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U.S. Citizenship  
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02

FILE: SRC 04 211 50069 Office: TEXAS SERVICE CENTER Date: **AUG 29 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: Self-represented

**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.

A handwritten signature in cursive script, appearing to read "Robert P. Wiemann".

Robert P. Wiemann, Chief  
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 courier service. It seeks to employ the beneficiary as a general and 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 ground that record failed to establish that the proffered 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.

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 evidence (RFE); (3) the petitioner's response to the RFE; (4) the director's decision; and (5) Form I-290B and an appeal brief. The AAO reviewed the record in its entirety before issuing its decision.

The petitioner describes itself as a courier service that delivers merchandise and packages in Broward, Miami-Dade, and Palm Beach counties in Florida. The petitioner indicates that its business was established in 2000 and expected to have eight employees by 2005, including six drivers, a coordinator, and a general and

operations manager. A copy of the petitioner's federal income tax return for 2003 lists gross receipts for that year of \$140,368. The petitioner proposes to hire the beneficiary as its general and operations manager to oversee the general operation and financial management of the company. In a statement accompanying the Form I-129 the petitioner stated that the beneficiary would have a wide scope of authority in regard to:

- Establishment of objectives, goals and policies for the corporation as a whole and for its commercial division.
- Design of the organization.
- Hiring, direction, and evaluation of the work force.
- Definition and hiring of physical resources.
- Definition and execution of promotional activity.
- Contracting with customers.

In response to the RFE the petitioner provided a more detailed description of the proffered position's duties, which read as follows:

#### Re-launch and Reorganization of Company Areas

- Direct, plan, and implement the new policies and objectives of the organization or business in accordance with board of directors.
- Direct activities required in the organization to set the procedures and establish responsibilities and coordinate functions among departments and sites.
- Analyze operations to evaluate performance of company and each department of the organization.
- Review financial statements, sales and activity reports to ensure that organization's objectives have been achieved.
- Establish internal control procedures and adequate function segregation.

#### *Marketing Area*

- Identify, develop, and evaluate marketing strategy, based on market characteristics, cost and contribution to the company.
- Develop marketing strategies.
- Formulate, direct, and coordinate marketing activities oriented to promote the services offered to the market.
- Hire, train, and direct the sales and marketing training performance.
- Negotiate contracts with clients.
- Ensure the sales and profitability of services using suitable tools for forecasting and strategic planning.

#### Finance Area

- Direct the preparation of the financial statements, the business report, budgets, projections and the information to the different authorities.
- Evaluate, design and implement the internal control policies.
- Establish financial objectives in the short and long term.
- Analyze and classify the risk of each operation, investment, or contract and the final result.

- Approve lines of credit inside-out of the company.
- Supervise employees performing financial, accounting, payroll and budgeting duties.
- Plan, direct, and coordinate activities for the personnel located in different locations.

Operations Area

- Direct and coordinate the daily operations.
- Establish the critical path to get the delivery goals.
- Propose and establish communication systems with the operations personnel.
- Handle the personnel, make the work distribution and assign specific tasks.
- Review the company information and results to evaluate the productivity and achieve objectives and establish the areas that need to be improved.
- Establish the operational staff requirements, hire and train the new employees.
- Attend, resolve, and inform about customer claims.
- Monitor the satellite offices of the company.

The beneficiary is qualified for the proffered position, the petitioner declares, by virtue of his degree in business administration from Santiago de Cali University in Colombia, awarded on March 24, 2000. According to the report of an educational credentials evaluation service in Miami, Florida, the beneficiary's education is equivalent to a bachelor's degree in business administration from an accredited U.S. college or university.

In her decision the director declared that the duties of the proffered position did not appear to be complex enough to require a bachelor's degree in a specific specialty. The director concluded that the proffered position does not qualify as a specialty occupation under any of the criteria enumerated at 8 C.F.R. § 214.2(h)(4)(iii)(A).

On appeal the petitioner asserts that the duties of the proffered position are so specialized and complex that knowledge associated with a baccalaureate or higher degree is required to perform them. The petitioner refers to the *O\*NET Online* as confirming that the position normally requires at least a baccalaureate degree, and identifies several other companies in the industry as evidence that a degree requirement is common to the industry in parallel positions among similar organizations.

