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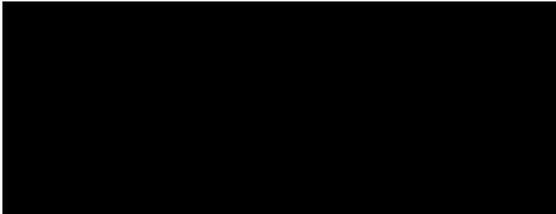


FILE: EAC 02 216 51390 Office: VERMONT SERVICE CENTER Date: **JUL 20 2005**

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, Director  
Administrative Appeals Office

**DISCUSSION:** The 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 owner and operator of retail and convenience stores that seeks to employ the beneficiary as a retail store manager. 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 on the basis that the petitioner had failed to establish that the proposed position meets the definition of a specialty occupation as set forth at 8 C.F.R. § 214.2(h)(4)(iii)(A).

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 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 proposed position.

The record of proceeding before the AAO contains (1) the Form I-129 and supporting documentation; (2) the director’s request for evidence (RFE); (3) the petitioner’s RFE response and supporting documentation; (4) the director’s denial letter; and (5) the Form I-290B and supporting documentation. The AAO reviewed the record in its entirety before issuing its decision.

The petitioner is an owner and operator of retail and convenience stores. It proposes to hire the beneficiary as a retail store manager. The Form I-129 described the duties of the proposed position as the “[m]anagement

of store and employees – duties include purchasing, budgeting, acctg., supervisory [sic].” The petitioner offered an expanded listing of these duties in the “Statement of Purpose” section of a submission entitled “Franchising Retail Business’s Job Description:”

Manages the operations and staff of 7-Eleven with [g]asoline, including the execution of all [c]ompany policies, procedures, programs, and systems. Ensures objectives are reached in all areas while following [c]ompany guidelines. Ensures compliance with all federal, state[,] and local laws and ethical business practices. Provides leadership, direction, training[,] and development to subordinate associates and crew.

The director denied the petition, finding that “[t]he evidence of record does not establish that the job offered qualifies as a ‘specialty occupation’ pursuant to section 101(a)(15)(H)(i)(b) of the Act.” As such, the director found that the petitioner had satisfied none of the four criteria set forth at 8 C.F.R. § 214.2(h)(4)(iii)(A), and therefore had not established the proposed position as a specialty occupation.

On appeal, counsel contends that the director erred in denying the petition, and that the proposed position is in fact a specialty occupation.

In determining whether a proposed 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. The AAO routinely consults the *Occupational Outlook Handbook* (the *Handbook*) for its information about the duties and educational requirements of particular occupations.

The *Handbook* sets forth the following information regarding the duties of sales worker supervisors:

Sales worker supervisors oversee the work of sales and related workers, such as retail salespersons, cashiers, customer service representatives, stock clerks and order fillers, sales engineers, and wholesale and manufacturing sales representatives. Sales worker supervisors are responsible for interviewing, hiring, and training employees, as well as for preparing work schedules and assigning workers to specific duties. Many of these workers hold job titles such as *sales manager* or *department manager*. Under the occupational classification system used in the *Handbook*, however, workers with the title *manager* who mainly supervise nonsupervisory workers are called *supervisors* rather than *managers*, even though many of these workers often perform numerous managerial functions. (Sales worker supervisors oversee retail salespersons, cashiers, customer service representatives, stock clerks and order fillers, sales engineers, and wholesale and manufacturing sales representatives, all of whom are discussed elsewhere in the *Handbook*.)

In retail establishments, sales worker supervisors ensure that customers receive satisfactory service and quality goods. They also answer customers’ inquiries, deal with complaints, and sometimes handle purchasing, budgeting, and accounting. Their responsibilities vary with the size and type of establishment. As the size of retail stores and the types of goods and services increase, these workers tend to specialize in one department or one aspect of merchandising. (Managers in eating and drinking places are discussed in the *Handbook* statement on food service managers.)

In that the duties of a sales worker supervisor as discussed in the *Handbook* are closely aligned to those of the position proposed in the petition, the AAO next turns to the *Handbook's* discussion of the educational qualifications necessary for entry into the field:

Sales worker supervisors usually acquire knowledge of management principles and practices—an essential requirement for a supervisory or managerial position in retail trade—through work experience. Many supervisors begin their careers on the sales floor as salespersons, cashiers, or customer service representatives. In these positions, they learn merchandising, customer service, and the basic policies and procedures of the company.

The educational backgrounds of sales worker supervisors vary widely. Regardless of the education they receive, recommended courses include accounting, marketing, management, and sales, as well as psychology, sociology, and communication. Supervisors also must be computer literate, because almost all cash registers, inventory control systems, and sales quotes and contracts are computerized.

Supervisors who have postsecondary education often hold associate's or bachelor's degrees in liberal arts, social sciences, business, or management. To gain experience, many college students participate in internship programs that usually are developed jointly by individual schools and firms.

