

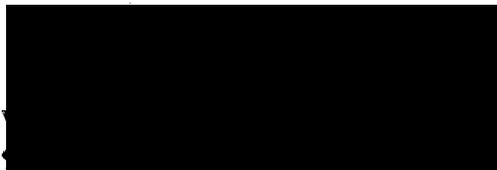
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U.S. Citizenship
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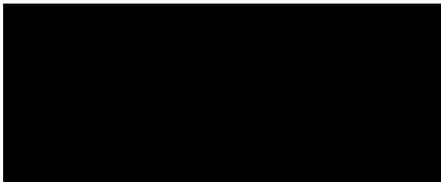
D-2

FILE: SRC 04 062 50385 Office: TEXAS SERVICE CENTER Date: **AUG 18 2006**

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

Robert P. Wiemann, Chief
Administrative Appeals Office

DISCUSSION: The service center 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 importer and exporter of used cars that seeks to employ the beneficiary as a contract administrator. The petitioner endeavors to classify the beneficiary as a nonimmigrant worker in a specialty occupation pursuant to § 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 copies of Internet job postings as supporting documentation.

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

The petitioner is seeking the beneficiary's services as a contract administrator. Evidence of the beneficiary's duties includes: the I-129 petition; the petitioner's December 24, 2003 letter in support of the petition; and the

petitioner's response to the director's request for evidence. According to this evidence, the beneficiary would perform duties that entail: assisting with activities concerned with contracts for the purchase and sale of vehicles and vehicle parts; examining performance requirements and delivery schedules; estimating costs of different vendors and preparing estimates; coordinating sales with shipping/freight documentation; acting as liaison between the petitioner and its clients; and directing the petitioner's overseas sales and advertising program. The petitioner indicated that a qualified candidate for the job would possess a bachelor's degree in business administration with a focus on accounting, or a closely related degree.

The director found that the proffered position was not a specialty occupation because the petitioner had not established that position was so complex or unique as to require a degree. Citing to the Department of Labor's (DOL) *Occupational Outlook Handbook (Handbook)*, the director noted that the minimum requirement for entry into the position was not a baccalaureate degree or its equivalent in a specific specialty. The director found further that the petitioner failed to establish any of the criteria found at 8 C.F.R. § 214.2(h)(4)(iii)(A).

On appeal, counsel states, in part, that a bachelor's degree in a specific field of study is a standard minimum requirement in the petitioner's industry. Counsel submits copies of Internet job postings as supporting documentation.

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 record's descriptions of the proffered position and the duties comprising it are limited to generalized functions that the petitioner has ascribed to the position, such as "Analyze financial information and prepare financial reports"; "Act as liaison between company and clients"; "Assist with activities concerned with contracts for purchase or sale of vehicles and vehicles' parts"; and "Direct our sales program and advertising for overseas customers, especially in the Arabian Gulf States." The petitioner has not identified methodologies or applications of specialized knowledge that actual performance of the position's functions would involve. Nor has the petitioner explained or provided documentary evidence to establish how the beneficiary's actual substantive work would require at least a bachelor's degree level of knowledge in a specific specialty.

A position's qualification as a specialty occupation under the related statute and regulations is not accomplished by a petitioner's composing general duties that align with general duties that the *Handbook* or other DOL resources ascribe to a particular occupational category, for it is the actual performance requirements that determine the type and level of educational credentials necessary for a particular position. As a consequence of the lack of detail about the actual substantive work and associated educational requirements of the proffered position, the record lacks a reasonable basis for the AAO to conclude that the evidence of record satisfies any of the criteria of 8 C.F.R. § 214.2(h)(4)(iii)(A).

The AAO turns first to 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)).

The AAO routinely consults the *Handbook* for its information about the duties and educational requirements of particular occupations. Although a review of the Administrative Services Managers training requirements in the *Handbook*, 2006-2007 edition, at page 26, finds that a manager of contract administration may qualify as a specialty occupation, the AAO does not concur with counsel that the proffered position is a specialty occupation. In this case, the petitioner did not describe the duties requiring at least a bachelor's degree in business, human resources, or finance indicated in the *Handbook*. Further, although information on the petition indicates that the petitioner was established in 1985 and has four employees, the record contains no evidence of these employees, such as quarterly wage reports. It is noted that the petitioner's 2002 federal income tax return reflects no compensation of officers or salaries and wages paid. Simply 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)). In view of the above discussion, the exact nature of the proffered position is not clear.

Regarding parallel positions in the petitioner's industry, the petitioner submitted Internet job postings for contract administrators. There is no evidence, however, to show that the employers issuing those postings are similar to the petitioner, or that the advertised positions are parallel to the instant position. The advertisements are for contract administrators in a variety of industries, including construction, defense, marketing, and pharmaceuticals. The petitioner's industry, however, is not represented. Thus, the advertisements are not probative.

The record also does not include any evidence from firms, individuals, or professional associations regarding an industry standard, or documentation to support the complexity or uniqueness of the proffered position; and the duties that comprise the proffered position are described in generalized terms that do not establish the position as sufficiently unique or sufficiently complex to require a bachelor's degree level of knowledge in a specific specialty.

The petitioner, therefore, has not established the criteria set forth at 8 C.F.R. § 214.2(h)(4)(iii)(A)(1) or (2).

The AAO now turns to the criterion at 8 C.F.R. § 214.2(h)(4)(iii)(A)(3) – the employer normally requires a degree or its equivalent for the position. As counsel does not address this issue on appeal, it will not be discussed further. The evidence of record does not establish this criterion.

Finally, the AAO turns to the criterion at 8 C.F.R. § 214.2(h)(4)(iii)(A)(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.

To the extent that they are depicted in the record, the duties do not appear so specialized and complex as to require the highly specialized knowledge associated with a baccalaureate or higher degree, or its equivalent, in a specific specialty. The proposed duties are described at a general level that does not establish specific work that the beneficiary would perform and how actual performance of that work would require the application of knowledge associated with the attainment of at least a bachelor's degree in a specific specialty.

Therefore, the evidence does not establish that the proffered position is a specialty occupation under 8 C.F.R. § 214.2(h)(4)(iii)(A)(4).

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.