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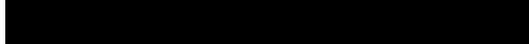
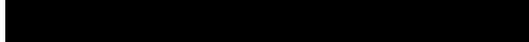
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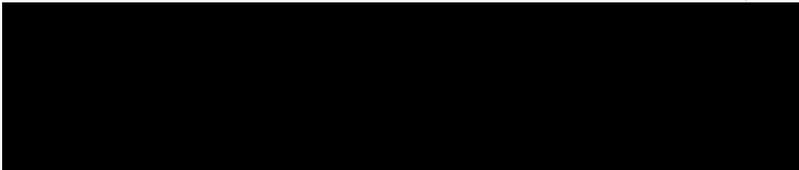
MAR 18 2005

FILE: EAC 03 101 52136 Office: VERMONT SERVICE CENTER Date:

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 materials have been returned to the office that originally decided your case. Any further inquiry must be made to that office.

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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 a jewelry business. It seeks to employ the beneficiary as an operations manager and to classify him 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 grounds that the proffered position did not qualify as a specialty occupation and the beneficiary was not qualified to perform the services of 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 additional evidence; (3) the petitioner's response thereto; (4) the director's decision; and (5) Form I-290B, counsel's appeal brief, and supporting materials. The AAO reviewed the record in its entirety before issuing its decision.

The petitioner designs, manufactures, and markets jewelry products, specializing in wedding jewelry. In a letter accompanying its Form I-129 the petitioner's general manager stated that it wanted to hire the beneficiary as the company's operations manager to perform the following duties:

- Purchase diamonds, gem stones, and jewelries from domestic and international suppliers.
- Build relationships with customers, as well as with domestic and international suppliers.
- Hire, train, supervise and evaluate all employees, and oversee human resources functions.
- Research customer demographics and execute a marketing plan accordingly.
- Create and manage company web-site.
- Manage financial accounts for the business along with a CPA.
- Exercise discretionary authority over the day-to-day operations of the company.
- Facilitate daily market and industry data for economic trend analysis.

The letter stated that the beneficiary would be responsible for managing the company's other four employees, three of whom have bachelor's degrees in fields related to their positions and two of whom have H-1B status. The four employees were listed as (1) general manager, [REDACTED] a U.S. citizen who attended British International College, (2) designer, [REDACTED] an H-1B worker who graduated from the Rhode Island School of Design, (3) director of marketing and sales, [REDACTED] an H-1B worker who graduated from Babson College, and (4) jeweler, [REDACTED] a U.S. citizen. The petitioner asserted that a qualified candidate for the operations manager position must have at least a bachelor's degree in business administration or a related field. The beneficiary earned a bachelor of science degree in business administration from Babson College in Wellesley, Massachusetts, on December 30, 2002.

In response to the request for additional evidence the petitioner's general manager provided an expanded list of duties for the proffered position, which he declared was actually more akin to a general manager or chief executive officer:

- Assessment of complex issues pertaining to international jewelry markets.
- Definition of pricing structures and sales methodologies for jewelry products.
- Supervision and training of subordinate employees.
- Management of company financial accounts including raising working capital and building investor relations.
- Generating financial statements such as income statements, balance sheets, cash flow statements and annual reports to provide to the IRS and other financial institutions.
- Determining consumer target market.
- Structuring the company's short and long-term business strategy.
- Building and managing relations with domestic and international suppliers.
- Handling customer relationship management (CRM) and training all employees on CRM procedures.
- Researching customer demographics and executing a marketing plan accordingly.
- Creating and managing the company website.
- Facilitating daily market and industry information from industry research companies in order to update investors and inform employees of current market news.
- Evaluating existing employees and potential additional employees for company's future expansion strategy.
- Creating business plans to evaluate current business strategy and to seek future opportunities.

The director found that the proffered position did not qualify as a specialty occupation under any of the criteria enumerated in 8 C.F.R. § 214.2(h)(4)(iii)(A). The Department of Labor (DOL)'s *Occupational Outlook Handbook (Handbook)*, the director noted, indicated that the educational backgrounds of managers varied widely and that many general manager positions were filled by promoting experienced lower-level managers without a college degree. The director concluded that a baccalaureate or higher degree in a specific specialty was not the normal minimum requirement for entry into the proffered position. Nor was the director persuaded that the duties of the job were so complex, unique or specialized that they required the theoretical and practical application of a body of highly specialized knowledge attained through a bachelor's or higher degree in a specific job-related specialty. The petitioner's assertion that the proposed duties of the position were professional in nature does not make the position a specialty occupation, the director declared, absent evidence that the industry normally requires a degree in the specific field of study for entry into the position. Finally, the director found that the beneficiary was not qualified to perform the services of a specialty occupation. Noting that the beneficiary has a bachelor's degree in business administration and work experience consisting of two months as an assistant project manager (for a venture capital company in South Korea) and volunteer managerial work in college, the director concluded that the beneficiary was not qualified to manage, supervise and train the petitioner's designer, director of marketing and sales, jeweler, and general manager.

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 argues that the proffered position qualifies as a specialty occupation under all four regulatory criteria enumerated in 8 C.F.R. § 214.2(h)(4)(iii)(A). Counsel asserts that the proffered position qualifies as a specialty occupation under 8 C.F.R. § 214.2(h)(4)(iii)(A)(I) because, contrary to the director's finding, the *Handbook* recognizes that a baccalaureate degree is the industry standard for entry into general manager positions. General managers and operations managers are included in the *Handbook's* occupational category entitled "top executives," and their duties are described as follows:

General and operations managers plan, direct, or coordinate the operations of companies or public and private sector organizations. Their duties include formulating policies, managing daily operations, and planning the use of materials and human resources, but are too diverse and general in nature to be classified in any one area of management or administration, such as personnel, purchasing, or administrative services. In some organizations, the duties of general and operations managers may overlap the duties of chief executive officers.

