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U.S. Citizenship
and Immigration
Services

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DA

MAR 18 2005

FILE: EAC 04 030 52440 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:

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 provides freight transportation and money transfer services from the United States to the Philippines. It seeks to employ the beneficiary as a traffic 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 is not a specialty occupation and the beneficiary is 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, a letter from the petitioner, and supporting materials. The AAO reviewed the record in its entirety before issuing its decision.

The petitioner describes itself as a company with 30 employees and \$2 million in gross annual income that provides transportation services from the United States to the Philippines, including door-to-door delivery of small parcels and documents, money transfers, ocean cargo shipments, and air freight. In a letter accompanying Form I-129 the petitioner stated that it intended to hire the beneficiary as its traffic manager to perform the following duties:

- Direct and coordinate activities concerned with documentation and routing of outgoing freight, and verification and reshipment of incoming freight.
- Direct activities of workers engaged in assigning tariff classifications according to type and weight of freight or merchandise, route and schedule shipments by air, rail, or truck, and prepare billings from tariff and classification manuals.
- Review documents to ensure that assigned classifications and tariffs are in accordance with mode of transportation and destination of shipment.
- Investigate shipper or consignee complaints regarding lost or damaged merchandise or shortages in shipment to determine responsibility.
- Direct preparation of claims against carrier responsible and correspond with shipper or consignee to effect settlement.
- Schedule shipments to ensure compliance with interstate traffic laws and regulations and company policies.

The petitioner asserted that the position required at a minimum a bachelor of arts degree or a bachelor of science degree in business management, economics, finance, or other related fields of study. The beneficiary, a native of the Philippines, earned a bachelor of arts degree with a major in philosophy from San Beda College in Manila on March 23, 1988.

The director found that the proffered position is not a specialty occupation. No specific type of degree was needed for the position, the director determined, and the evidence of record did not establish that the position otherwise satisfied the statutory definition of a specialty occupation. The director also found that the beneficiary was not qualified to perform the services of the proffered position because his degree – a bachelor of arts in philosophy – bore no discernible relation to the position of traffic manager.

On appeal the petitioner asserts that the duties of the traffic manager position are complex and cannot be performed by an individual without a baccalaureate degree and training in the cargo and/or airline industry. The petitioner contends that all of its senior and middle management staff have baccalaureate degrees, and has submitted such evidence for four employees – the vice president and general manager, the chief financial officer, the marketing manager, and the customer service manager. According to the petitioner, the position of traffic manager is a middle management position requiring critical decision making on personnel and logistical matters, as well as liaison work with senior representatives of major carriers such as Federal Express, United Parcel Service, and others. The beneficiary is qualified to perform the job, the petitioner contends, because of his work experience as a cargo manager and in the airline industry in the area of flight operations.

The AAO determines that the proffered position does not meet any of the criteria of a specialty occupation under 8 C.F.R. § 214.2(h)(4)(iii)(A). The petitioner acknowledges that it would accept a bachelor of arts degree for the position without any specific specialty directly relating to the position of

traffic manager, indicating that the position does not have a specific degree requirement. The AAO has also consulted the Department of Labor (DOL)'s *Occupational Outlook Handbook (Handbook)*, which it routinely uses as an authoritative source of information about the duties and educational requirements of particular occupations, and finds that the traffic manager position at issue in this case falls generally under the *Handbook's* category of "first-line supervisors/managers of transportation and material moving machine and vehicle operators." According to the *Handbook*, 2004-05 edition, at page 661, the most significant source of education for individuals in this occupation, who "[d]irectly supervise and coordinate activities of transportation and material-moving machine and vehicle operators and helpers," is work experience in a related occupation. Thus, the record does not establish that a baccalaureate or higher degree in a specific specialty is the normal minimum requirement for entry into the proffered traffic manager position, as required for it to qualify as a specialty occupation under 8 C.F.R. § 214.2(h)(4)(iii)(A)(1).

As for the second alternative criterion of a specialty occupation, at 8 C.F.R. § 214.2(h)(4)(iii)(A)(2), there is no evidence that "the degree requirement is common to the industry in parallel positions among similar organizations," as required for the traffic manager position to 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 show that the proffered position is "so complex or unique that it can be performed only by an individual with a degree," 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 proffered position does not meet the third alternative criterion of a specialty occupation at 8 C.F.R. § 214.2(h)(4)(iii)(A)(3) – "the employer normally requires a degree or its equivalent for the position" – because the position is newly created and the petitioner does not have a hiring history for it.

Lastly, the proffered position does not meet the fourth alternative criterion of a specialty occupation because the petitioner has not provided persuasive evidence that the specific duties are so specialized and complex that they require a body of knowledge associated with the attainment of a baccalaureate or higher degree in a specific specialty. The record does not demonstrate that the duties of the traffic manager position are more specialized or complex than those normally encountered in the occupation, or that the duties could not be performed by an experienced individual who does not have a baccalaureate or higher degree in a specific job-related specialty. Accordingly, the proffered position does not qualify as a specialty occupation under 8 C.F.R. § 214.2(h)(4)(iii)(A)(4).

For the reasons discussed above, the record fails to establish 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 is not a specialty occupation, the issue of whether the beneficiary is qualified to perform the services of a specialty occupation is irrelevant to the disposition of this case.

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.