**U.S. Department of Homeland Security**
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U.S. Citizenship and Immigration Services

Dq

[redacted]

FILE: WAC 03 193 50964 Office: CALIFORNIA SERVICE CENTER Date: JAN 27 2006

IN RE: Petitioner: [redacted]
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:

[redacted]

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 manages and produces the Los Angeles auto show. It seeks to employ the beneficiary as a human resources 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, finding that the proffered position is not a specialty occupation and the beneficiary is not qualified to perform a specialty occupation. On appeal, counsel states that the proffered position qualifies as a specialty occupation, and that the beneficiary is qualified to perform a specialty occupation. Counsel submits additional and previously submitted evidence.

Section 214(i)(l) of the Act, 8 U.S.C. § 1184(i)(l), 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) the 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 human resources 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 would perform duties that entail managing outside recruitment agencies and headhunters and handling screening procedures; drafting, developing, planning, modifying, and implementing a policy manual covering insurance, medical plans, pension plans, personnel transactions, company policies, disability information, terminations, and job behavior; creating individual and group training programs; formulating policies on employment, employee standards, employee relations, wage and salary administration, benefit administration, and orientation and training development; ensuring compliance with federal, state, and local laws, regulations, and ordinances; preparing a budget for anticipated personnel operations; maintaining employee records; and analyzing statistical data designed to identify and determine personnel problems and develop recommendations to improve personnel policies and practices. The petitioner requires a baccalaureate degree in human resources, labor relations, business administration, or a liberal arts related field such as psychology.

The director determined that the proposed position resembles a personnel clerk as that occupation is depicted in the Department of Labor's *Occupational Outlook Handbook* (the *Handbook*). The director conceded that a human resources manager often qualifies as a specialty occupation where a company is large and has a specific department dedicated to human resource issues, and the nature of the duties require a degree in human resources or a related field. The director found that the petitioner is small and that the proposed duties are routine and normally performed by management staff or a personnel clerk, and that the petitioner does not have the organizational complexity to require the services of a human resources manager. The duties performed by the show director/corporate president, the director stated, include employee recruitment and employee training. The director concluded that the beneficiary is not qualified to perform a specialty occupation requiring a baccalaureate degree in human resources or a related field.

On appeal, counsel discusses the proposed duties, the educational requirement of a baccalaureate degree in psychology, and the beneficiary's employment experience. Counsel states that the letters from Mr. [redacted] assistant professor of labor economics at the New York State School of Industrial and Labor Relations at Cornell University, and Mr. [redacted] professor at the Industrial Relations Center within the Carlson School of Management at the University of Minnesota, establish that the proposed position requires a baccalaureate degree in human resources, management, business administration, or psychology. Counsel states that the director conceded a human resources manager often qualifies as a specialty occupation. However, counsel disagrees with the director's conclusion that the petitioner lacked the organizational complexity to require the services of a human resources manager. Counsel refers to the *Handbook* and the submitted letters from Mr. [redacted] and Mr. [redacted] to distinguish the proposed duties from those of a personnel clerk. Counsel cites *Unico American Corp. v. Watson*, 1991 WL 11002594 (C.D.

Cal. Mar 19, 1991), and states that case law has long held that an employer's supporting evidence must be considered and weighed. Counsel also cites *Hong Kong T.V. Video vs. Ilchert*, 685 F. Supp 712 (N.D. Cal. 1988), and *Immediate Business Systems vs. Richard*, 645 F. Supp. 355 (N.D. Ga. 1986), and states that the cases indicate that the testimony of experts which is not contradicted by CIS must be considered. Counsel discusses the definition of an expert in the Federal Rules of Evidence. Counsel maintains that the *Handbook* discloses that the proposed position resembles a human resources manager, and that it reports that that occupation requires the services of a degreed professional. In citing to *Young China Daily vs. Chappell*, 742 F. Supp. 552 (N.D. Cal. 1998), counsel states that the case indicates that the size of a petitioner is irrelevant in determining whether a position qualifies as a specialty occupation. Counsel states that the human resources duties performed by the show director/corporate president reflect only two of the proposed duties. Counsel asserts that the Los Angeles Auto Show requires staffing on an ongoing basis throughout the year.

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.

In a February 27, 2004 letter, counsel's reference to and assertions about the relevance of information from the *Occupational Information Network-Standard Occupational Classification (O*Net-SOC)* is not persuasive. Neither a specific vocational preparation (SVP) rating nor a Job Zone category indicates that a particular occupation requires the attainment of a baccalaureate or higher degree, or its equivalent, in a specific specialty as a minimum for entry into the occupation. An SVP rating and Job Zone category are meant to indicate only the total number of years of vocational preparation required for a particular position. Neither classification describes how those years are to be divided among training, formal education, and experience, nor specifies the particular type of degree, if any, that a position would require.

