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U.S. Citizenship
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FILE: [Redacted] Office: VERMONT SERVICE CENTER Date:

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:
[Redacted]

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 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 an ice cream manufacturer, with four employees, that seeks to employ the beneficiary as a food production supervisor. 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. 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) counsel's response to the director's request; (4) the director's denial letter; and (5) Form I-290B and supporting documents. The AAO reviewed the record in its entirety before issuing its decision.

The petitioner is seeking the beneficiary's services as a food production supervisor. 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 coordinating production scheduling, staffing, procurement and maintenance of equipment, quality control, inventory control, and the coordination of production activities with those of other departments; planning the production schedule within budgetary limitations and time constraints; using mathematical formulas to determine which machines will be used, whether new machines need to be purchased, whether overtime or extra shifts are necessary; what the sequence of production will be; monitoring the production run to make sure that it stays on schedule; and correcting any problems that may arise; monitoring products standards; determining why standards are not being maintained and improving the product; when necessary, implementing better training programs, reorganizing the manufacturing process or instituting employee suggestions or involvement programs; hiring and firing employees; maintaining time and payroll records; and establishing and enforcing nutrition and sanitation standards for the company.

The petitioner indicated that the duties of the proffered position require the services of an individual who is the holder of a bachelor's degree in food service management, industrial engineering, food technology or a closely related field.

The director issued a request for evidence to solicit additional information to determine whether the proffered position qualified as a specialty occupation. Counsel for the petitioner responded and stated that the beneficiary's duties as a production supervisor, food are "akin to those of an Industrial Production Manager." Counsel contended that a baccalaureate degree in industrial management, business management, business administration or food technology is the minimum educational requirement (or its equivalent) to qualify an individual for a position in food production management. Counsel contended that the beneficiary would be responsible for efficiently running a complex organization and her duties would include planning the utilization of the company's facilities and personnel to improve the efficiency of operations in the office and throughout the establishment. Counsel stated that the petitioner has grown to have gross annual sales in excess of \$600,000.

The director determined that the proffered position was not a specialty occupation. The director found that the proposed duties qualify as a specialty occupation. The director noted that changing the title of the proffered position from production supervisor, food to an industrial production manager does not establish that the proffered position is a specialty occupation. Finally, the director stated that the petitioner has not submitted any additional documentation to establish that the proffered position qualifies as a specialty occupation.

On appeal, counsel states that the job duties of the position are clearly specialized and complex and require the attainment of at least a bachelor's degree in the appropriate discipline. Counsel notes that there is no title for food production supervisor found in the Department of Labor's *Occupational Outlook Handbook (Handbook)* but asserts that both the intent of the position and the specific job duties of the position are found under the title Industrial Production Manager.

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.

Based on the record of proceeding, the AAO has determined that the proffered position is most similar to that of an industrial production manager in the *Handbook*. According to the *Handbook*, industrial production managers duties vary from plant to plant but share many of the same major responsibilities which include production scheduling, staffing, procurement and maintenance of equipment, quality control, inventory control, and the coordination of production activities with those of other departments. The *Handbook* states that the primary mission of industrial production managers is planning the production schedule within budgetary limitation and time constraints. Industrial production managers do this by analyzing the plant's personnel and capital resources to select the best way of meeting the production quota. They determine, often using mathematical formulas, which machines will be used, whether new machines will be purchased, whether overtime or extra shifts are necessary, and what the sequence of production will be.

With respect to the educational qualifications required of industrial production managers, the *Handbook* states:

Because of the diversity of manufacturing operations and job requirements, there is no standard preparation for this occupation. However, a college degree is required, even for those who have worked their way up the ranks. Many industrial production managers have a college degree in business administration, management, industrial technology, or industrial engineering. . . . Some are former production-line supervisors who have been promoted. Although many employers prefer candidates with a business or engineering background, some companies hire well-rounded liberal arts graduates.

Accordingly, the petitioner cannot establish that a baccalaureate or higher degree or its equivalent in a specific specialty is the normal minimum requirement for entry into the industrial production manager position. The *Handbook* states that degrees from different specialties will qualify as a minimum requirement.

To establish the second criterion - that a specific degree requirement is common to the industry in parallel positions among similar organizations – neither the petitioner nor counsel addressed this issue.

No evidence is in the record that would show the proffered position is so complex or unique that it can be performed only by an individual with a degree. Again, the *Handbook* reveals that the proffered position is performed by industrial production managers, positions that do not require a bachelor's degree in a specific specialty.

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 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. Counsel asserts that the level of responsibility “is that of a policy maker, as she will determine the course to follow in all operations, sales, and financial analysis activities.” Counsel adds that “the goal is for the beneficiary to devise and develop operational plans and participate in the creation of a corporate identity and monitor the implementation of this identity.” Counsel concludes the duties are “complex and specialized and thus require that the petitioner’s food production supervisor be the holder of a bachelor’s or higher degree in the appropriate discipline.” The petitioner has stated that it has four employees and gross sales of \$600,000. The petitioner has not provided any evidence of the size of its business. The petitioner has not described the specific duties and responsibilities to be performed by the beneficiary in relation to its particular business e.g. types of operational plans and how the plans will be implemented in relation to its business. Going on record without supporting documentary evidence is not sufficient for purposes 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)).

It cannot be concluded 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. Once again, the *Handbook* reveals that the proffered position is performed by industrial production managers, an occupation not requiring a bachelor’s degree in a specific specialty.

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.