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U.S. Citizenship
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Services

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FILE: LIN 03 033 53222 Office: NEBRASKA SERVICE CENTER Date: JUN 15 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 of the Nebraska Service Center denied the nonimmigrant visa petition and the Administrative Appeals Office (AAO) dismissed a subsequent appeal. The matter is again before the AAO on motion to reopen or reconsider. The motion will be granted. The previous decision shall be affirmed. The petition will be denied.

The petitioner is a telecommunications company that seeks to employ the beneficiary as an administrative services manager and 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 proffered position is not a specialty occupation and the beneficiary is not qualified to perform a specialty occupation.

On motion to reconsider, counsel states that the AAO erroneously summarily dismissed the appeal of the instant petition because the brief and additional evidence had been timely submitted to the Nebraska Service Center within the allocated forty-five (45) days. The record contains a document from the Nebraska Service Center stating that it had timely received the petitioner's brief and additional evidence; thus, the AAO grants the motion to reconsider.

The AAO will first address whether the proposed position is 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.

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; (5) Form I-290B and supporting documentation; and (6) the AAO decision. The AAO has reviewed the record in its entirety before issuing its decision.

The petitioner is seeking the beneficiary's services as an administrative services manager. 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 administrative and clerical telecommunications personnel; analyzing internal processes and planning procedural policies to improve operations; producing cost savings methods for telecommunications supplies and disposing of products to improve efficiency; preparing operational reports and schedules; managing inventory stock; producing a systematic organization of products to promote company growth; formulating budget reports; and teaching operational procedures to staff. The petitioner stated that the beneficiary qualifies for the proposed position based on his education and work experience.

The director concluded that the proposed position is not a specialty occupation. The director stated that the beneficiary's duties do not require specialized knowledge, training, experience, or skill, and that the personnel supervised by the beneficiary do not perform complex duties or require special skills. The director also determined that the beneficiary's education and work experience did not qualify him for a specialty occupation.

On appeal, counsel states that the Department of Labor's (DOL) *Occupational Outlook Handbook* (the *Handbook*), the *Dictionary of Occupational Titles* (DOT), and the *Occupational Information Network* (O*Net) demonstrate that the proposed position is a specialty occupation.

Upon review of the record, the petitioner has not established that the proffered position is a specialty occupation.

The AAO first 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)).

Counsel states that the proffered position is a specialty occupation because it has been assigned a specific SVP rating in the *DOT* and *O*Net*. However, 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. The DOL has replaced the *DOT* with the *Occupational Information Network (O*Net)*. Both the *DOT* and the *O*Net* provide only general information regarding the tasks and work activities associated with a particular occupation, as well as the education, training, and experience required to perform the duties of that occupation. The *Handbook* provides a more comprehensive description of the nature of a particular occupation and the education, training, and experience normally required to enter into and advance within the occupation. For this reason, CIS is not persuaded by a claim that the proffered position is a specialty occupation simply because the DOL has assigned it a specific SVP rating in the *DOT* and the *O*Net*.

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.

A review of the *Handbook* discloses that the beneficiary's duties correspond to those of an administrative services manager as that occupation is defined in the *Handbook*. The *Handbook* reports the following about the educational qualifications for this occupation:

Educational requirements for these managers vary widely, depending on the size and complexity of the organization. In small organizations, experience may be the only requirement needed to enter a position as office manager. When an opening in administrative services management occurs, the office manager may be promoted to the position based on past performance. In large organizations, however, administrative services managers normally are hired from outside and each position has formal education and experience requirements. Some administrative services managers have advanced degrees.

Specific requirements vary by job responsibility. For first-line administrative services managers of secretarial, mailroom, and related support activities, many employers prefer an associate degree in business or management, although a high school diploma may suffice when combined with appropriate experience. For managers of audiovisual, graphics, and other technical activities, postsecondary technical school training is preferred. Managers of highly complex services, such as contract administration, generally need at least a bachelor's degree in business, human resources, or finance. . . .

Based on the *Handbook's* information and the description of the beneficiary's duties, the proposed position would not require a baccalaureate-level degree. Although the *Handbook* states that specific requirements vary by job responsibility, it indicates that only managers of highly complex services such as contract administration generally require at least a bachelor's degree in a specific specialty. As described by the

petitioner, the beneficiary will not perform complex services such as contract administration. The beneficiary will oversee staff responsible for simple routine duties such as customer service, processing purchases and filling orders, soliciting customers over the telephone, opening new accounts, maintaining inventory, and receiving merchandise and entering the information into the computer. Given the general nature of the beneficiary's duties, baccalaureate-level knowledge in a specific specialty would not be required to analyze internal processes and plan procedural policies, produce cost savings methods for telecommunications supplies and dispose of products, prepare operational reports and schedules, manage inventory stock, produce a systematic organization of products, formulate budget reports, and teach operational procedures to staff. Consequently, the petitioner fails to establish the first criterion at 8 C.F.R. § 214.2(h)(4)(iii)(A): that a baccalaureate or higher degree or its equivalent is the normal minimum requirement for entry into the particular position.

No evidence establishes the second criterion at 8 C.F.R. § 214.2(h)(4)(iii)(A) - that a specific degree requirement is common to the industry in parallel positions among similar organizations or shows that the proffered position is so complex or unique that it can be performed only by an individual with a degree. Again, the *Handbook* explains that only administrative managers of highly complex services such as contract administration generally require at least a bachelor's degree in a specific specialty. As discussed in this decision, because the proposed position does not involve highly complex services it does not require a bachelor's degree in a specific specialty.

No evidence in the record establishes 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. Once again, the *Handbook* explains that only administrative managers of highly complex services such as contract administration generally require at least a bachelor's degree in a specific specialty; since the proposed position does not involve highly complex services, it would not require 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 on this ground.

The director also concluded that the beneficiary is not qualified for the proposed position. Because the AAO determined that the proposed position does not qualify as a specialty occupation, whether or not the beneficiary qualifies to perform the proposed position is inconsequential in this proceeding.

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.