The AAO routinely consults the *Handbook* for its information about the duties and educational requirements of particular occupations. The AAO does not concur with the director's conclusion that the proposed position

resembles a personnel clerk. The AAO finds that the proposed duties resemble those of human resources, training, and labor relations managers and specialists, as those occupations are depicted in the *Handbook,* and that the *Handbook* discloses that a baccalaureate degree in a specific specialty is not required for those occupations. It reports:

> Because of the diversity of duties and levels of responsibility, the educational backgrounds of human resources, training, and labor relations managers and specialists vary considerably. In filling entry-level jobs, many employers seek college graduates who have majored in human resources, personnel administration, or industrial and labor relations. Other employers look for college graduates with a technical or business background or a well-rounded liberal arts education.

The *Handbook's* passage indicates that a baccalaureate degree in a specific specialty is not required for a human resources, training, and labor relations specialist or manager as employers accept baccalaureate degrees in fields which range from technical or business to the liberal arts.

The submitted *California Occupational Guide* (*COG*) also shows that a human resources manager does not require a baccalaureate degree in a specific specialty; it states:

> Entry-level professional positions in [h]uman [r]esources normally require a four year college degree. The preferred degree could vary from business administration with a human resources specialization to industrial relations or sociology. Some employers may look for a well-rounded background and choose liberal arts graduates.

Counsel cites *Hong Kong T.V. Video* and *Immediate Business Systems* and states that the cases indicate that the evidence from experts such as Mr. [redacted] and Mr. [redacted] must be considered. Although the letters are relevant in determining whether the proposed position qualifies as a specialty occupation, the AAO finds that no independent evidence in the record substantiates their assertion that the proposed position resembles a human resources manager and that a human resources manager requires a baccalaureate degree in a specific specialty such as human resources management, business administration, or psychology. Going on 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 Dec. 190 (Reg. Comm. 1972)) The AAO notes that the *Handbook*, which is a compilation of data from nationwide surveys, questionnaires, interviews, and other studies, indicates that a broad range of degrees is acceptable to perform as a human resources manager. CIS may, in its discretion, use as advisory opinions statements submitted as expert testimony. However, 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 AAO also notes that a degree requirement of business administration does not qualify a position as a specialty occupation. As indicated in *Matter of Michael Hertz Assocs.,* 19 I&N Dec. 558, 560 (Comm. 1988), for a position to qualify as a specialty occupation:

> A petitioner must establish that the position realistically requires knowledge, both theoretical and applied, which is almost exclusively obtained through studies at an institution of higher learning. The depth of knowledge and length of studies required are best typified by a degree granted by such institution at the baccalaureate level. It must be demonstrated that the position requires a precise and specific course of study which relates directly and closely to the position in question. Since there must be a close corollary between the required specialized studies and the position, the requirement of a degree of generalized title, such as business administration or liberal arts, without further specification, does not establish eligibility.

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 in a specific specialty is the normal minimum requirement for entry into the particular position.

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 record contains job postings. Of the 31 job postings, 10 require a baccalaureate degree in a specific specialty. However, none of the job postings requiring a baccalaureate degree in a specific discipline represent companies similar in nature (size and scope) as the petitioner. AT&T Broadband and Nextel are technology companies; Wendy's International, Inc. is a billion dollar company; Fifth Third Bank and Credit Acceptance Corporation are in the financial sector; Lockheed Martin is in the defense industry; Private Healthcare Systems is in the health care industry; and Guardian Automotive, ICOS Corporation, and Best Buy Company are not described. The postings, therefore, fail to establish that a specific degree requirement is common to the industry in parallel positions among similar organizations.

To establish the second alternative prong at 8 C.F.R. § 214.2(h)(4)(iii)(A)(*2*) the petitioner must show that the proffered position is so complex or unique that it can be performed only by an individual with a degree. The *Handbook* reports that the proposed duties parallel those of human resources, training, or labor relations specialists or managers, which are occupations that do not require a baccalaureate degree in a specific specialty. The petitioner, therefore, fails to establish the second alternative prong at 8 C.F.R. § 214.2(h)(4)(iii)(A).

The third criterion at 8 C.F.R. § 214.2(h)(4)(iii)(A) requires that the petitioner show that it normally requires a degree or its equivalent for the position. The petitioner submitted no evidence to establish this criterion.

The fourth criterion at 8 C.F.R. § 214.2(h)(4)(iii)(A) requires that the petitioner demonstrate 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. The proposed duties resemble those of a human resources, training, and labor relations specialist or manager, which are the occupations that the *Handbook* indicates do not require a baccalaureate degree in a specific specialty. Consequently, 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.

The director also found that the beneficiary is not qualified to perform a specialty occupation. The AAO has concluded that the proposed position fails to qualify as a specialty occupation; therefore, whether or not the beneficiary is qualified for the proposed position is irrelevant in this proceeding.

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.