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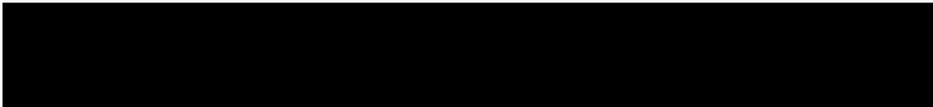
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FILE: SRC 04 229 50528 Office: TEXAS SERVICE CENTER Date: **APR 12 2006**

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, 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 a national automobile leasing and rental company and seeks to employ the beneficiary as an assistant manager (management trainee/assistant). The petitioner endeavors 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 because the position did not qualify as a specialty occupation. On appeal, counsel submits a brief asserting that the proffered position is a specialty occupation.

The issue to be discussed in this proceeding is whether the proffered position qualifies as a specialty occupation.

Section 101(a)(15)(H)(i)(b) of the Act, 8 U.S.C. § 1101(a)(15)(H)(i)(b), provides, in part, for the classification of qualified nonimmigrant aliens who are coming temporarily to the United States to perform services in 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.

The term "specialty occupation" is further defined at 8 C.F.R. § 214.2(h)(4)(ii) as:

[A]n occupation which requires theoretical and practical application of a body of highly specialized knowledge in fields of human endeavor including, but not limited to, architecture, engineering, mathematics, physical sciences, social sciences, medicine and health, education, business specialties, accounting, law, theology, and the arts, and which requires the attainment of a bachelor's degree or higher in a 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 are 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) the 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) the Form I-290B with supporting documentation. The AAO reviewed the record in its entirety before issuing its decision.

The petitioner is seeking the beneficiary’s services as an assistant manager (management trainee/assistant). Evidence of the beneficiary’s duties includes the Form I-129 petition with attachment and the petitioner’s response to the director’s request for evidence. According to this evidence the beneficiary would:

- Provide customer service by helping customers assess their rental needs;
- Assist in the administrative and auditing duties of the branch;
- Conduct follow up with business customers including insurance adjusters, dealerships and auto body shops;
- Apply appropriate rental charges and handle all forms of customer payments;
- Collect and receive branch receivables, vehicles and repossessions;
- Sell options and protection products, rental terms and conditions, vehicle features and benefits;
- Assist in branch sales and marketing efforts; and
- Assist in financial administration of the branch.

The petitioner requires a minimum of a bachelor’s degree for entry into the proffered position, with a preference for a degree in business, management, finance, marketing, public relations or a similar field.

Upon review of the record, the petitioner has failed to establish that a baccalaureate or higher degree or its equivalent is normally the minimum requirement for entry into the offered position, or that a degree requirement is common to the industry in parallel positions among similar organizations, as asserted by counsel. Factors often considered by CIS when determining these criteria include: whether the Department of Labor's *Occupational Outlook Handbook (Handbook)* reports that the industry requires a degree; whether an industry 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." *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 information about the duties and educational requirements of particular occupations. The duties of the proffered position are essentially those noted for general and operations managers (assistant) who plan, direct, or coordinate the operations of companies or public and private sector organizations. These managers formulate policies, manage daily operations, and plan the use of materials and human resources. The petitioner has not met any of the above requirements to qualify the offered position as a specialty occupation. The proffered position requires general managerial skills, and those skills do not arise from any particular specialty. Indeed, many management or top executive positions are filled by promoting experienced, lower level managers from within an organization. Other top executives/managers hold degrees in business administration or a liberal arts degree. A college degree in a specific specialty is not a minimum requirement for entry into the field of management. A degree in a wide range of disciplines will suffice for positions that do require a college education. The petitioner has, therefore, failed to establish the criterion at 8 C.F.R. § 214.2(h)(4)(iii)(A)(I).

The petitioner asserts that a degree requirement is common to the industry in parallel positions among similar organizations, and in support of this assertion submits copies of job advertisements and an opinion letter from Dr. [REDACTED] Professor of Marketing, Graduate Program Chair, Lubin Graduate School of Business, Pace University. The job advertisements submitted are for assistant manager/management trainee positions from Wal-Mart and the Hannaford corporation. Both companies require a bachelor's degree for the positions advertised, but do not require a degree in a specific educational discipline. This supports the findings in the *Handbook* concerning the educational requirements for the position in the industry, that a college degree in a specific specialty is not required. Positions that do require a degree accept degrees in a wide range of educational disciplines, from business to liberal arts. Dr. [REDACTED] opined that the proffered position is a specialty occupation requiring bachelor's level training in business management, management, or a related business sub-discipline. Dr. [REDACTED] provides no basis for his opinion other than his education, training, and experience. He does not reference any employment or labor survey or study, or any other source of authority, to corroborate his opinion. Simply going on the record without supporting documentary evidence is not sufficient for purposes 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 190 (Reg. Comm. 1972)). His opinion will be given little weight as it conflicts with the findings in the *Handbook* concerning the industry wide educational requirements for entry into the position. The *Handbook* is a compilation of national data gathered from industry surveys, questionnaires, interviews and other sources. CIS may, in its discretion, use as advisory opinion statements submitted as expert testimony. Where an opinion is not in accord with other information or is in any way questionable, CIS is not required to accept, or may give less

weight, to that evidence. *Matter of Caron International*, 19 I&N Dec. 791 (Comm. 1988). The petitioner has not established the referenced criterion at 8 C.F.R. § 214.2(h)(4)(iii)(A)(2).

