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U.S. Citizenship
and Immigration
Services

D2

FILE: SRC 04 036 52835 Office: TEXAS SERVICE CENTER Date: DEC 23 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 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 a rental car and leasing company that seeks to employ the beneficiary as a management trainee. The petitioner 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. On appeal, counsel submits a brief.

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 management trainee. Evidence of the beneficiary's duties includes: the I-129 petition; the petitioner's October 16, 2003 letter in support of the petition; and the petitioner's response to the director's request for evidence. According to this evidence, the beneficiary would perform duties that entail: assisting in employee recruitment, orientation, training, performance appraisals, and supervision; marketing management, according to corporate policies, profitability determinations and business forecasting; determining successful marketing strategies and executing advertisements; accounting, including worksheets, ledgers, journal vouchers, break even points, debits and credits; reviewing/evaluating business statistics and reports, such as periodic reports to monitor occupancy levels and profitability based upon an analysis of total income/profit per car, using the Enterprise Service Quality Index; dealing with industry specific losses, such as stolen cars and conversions, according to industry standards; maintaining a profitable fleet mix (a profitable combination of cars in the rental location) and overseeing the maintenance of the fleet (including vehicle inventory, financing, service contracts, warranties and insurance policies; analyzing conflicting accident reports; settling disputes arising out of insurance matters and/or customer complaints in accordance with Enterprise Rent-A-Car's policies; and directing, evaluating and executing care leases and purchasing contracts. The petitioner stated that a qualified candidate for the position would possess a bachelor's degree in business administration or a related field.

The director found that the proffered position was not a specialty occupation and that the petitioner failed to establish any of the criteria found at 8 C.F.R. § 214.2(h)(4)(iii)(A).

On appeal, counsel states that its competitors in the industry all require a bachelor's degree in a business-related field for positions similar to the proffered position. Counsel also states that the duties of the proffered position reflect that the petitioner's employees have complex duties and functions beyond those of other companies in the industry. Counsel asserts that the duties of the proffered position are so complex and specialized that the knowledge required to perform the duties would typically be associated with earning a bachelor's degree.

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 turns first 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; 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)).

The AAO routinely consults the *Handbook* for its information about the duties and educational requirements of particular occupations. The proffered position most closely resembles that of an entry-level operations manager. The *Handbook* states:

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.

It is clear that there is no requirement for a bachelor's degree in a specific specialty for entry into this field.

The petitioner cites *Tapis International v. INS*, 94 F.Supp.2d 172 (D.Mass Apr. 24, 2000) in support of its argument that the position requires a specialty degree, e.g. a bachelor's degree in business administration plus a significant amount of experience in the car rental industry. The petitioner's reliance on *Tapis* is misplaced. The court in that case indicated that CIS should consider positions as specialty occupations when the position requires the beneficiary to have specific baccalaureate level knowledge, and no degree is offered in the field. The position here does not require any knowledge of the car rental industry, as the beneficiary is an entry-level management trainee, who will be learning the industry on the job. Thus, the petitioner has not established that the proffered position is an emerging specialty occupation for which a baccalaureate degree is required.

On appeal, counsel submits several Internet job listings from the petitioner's competitors and others in closely related fields. Most of the advertisements require a bachelor's degree in business administration, as does the petitioner. A petitioner must demonstrate that the proffered position requires a precise and specific course of study that relates directly and closely to the position in question. Since there must be a close corollary between the required specialized studies and the position, the requirement of a degree with a generalized title, such as business administration or liberal arts, without further specification, does not establish the position as a specialty occupation. *Matter of Michael Hertz Associates*, 19 I&N Dec. 558 (Comm. 1988).

The record does not contain any evidence from professional associations regarding an industry standard or any evidence to support the complexity or uniqueness of the proffered position. The petitioner has, thus, not established the criteria set forth at 8 C.F.R. § 214.2(h)(4)(iii)(A)(1) or (2).

The AAO now turns to the criterion at 8 C.F.R. § 214.2(h)(4)(iii)(A)(3) – the employer normally requires a degree or its equivalent for the position. In response to the director's request for evidence, the petitioner stated that a degree in business administration was required for entry into the proffered position. There is no evidence in

the record, however, regarding the petitioner's past hiring practices. The information submitted on appeal from the petitioner's website does not indicate that a degree in a specific specialty is required for entry into the proffered position. Again, the AAO notes that a requirement of a degree with a generalized title such as business administration, without further specification, does not establish the position as a specialty occupation. *Matter of Michael Hertz Associates*.

Finally, the AAO turns to the criterion at 8 C.F.R. § 214.2(h)(iii)(A)(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.

To the extent that they are depicted in the record, the duties do not appear so specialized and complex as to require the highly specialized knowledge associated with a baccalaureate or higher degree, or its equivalent, in a specific specialty. Therefore, the evidence does not establish that the proffered position is a specialty occupation under 8 C.F.R. § 214.2(h)(4)(iii)(A)(4).

As related in the discussion above, 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.