In determining whether a position meets the statutory and regulatory criteria of a specialty occupation, CIS routinely consults the Department of Labor (DOL)'s *Occupational Outlook Handbook (Handbook)* 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*, 764 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, Inc. v. Reno, id.*, at 1165-66.

The AAO determines that the proffered position involves a combination of duties that fall under two different occupational categories in the *Handbook*. One is "general and operations manager," a sub-category of the

broad occupational category called “top executives.” The duties of the occupation are described as follows in the DOL *Handbook*, 2006-07 edition, at 68:

*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 . . . operations managers may overlap the duties of chief executive officers.

The other occupational category applicable to the proffered position is “transportation, storage, and distribution manager,” the duties of which are described as follows in the *Handbook, id.*, at 662: “Plan, direct, or coordinate transportation, storage, or distribution activities in accordance with governmental policies and regulations. Includes logistics managers.”

The *Handbook* describes the educational background and experience of top executives, including operations managers, as follows:

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 . . . .

Many top executive positions are filled from within the organization by promoting experienced, lower level managers when an opening occurs. 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. [Emphasis added.] However, many companies prefer that their top executives have specialized backgrounds and, therefore, hire individuals who have been managers in other organizations.

*Id.* at 68-69. The foregoing information indicates that degrees in a variety of different fields are suitable for many general and/or operations manager positions, and that some individuals attain such positions without a college degree. In the transportation industry, of which the petitioner is a part, relevant managerial experience may substitute for a baccalaureate degree of any sort. Thus, there is ample opportunity to enter into a general or operations manager position without a baccalaureate or higher degree in a specific specialty.

As for transportation, storage, and distribution managers – including logistics managers – the *Handbook* states the following: “Most significant source of education or training: Work experience in a related occupation.” *Id.* at 662.

The petitioner cites another DOL resource on occupations – *O\*NET Online*. As discussed in the director’s decision, however, the excerpts in the record do not identify a particular occupation and do not state that a baccalaureate or higher degree in a specific specialty is required.

Based on the foregoing information the AAO concludes that the proffered position does not meet the first alternative criterion of a specialty occupation, at 8 C.F.R. § 214.2(h)(4)(iii)(A)(1), because a baccalaureate degree in a specific specialty is not the normal minimum requirement for entry into the position.

With regard to the second alternative criterion of a specialty occupation, at 8 C.F.R. § 214.2(h)(4)(iii)(A)(2), the petitioner has identified four companies – all apparently in the courier business – as evidence of an industry standard requiring a specialty degree for operations and/or operations managers. The petitioner has provided no information about the subject companies, nor any evidence that they employ general and/or operations managers, what duties they perform, or the degree requirements for such positions. The petitioner has not identified any individuals who work as general and/or operations managers with the companies, nor submitted any evidence of their educational degrees. Thus, the record does not establish that a degree requirement in a specific specialty is common to the petitioner's industry in parallel positions among similar organizations, as required for the proffered 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 evidence of record demonstrate that the proffered position is so complex or unique that a degree in a specific specialty is required to perform the job. The job is not unique, and the petitioner has not shown that it is so specialized that it could not be performed by an individual with less than a baccalaureate degree. Accordingly, the proffered position does not qualify as a specialty occupation under the second prong of 8 C.F.R. § 214.2 (h)(4)(iii)(A)(2).

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 baccalaureate or higher degree in a specific specialty, as required for the position to qualify as a specialty occupation under 8 C.F.R. § 214.2(h)(4)(iii)(A)(3).

Finally, the record does not establish that the duties of the proffered position are so specialized and complex that they require knowledge usually associated with a baccalaureate or higher degree in a specific specialty. As far as the record shows, the duties of the position could be performed by an individual with less than baccalaureate level knowledge in a specific specialty. Accordingly, the position does not meet the fourth alternative criterion of a specialty occupation at 8 C.F.R. § 214.2 (h)(4)(iii)(A)(4).

For the reasons discussed above, the record does not establish that the proffered position meets any of the criteria enumerated at 8 C.F.R. § 214.2(h)(4)(iii)(A) to qualify as a specialty occupation. 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. § 1101(a)(15)(H)(i)(b).

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.