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Individuals who display leadership and team-building skills, self-confidence, motivation, and decisiveness become candidates for promotion to assistant manager or manager. A postsecondary degree may speed a sales worker supervisor's advancement into management, because it is viewed by employers as a sign of motivation and maturity—qualities deemed important for promotion to more responsible positions.

These findings do not support counsel's contention that a bachelor's degree is required for entry into the field. Even supervisors with postsecondary education do not necessarily possess a bachelor's degree: the *Handbook* specifically states that supervisors' educational backgrounds vary widely, and that those who did attend postsecondary education often hold either associate's or bachelor's degrees. The fact that some supervisors possess bachelor's degrees is not synonymous with the "normally required" standard imposed by the regulation.

The AAO will accord no weight to the information counsel submits from the *Dictionary of Occupational Titles (DOT)*, as the *DOT* is not a persuasive source of information regarding whether a particular job requires the attainment of a baccalaureate or higher degree in a specific specialty, or its equivalent, as a minimum for entry into the occupation. It provides an assessment (the S.V.P. rating) that is meant to indicate only the total number of years of vocational preparation required for a particular position. It does not describe how those years are to be divided among training, formal education, and experience, and it

does not specify the particular type of degree, if any, that a position would require. For the same reason, the information counsel submits from *O\*Net* will be accorded no weight.<sup>1</sup>

Therefore, the proposed position does not qualify as a specialty occupation under 8 C.F.R. § 214.2(h)(4)(iii)(A)(1).

Nor does the proposed position qualify as a specialty occupation under either prong of 8 C.F.R. § 214.2(h)(4)(iii)(A)(2). The first prong of this regulation requires a showing that a specific degree requirement is common to the industry in parallel positions among similar organizations. No evidence has been submitted, nor has the petitioner asserted, that the proposed position qualifies as a specialty occupation under this prong.

Thus, the proposed position does not qualify as a specialty occupation under the first prong of 8 C.F.R. § 214.2(h)(4)(iii)(A)(2).

The AAO also concludes that the record does not establish the proposed position as a specialty occupation under the second prong of 8 C.F.R. § 214.2(h)(4)(iii)(A)(2), which requires a showing that the position is so complex or unique that it can only be performed by an individual with a degree. It finds no evidence that would support such a finding, as the position described in the petition is very similar to the sales worker supervisor position described in the *Handbook*.

Accordingly, the petitioner cannot establish its proposed position as a specialty occupation under either prong of 8 C.F.R. § 214.2(h)(4)(iii)(A)(2).

The AAO next turns to the criterion at 8 C.F.R. § 214.2(h)(4)(iii)(A)(3), which requires that the petitioner demonstrate that it normally requires a degree or its equivalent for the position. To determine a petitioner's ability to meet the third criterion, the AAO normally reviews the petitioner's past employment practices, as well as the histories, including the names and dates of employment, of those employees with degrees who previously held the position, and copies of those employees' diplomas.

The submitted evidence fails to establish the third criterion. In the appellate brief, counsel contends that the proposed position qualifies under this criterion because the president of the petitioning company, who he states holds bachelor's degrees in physics, mathematics, chemistry, and English literature, is currently fulfilling the duties of the proposed position to be filled by the beneficiary upon approval of the petition. Since he holds these degrees, counsel contends, the petitioner therefore normally requires a baccalaureate or higher degree for the position.

Counsel's contention that the proposed position qualifies for classification as a specialty occupation under this criterion fails. The beneficiary would be the first individual, other than the president of the company, who has ever held this position, so the petitioner cannot demonstrate any pattern or past trends in its hiring. The petitioner cannot demonstrate that it "normally requires" a degree on this basis, as the only person to have ever held this job is the founder and president of the company. The AAO further notes that the petitioner has not substituted copies of the degrees held by the president of the company. Simply

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<sup>1</sup> Even if the AAO were to consider the *O\*Net* submission, the information submitted does not support the contention that a bachelor's degree is normally required for entry into the occupation. The *O\*Net* submission states that "[m]ost occupations in this zone require training in vocational schools, on-the-job experience, or an associate's degree. Some may require a bachelor's degree." The fact that a position "may require" a degree is not synonymous with the "normally required" standard imposed by the regulation.

going on record without supporting documentary evidence is not sufficient for the purpose 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)).

Thus, the third criterion of 8 C.F.R. § 214.2(h)(4)(iii)(A) has not been satisfied.

The fourth criterion, 8 C.F.R. § 214.2(h)(4)(iii)(A)(4), requires the petitioner to establish that the nature of the proposed position's duties is so specialized and complex that the knowledge required to perform them is usually associated with the attainment of a baccalaureate or higher degree in the specialty occupation. A review of the duties of the proposed position does not lead to a conclusion that they would require the beneficiary to possess a higher degree of knowledge and skill than that normally expected of retail store managers in other, similar organizations.

Thus, the proposed position does not qualify as a specialty occupation under 8 C.F.R. § 214.2(h)(4)(iii)(A)(4).

The proposed position does not qualify for classification as a specialty occupation under any of the four criteria set forth at 8 C.F.R. §§ 214.2(h)(4)(iii)(A)(1), (2), (3), and (4). Accordingly, the AAO will 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.