

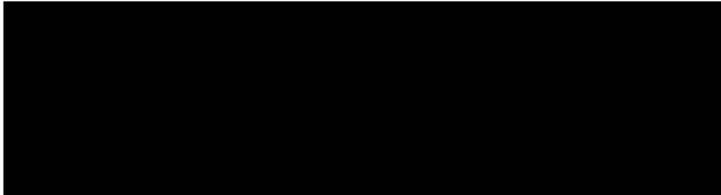


U.S. Citizenship
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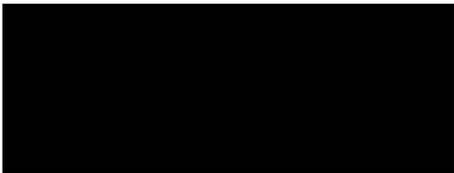


FILE: SRC 04 188 52132 Office: TEXAS SERVICE CENTER Date: **MAR 06 2006**

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.

for Michael T. Kelly
Robert P. Wiemann, Director
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 cleaning services company that seeks to employ the beneficiary as an operation management analyst. 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 proffered position is not a specialty occupation and the beneficiary is not qualified to perform a specialty occupation. On appeal, counsel submits a brief.

The AAO will first address the director's conclusion that the position is not 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.

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 an operation management analyst. Evidence of the beneficiary's duties includes: the I-129 petition; the petitioner's May 28, 2004 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: hiring, training and supervising personnel; planning projects; supervising operations; maintaining and expanding client relationships; developing and applying time and cost networks, such as program evaluation; and reviewing techniques to plan and control large projects. The petitioner indicated that a qualified candidate for the job would possess a bachelor's degree.

The director found that the proffered position was not a specialty occupation. 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 that the proffered position is highly complex and combines sales promotion, human resources and operations management duties. Counsel states that the company is expanding and it needs someone who can handle the expansion.

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 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 Department of Labor's *Occupational Outlook Handbook (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. 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 duties of the position are most like those of an operations manager, which is described in the *Handbook* entry under top executives. The *Handbook* states:

In smaller organizations . . . a partner, owner, or general manager often is responsible for purchasing, hiring, training, quality control, and day-to-day supervisory duties. . . .

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.

No evidence in the *Handbook* indicates that a baccalaureate or higher degree or its equivalent in a specific specialty is required for a top executive position. The *Handbook* does indicate that a bachelor's degree is normally required for top executives, however, that degree could be in a wide range of specialties. As discussed above, CIS interprets the degree requirement to mean not just any baccalaureate or higher degree, but one in a specific specialty that is directly related to the proffered position.

The petitioner did not submit any evidence regarding parallel positions in the petitioner's industry. The record does not include any industry-standard information from individuals, firms or professional associations in the industry, or documentation to support the complexity or uniqueness of the proffered position. The petitioner has, thus, 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. There is no evidence in the record regarding the employer's previous recruiting and hiring practices for the proffered position. The record includes an Internet posting for the current position, which states that a bachelor's degree is required, although it does not state that the degree must be in a specific specialty. As previously discussed, the degree must be in a specific specialty that is directly related to the position. On appeal, counsel states, "The officer is concentrating on the fact that the announcement did not specifically state that a bachelor's degree is required in a specific field, even if the company requires it." There is no evidence in the record that the petitioner requires a bachelor's degree in a specific specialty. In its letter of support, the petitioner states that the beneficiary has the equivalent of a bachelor's degree in business administration. It continues to state that the beneficiary's academic background and work experience "make him a perfect candidate for the position being offered. His qualifications meet the requirements to carry his responsibilities and duties to the full extent of the position." This does not indicate that the petitioner requires a degree in business administration for entry into the proffered position.

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. 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 director also found that the beneficiary would not be qualified to perform the duties of the proffered position if the job had been determined to be a specialty occupation. The director based her determination on the lack of supporting documentation accompanying the credential evaluation submitted by the petitioner. The evaluator determined that the beneficiary had the equivalent of three years of education at a United States university, based on his foreign degree in civil construction. He then determined that the beneficiary's education, work history, curriculum vitae, affidavit and letters issued by his employers reflected that the beneficiary had the equivalent of a bachelor's degree in business administration from a United States university. The evidence of record, however, includes only the beneficiary's resume, numerous letters of appreciation from previous employers, memoranda noting changes in position, and certificates regarding training classes completed. None of the letters includes descriptions of the duties performed by the beneficiary in his previous positions. On appeal, counsel submits a copy of the beneficiary's diploma and transcript.

The AAO notes that a credentials evaluation service may not evaluate an alien's work experience or training; it can only evaluate educational credentials. The AAO will accept that portion of the evaluation that analyzes the equivalency of the beneficiary's foreign education. In order to meet the terms of 8 C.F.R. § 214.2(h)(4)(iii)(D)(I), an evaluation of training and/or experience must be from an official who has authority to grant college-level credit for training and/or experience in the specialty at an accredited college or university which has a program for granting such credit based on an individual's training and/or work experience. Although the evaluator states that he has "advisory authority to grant college-level credit for training and/or experience in the field of business administration," there is no evidence in the record documenting whether the professor has authority to grant credit, nor is there any evidence to establish that Florida International University has a program for granting such credit. 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)). With respect to that portion of the evaluation analyzing the beneficiary's work experience, the evaluation carries no weight in these proceedings. *Matter of Sea, Inc.*, 19 I&N Dec. 817 (Comm. 1988).

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.