally possessed by a general/operations manager and bookkeeper or that its duties represent an amalgam of jobs requiring the beneficiary to have skills other than those of a general/operations manager and bookkeeper. Without supporting documentary evidence, the assertions of counsel will not satisfy the petitioner's burden of proof in these proceedings. The assertions of counsel do not constitute evidence. *Matter of Obaigbena*, 19 I&N Dec. 533, 534 (BIA 1988); *Matter of Laureano*, 19 I&N Dec. 1 (BIA 1983); *Matter of Ramirez-Sanchez*, 17 I&N Dec. 503, 506 (BIA 1980). Accordingly, the record does not establish the proffered position as a specialty occupation under the fourth and final criterion at 8 C.F.R. § 214.2(h)(4)(iii)(A).

For the reasons related in the preceding discussion, the petitioner has failed to establish that the proffered position meets the requirements for 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.