



U.S. Citizenship
and Immigration
Services

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FILE: EAC 04 032 50927 Office: VERMONT SERVICE CENTER Date: JAN 27 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 documents 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 director of the service center 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 convenience store/gas station that seeks to employ the beneficiary as a business manager. The petitioner, therefore, 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 proffered position is not a specialty occupation. On appeal, the petitioner submits additional evidence.

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 business manager. Evidence of the beneficiary's duties includes: the Form I-129; the attachments accompanying the Form I-129; the petitioner's support letter; and the petitioner's response to the director's request for evidence. According to this evidence, the beneficiary will oversee payroll, quarterly tax filings, inventory, accounts payable, accounts receivable, budgeting, and marketing; conduct price surveys and negotiate gasoline prices with vendors; and develop and implement marketing strategies and sales promotions based on market analysis. For the proposed position the petitioner requires a baccalaureate degree in business.

The director stated that the submitted job postings were unpersuasive in establishing that the proposed position qualifies as a specialty occupation, and that the evidence failed to show a complexity and specialization of the day-to-day operations which would require a bachelor's degree in a specific specialty. According to the director, the petitioner also did not establish an industry requirement of a baccalaureate degree in a specific field of study for the proposed position.

On appeal, the petitioner states that the proposed position involves complex duties that require advanced knowledge of finance, budgeting, marketing strategy, sales principles, and statistics and strategic planning; and that such knowledge is attained from the completion of a bachelor's degree in business. Counsel submits tax records, stating that the petitioner had gross revenue of \$123,000 in 2002; \$360,000 in 2003; and even higher revenue in 2004. The petitioner's president stated that he previously performed the duties of the proposed position and that he holds the educational equivalent to a bachelor's degree in business.

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 AAO first considers 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)).

In determining whether a position qualifies as a specialty occupation, CIS looks beyond the title of the position and determines, from a review of the duties of the position and any supporting evidence, whether the position actually requires the theoretical and practical application of a body of highly specialized knowledge, and the attainment of a baccalaureate degree in a specific specialty as the minimum for entry into the occupation as required by the Act.

The Department of Labor's (DOL) *Occupational Outlook Handbook* (the *Handbook*) is routinely consulted by the AAO for information about the duties and educational requirements of particular occupations. The *Handbook* reveals that the proposed duties are an amalgam of a marketing manager and a financial clerk, and that those occupations do not require a baccalaureate degree in a specific specialty. The *Handbook* describes a marketing manager as one who develops the detailed marketing strategy, determines the demand for a product or service, identifies potential markets, develops pricing strategy, monitors trends, and promotes products and services. These duties correspond to the beneficiary's duties involving marketing and promotions.

According to the *Handbook* employers do not require a baccalaureate degree for a marketing manager; it states:

A wide range of educational backgrounds is suitable for entry into advertising, marketing, promotions, public relations, and sales managerial jobs, but many employers prefer those with experience in related occupations plus a broad liberal arts background. A bachelor's degree in sociology, psychology, literature, journalism, or philosophy, among other subjects, is acceptable. However, requirements vary, depending upon the particular job.

For marketing, sales, and promotions management positions, some employers prefer a bachelor's or master's degree in business administration with an emphasis on marketing. . . .

The record shows that the petitioner employs four persons and that its federal income tax return for the year 2002 indicated gross revenue of \$123,000, and \$360,000 in 2003. The level of income generated by the petitioner, the AAO finds, has a direct and substantial bearing on the complexity, scope, and depth of the proposed duties as a financial clerk. Responsibility for income of \$360,000 and \$123,000 differs vastly from responsibility associated with a far larger income or for responsibility for many employees. Given the context of the petitioner's operations, the proposed duties concerning financial matters parallel those of bookkeeping, accounting, and auditing clerks. The *Handbook* depicts the occupations as follows:

Bookkeeping, accounting, and auditing clerks are an organization's financial recordkeepers. They update and maintain one or more accounting records, including those that tabulate expenditures, receipts, accounts payable and receivable, and profit and loss. . . . post debits and credits, produce financial statements, and prepare reports and summaries for supervisors and managers. . . . handle the payroll, make purchases, prepare invoices, and keep track of overdue accounts.

More advanced accounting clerks may total, balance, and reconcile billing vouchers; ensure completeness and accuracy of data on account. . . . They may also review invoices and statements to ensure that all information is accurate and complete. . . . Auditing clerks verify records of transactions posted by other workers.

Financial clerks . . . record all amounts coming into or leaving an organization . . . keep track of a store's inventory. . . .

Auditing clerks verify records of transactions posted by other workers. They check figures, postings, and documents to ensure that they are correct, mathematically accurate, and properly coded.

The *Handbook* states that employers require most financial clerks to have at least a high school diploma, and for bookkeepers and accounting clerks, they often require an associate's degree in business or accounting.

Accordingly, based on the evidence in the record, the petitioner fails to establish the first criterion at 8 C.F.R. § 214.2(h)(4)(iii)(A): that a baccalaureate or higher degree or its equivalent is the normal minimum requirement for entry into the particular position.

The petitioner submits job postings to establish the first alternative prong at 8 C.F.R. § 214.2(h)(4)(iii)(A)(2) - that a specific degree requirement is common to the industry in parallel positions among similar organizations. The postings do not establish this prong as the employers either differ in nature from the petitioner, a small convenience store/gas station, or their nature is not disclosed in the posting. [REDACTED] and [REDACTED] are not described; The [REDACTED] designs and manufactures packaging; [REDACTED] is in the music industry; Creative Financial Staffing represents itself as a staffing company in one posting and in another posting it represents a school; [REDACTED] is a design firm; the West Hartford Company provides delivery service; and [REDACTED] & Consulting, Inc. provides consulting services. The job postings, therefore, do not establish that a specific degree requirement is common to the industry in parallel positions among similar organizations.

The petitioner has not established the second alternative prong at 8 C.F.R. § 214.2(h)(4)(iii)(A)(2) as no evidence in the record shows the proffered position as so complex or unique that it can be performed only by an individual with a degree. As discussed earlier, the proposed duties, in light of the evidence in the record, parallel those of a marketing manager and a financial clerk, which are occupations that the *Handbook* reveals do not require a baccalaureate degree in a specific specialty.

No evidence in the record establishes the regulation at 8 C.F.R. § 214.2(h)(4)(iii)(A)(3): that the petitioner normally requires a degree or its equivalent for the position.

To satisfy the regulation at 8 C.F.R. § 214.2(h)(4)(iii)(A)(4) the petitioner must establish that the nature of the specific duties is so specialized and complex that the knowledge required to perform them is usually associated with the attainment of a baccalaureate or higher degree in a specific specialty. Again, based on the evidence in the record, the *Handbook* shows that the proposed duties correspond to those of a marketing manager and a financial clerk, which are occupations that do not require a baccalaureate degree in a specific specialty. Accordingly, the petitioner fails to establish this last criterion at 8 C.F.R. § 214.2(h)(4)(iii)(A).

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 on this ground.

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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.