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U.S. Citizenship
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FILE: WAC 03 027 52557 Office: CALIFORNIA SERVICE CENTER Date: FEB 28 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 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 an importer and exporter of kitchenware and household products. It seeks to employ the beneficiary as a human resources manager and to classify her 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 did 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 evidence (RFE); (3) the petitioner's response to the RFE; (4) the notice of decision; (5) Form I-290B, counsel's appeal brief, and supporting documentation. The AAO reviewed the record in its entirety before issuing its decision.

The petitioner described the proffered position of human resources manager as follows in two internet advertisements during the summer of 2002, which were submitted with the petition:

Partake in the recruitment, interviewing and selection of employees. Plan, draft, develop, modify and revise company policy manual concerning a wide array of matters including pensions, personnel transactions, insurance, medical coverage, leaves of absence, termination policies, etc. Develop and conduct training seminars/programs for all employees. Formulate company policies concerning all aspects of personnel and industrial relations.

Must have Bachelor's Degree in Business Administration, Communications, Human Resources, or within a Liberal Studies/Social Sciences curriculum. Prior experience in Human Resources Management work will be a plus.

Based on the job announcement, a more detailed description of the position in letters from the petitioner, and extensive documentation submitted with the petition and in response to the RFE, the director determined that the duties of the proffered position were primarily administrative in nature and could be handled by a personnel clerk, as described in the Department of Labor (DOL)'s *Occupational Outlook Handbook (Handbook)*. A personnel clerk did not qualify as a specialty occupation. The director also referred to the other internet job postings for human resources managers in the record and concluded that none of them involved parallel positions in similar organizations since none of the companies was clearly in a similar line of business or similar in size to the petitioner. The director concluded that the petitioner failed to establish that the proffered position required at least a baccalaureate degree, that such a degree requirement was common to the industry in parallel positions among similar organizations, that the position was so complex or unique, or the duties thereof so specialized and complex, that a baccalaureate degree or baccalaureate-level knowledge was required to perform the duties of the position, or that the petitioner normally required a degree or its equivalent for the position. Hence, the proffered position did not meet any of the criteria of a specialty occupation enumerated in 8 C.F.R. § 214.2(h)(4)(iii)(A).

In determining whether a position meets the statutory and regulatory criteria of a specialty occupation, CIS routinely consults the *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, id.*, at 1165-66.

On appeal counsel asserts that the director erred in finding that the duties of the proffered position were those of a personnel clerk. According to counsel the record amply demonstrates that the duties of the position – including recruitment campaigns to fill vacant positions; composing a policy manual for employees covering medical insurance, pension plans, personnel transactions, conduct on the job, and termination procedures; creating individual and group training programs to enhance job performance;

formulating company policy on employee standards and relations, employee compensation and benefits, and retirement packages; and tailoring company policies to federal, state, and local law – were beyond the competence of a personnel clerk and required the services of a bona fide human resources manager. The AAO agrees with counsel that the proffered position is more akin to that of a human resources manager than that of a personnel clerk. As the director pointed out in his decision, however, human resources manager is a broad occupational category and the duties of individual positions vary considerably depending on the nature of the company and the scale of its operations.

Reflecting the broad range of positions within the occupational category, educational requirements for human resources managers also vary. As explained in the *Handbook*, 2004-05 edition, at page 49:

Because of the diversity of duties and levels of responsibility, the educational backgrounds of human resources . . . managers and specialists vary considerably. In filling entry-level jobs, many employers seek college graduates who have majored in human resources, personnel administration, or industrial and labor relations. Other employers look for college graduates with a technical or business background or a well-rounded liberal arts education.

According to the *Handbook*, therefore, entry-level human resources managers do not need a baccalaureate or higher degree in a specific specialty directly related to the position. Counsel cites other evidence in the record regarding the educational requirements for human resources managers, including a State of California labor market report and a DOL Bureau of Labor Statistics report. Both of these documents confirm, however, that a variety of educational degrees are acceptable for entry-level positions in the field. Counsel also cites a DOL publication in the Federal Register on education and training categories which lists human resources managers as an occupation requiring “work experience plus a bachelor’s or higher degree,” but does not indicate that a degree in any specific specialty is required. In addition, counsel refers to letters from two university professors – Jed DeVaro of Cornell University’s School of Industrial and Labor Relations, dated July 28, 2003, and John Remington of the University of Minnesota’s Carlson School of Management, dated July 30, 2003 – who assert that the duties of the position proffered by the petitioner in this case require the services of a human resources manager. Turning to the educational requirement of the position, Prof. DeVaro states that it requires “a four-year university degree in an area such as Human Resources Management, Business Administration, or a quantitative major in the social sciences such as psychology or economics,” while Prof. Remington states that it requires “a Bachelor’s Degree in an area such as Human Resources Management, Business Administration, Communications, or other related Social Sciences field.” Thus, the two professors likewise confirm that a variety of educational degrees are acceptable for the proffered position. The evidence of record, therefore, does not establish that a baccalaureate or higher degree in a specific specialty is the normal minimum requirement for entry into a position of human resources manager. Accordingly, the proffered position does not meet the first alternative criterion of a specialty occupation, set forth in 8 C.F.R. § 214.2 (h)(4)(iii)(A)(1).

With respect to the second alternative criterion of a specialty occupation, set forth in 8 C.F.R. § 214.2 (h)(4)(iii)(A)(2), the record does not establish that a baccalaureate degree in a specific specialty is common to the industry in parallel positions among similar organizations. Counsel refers to the numerous internet job announcements in the record for human resources managers. As the director pointed out in his decision, however, the petitioner has not shown that the advertising companies are

similar to the petitioner as to type of business and scale of operations. Without such similarity, the *Handbook* makes clear, the advertised positions are not likely to be comparable to the petitioner's. Moreover, while some of the job announcements specify that a bachelor's degree in human resources management or a related field is required, others simply require a bachelor's degree without specifying a field (or in one case a two-year associate's degree plus experience). Nor has the petitioner shown that the proffered position in this case is so complex or unique that it can only be performed by an individual with a specialty degree directly related to human resources management. Thus, 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).

As indicated in the record, the position of human resources manager was newly created at the time of filing. Since there is no hiring history for the job, the petitioner cannot establish that it normally requires a degree or its equivalent for the position, as required for the position to meet the third alternative criterion of a specialty occupation at 8 C.F.R. § 214.2(h)(4)(iii)(A)(3).

Finally, the record does not establish that the specific duties of the human resources manager are so specialized and complex that the knowledge required to perform them is usually associated with a baccalaureate or higher degree. Thus, 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 petitioner has failed to demonstrate that its human resources manager meets any of the criteria set forth in 8 C.F.R. § 214.2(h)(4)(iii)(A) to qualify as a specialty occupation. 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.