The petitioner has submitted evidence to establish that its policy is to normally employ individuals with a baccalaureate level education for the proffered position. In support of that assertion the petitioner submitted a statement from its recruiting manager for Northeast Florida, copies of previous H-1B approval notices for the position, and copies of the employment applications of recent hires. The recruiting manager states that 90 per cent of the hires for the management trainee position hold a bachelor's degree or greater. The manager does not state that the degree need be in a specific specialty, although it prefers a degree in business, finance, management, marketing, communications or public relations. Although those applications indicate that the applicants are college graduates, the record does not contain independent verification of the applicant's degrees, or state what fields the degrees are in. The petitioner must require a degree in a specialty in order to meet this requirement. Simply going on the record without supporting documentary evidence is not sufficient for purposes 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 190 (Reg. Comm. 1972)). The petitioner's normal hiring practice alone, however, will not qualify the position as a specialty occupation under 8 C.F.R. § 214.2(h)(4)(iii)(A)(3). CIS must examine the ultimate employment of the alien, and determine whether the position qualifies as a specialty occupation. *Cf. Defensor v. Meissner*, 201 F. 3d 384 (5th Cir. 2000). The critical element is not the title of the position or an employer's self-imposed standards, but whether the position actually requires the theoretical and practical application of a body of highly specialized knowledge, and the attainment of a baccalaureate or higher degree in the specific specialty as the minimum for entry into the occupation as required by the Act.¹ To interpret the regulations any other way would lead to absurd results: if CIS were limited to reviewing a petitioner's self-imposed employment requirements, then any alien with a bachelor's degree could be brought into the United States to perform menial, non-professional, or an otherwise non-specialty occupation, so long as the employer required all such employees to have baccalaureate or higher degrees. *See id* at 388. The petitioner has failed to establish the criterion at 8 C.F.R. § 214.2(h)(4)(iii)(A)(3).

The petitioner has not established that the duties of the proffered position are so complex or unique that they can be performed only by an individual with a degree in a specific specialty, or that they are so specialized or complex that knowledge required to perform them is usually associated with the attainment of a baccalaureate or higher degree in a specific specialty. The duties of the position are those that would be routinely performed by general or operations managers (assistants/trainees) in the petitioner's industry, and are routinely performed both by individuals with less than a baccalaureate level education, and those who hold degrees in a wide range of educational disciplines. The petitioner has not established the referenced criteria at 8 C.F.R. § 214.2(h)(4)(iii)(A)(2) or (4).

Finally, the petitioner states that previous H-1B petitions have been approved for the offered position. This reference will not sustain the petitioner's burden of establishing H-1B qualification in the petition now before

¹ The court in *Defensor v. Meissner* observed that the four criteria at 8 C.F.R. 214.2(h)(4)(iii)(A) present certain ambiguities when compared to the statutory definition, and "might also be read as merely an additional requirement that a position must meet, in addition to the statutory and regulatory definition." *See id.* at 387.

the AAO. This record of proceeding does not contain the entire records of proceedings in the petitions referred to by counsel. Accordingly, no comparison of the positions can be made. Each nonimmigrant petition is a separate proceeding with a separate record. *See* 8 C.F.R. § 103.8(d). In making a determination of statutory eligibility, the AAO is limited to the information contained in the record of proceeding. *See* 8 C.F.R. § 103.2(b)(16)(ii). It warrants noting that Congress intended this visa classification for aliens that are to be employed in an occupation that requires the theoretical and practical application of a body of highly specialized knowledge. Congress specifically stated that such an occupation would require, as a *minimum* qualification, a baccalaureate or higher degree in the specialty. CIS regularly approves H-1B petitions for qualified aliens who are to be employed as engineers, computer scientists, certified public accountants, college professors, and other such professions. These occupations all require a baccalaureate degree in the specialty occupation as a minimum for entry into the occupation and fairly represent the types of professions that Congress contemplated when it created that visa category. In the present matter, the petitioner has offered the beneficiary a position as an assistant manager (management trainee/assistant). For the reasons discussed above, the proffered position does not require attainment of a baccalaureate or higher degree in a specific specialty as a minimum for entry into the occupation, and approval of a petition for another beneficiary based on identical facts would constitute material error, gross error, and a violation of 8 C.F.R. § 214.2 paragraph (h).

The petitioner has failed to establish that the offered position meets any of the criteria listed at 8 C.F.R. § 214.2(h)(4)(iii)(A). 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 and the appeal shall accordingly be dismissed.

ORDER: The appeal is dismissed. The petition is denied.