Handbook, 2004-05 edition, at 65. The foregoing description accords with the proffered position described in the instant petition. The *Handbook* goes on to describe the educational background and experience of top executives, including general and operations managers:

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 Some top executives in the public sector have a background in public administration or liberal arts. Others might have a background related to their jobs 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. However, many companies prefer that their top executives have specialized backgrounds and, therefore, hire individuals who have been managers in other organizations.

Handbook, id., at 66. While the foregoing excerpt indicates that some general and operations manager positions may require baccalaureate or higher degrees in a specific specialty, it is not the normal minimum requirement for entry into such a position. The AAO concludes, therefore, that the proffered position does not meet the first alternative criterion of a specialty occupation under 8 C.F.R. § 214.2(h)(4)(iii)(A)(1).

On appeal counsel cites the DOL's *Dictionary of Occupational Titles (DOT)*, which rates occupations similar to the proffered position in this case at an SVP ("specific vocational preparation") of level 8. According to counsel that means the occupation requires a bachelor's degree. The *DOT*, however, is not a persuasive source of information about whether a particular job requires a baccalaureate or higher degree in a specific specialty, or its equivalent, as a minimum for entry into the occupation. An SVP rating is meant to indicate the total number of years of vocational preparation required for a particular position. It does not specify 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 particular position would require. Thus, the *DOT* does not establish that a baccalaureate or higher degree in a specific specialty is required for entry into a general manager or operations manager position.

As for the second alternative criterion of a specialty occupation, at 8 C.F.R. § 214.2(h)(4)(iii)(A)(2), the record does not establish that a degree requirement is common to the industry in parallel positions among similar organizations. The petitioner has submitted a series of job announcements from companies seeking to fill a variety of executive and managerial positions including vice presidents, a chief executive officer, general managers, sales managers, business managers, and operations managers. None of the companies appears to be in the same line of business as the petitioner, and all of the companies appear to be larger than the petitioner in terms of personnel and business scope. Moreover, the majority of the job announcements do not specify that the applicant must have a bachelor's or higher degree in a specific specialty. Some indicate only that a bachelor's degree is required, without specification, while others indicate that an unspecific bachelor's degree plus relevant experience or, in one case, relevant experience alone would suffice. Thus, the job advertisements submitted by the petitioner do not establish that the requirement of a specialty degree is common to the industry, that the advertised jobs are parallel positions to the proffered position in this case, or that the advertising companies are similar organizations to the

petitioner. On appeal the petitioner has submitted a letter from the president of a jewelry business in New York City stating that it requires a bachelor's degree for the position of operations manager. The letter is ambiguous, however, as to whether the company always requires a degree in business administration with an emphasis in management or a related specialty area, or whether a bachelor's degree in an unrelated area may also be acceptable for the operations manager position. Furthermore, the letter does not indicate the scope of the company's business operation, which may be on a different scale than that of the petitioner and may invest its operations manager with a different scope of duties. Thus, the letter from the New York City jeweler also fails to demonstrate that a degree requirement is common to the industry in parallel positions among similar organizations. Accordingly, the proffered position does not qualify as a specialty occupation under the first prong of 8 C.F.R. § 214.2(h)(4)(iii)(A)(2).

Nor does the record establish that the proffered position is so complex or unique that it can only be performed by an individual with a bachelor's degree in a specific specialty, as required to qualify as a specialty occupation under the second prong of 8 C.F.R. § 214.2(h)(4)(iii)(A)(2). The petitioner has submitted no evidence demonstrating the uniqueness of the position, or that its complexity exceeds that of other operations managers or general managers in the jewelry industry, such that a degree in a specific specialty would be required.

As for the third alternative criterion of a specialty occupation, the proffered position is newly created and the petitioner has no hiring history for it. Thus, the petitioner cannot show that it normally requires a bachelor's degree in a specific specialty for the position, as required to qualify as a specialty occupation under 8 C.F.R. § 214.2(h)(4)(iii)(A)(3).

Lastly, the proffered position does not qualify as a specialty occupation under the fourth alternative criterion, at 8 C.F.R. § 214.2(h)(4)(iii)(A)(4), because the record does not establish that the duties of the position are so specialized and complex that the knowledge required to perform them is usually associated with a baccalaureate or higher degree in a specific specialty. Counsel points to an evaluation of the position by an associate professor and chair of the marketing department at Seton Hall University, who declares that bachelor's level education in business administration or a related field and the application of specialized knowledge in business administration, operations management, and related fields is required to perform the duties of the job, making the position a specialty occupation. The professor does not cite any references for the basis of his opinion, which does not accord with the information in the *Handbook* about general and operations managers, previously discussed. CIS may, in its discretion, use as advisory opinions statements from universities, professional organizations, or other sources submitted in evidence as expert testimony. When an opinion is not accord with other information or is in any way questionable, however, CIS is not required to accept or may give less weight to that evidence. See *Matter of Caron International, Inc.*, 19 I&N Dec. 791, 795 (Comm. 1988). As far as the record shows, however, neither the duties of the position nor the particular circumstances of the petitioner's jewelry business distinguish the proffered position in any significant way from that of any other general manager or operations manager in the jewelry industry, for whom knowledge associated with a degree in a specific specialty is not normally required.

Thus, the proffered position does not meet any of the qualifying criteria of a specialty occupation enumerated at 8 C.F.R. § 214.2(h)(4)(iii)(A). 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).

Since the proffered position does not qualify as a specialty occupation, the issue of the beneficiary's qualifications to perform the services of a specialty occupation is irrelevant to the disposition of this petition.

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.