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U.S. Citizenship
and Immigration
Services

D2

FILE: SRC 06 058 50499 Office: TEXAS SERVICE CENTER Date: MAR 16 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, Director
Administrative Appeals Office

DISCUSSION: The director of the Texas Service Center denied the nonimmigrant visa petition and the matter is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be sustained. The petition will be approved.

The petitioner is a manufacturer of licensed sports collectibles, with 153 employees. It seeks to employ the beneficiary as a chief executive officer/president pursuant to section 101(a)(15)(H)(i)(b) of the Immigration and Nationality Act (INA), 8 U.S.C. § 1101(a)(15)(H)(i)(b). The director denied the petition because she determined that the proffered position did not meet the requirements for classification as a specialty occupation.

The record of proceeding before the AAO contains: (1) Form I-129 and supporting documentation; (2) the director's request for evidence; (3) the petitioner's response to the director; and (4) Form I-290B, with a letter from counsel. The AAO reviewed the record in its entirety before reaching its decision.

The issue before the AAO is whether the petitioner's proffered position qualifies as a specialty occupation. To meet its burden of proof in this regard, the petitioner must establish that the job it is offering to the beneficiary meets the following statutory and regulatory requirements.

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:

An 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 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 above criteria to mean not just any baccalaureate or higher degree, but one in a specific specialty that is directly related to the proffered position.

The director found the duties of the proffered position to be closely aligned to the general occupational category of top executives, for which the Department of Labor’s *Occupational Outlook Handbook* indicates a degree is not a normal minimum entry requirement.¹

The crux of the appeal is that the director failed to take proper account of the proposed position’s primary responsibility for the petitioner’s “financial condition, plans, and strategies for financial growth.”

The AAO agrees that the proffered position’s duties encompass those performed by top executives. However, as discussed below, the AAO further finds that the responsibility for developing and directing the petitioner’s financial strategies is a primary and defining aspect of the proffered position. As developed in the record, the duties associated with that responsibility establish that the beneficiary would not only oversee the petitioner’s general operations and administration, but that he would also function as the petitioner’s financial manager.

As discussed below, the AAO finds that, by demonstrating the prominent and substantial financial manager aspect of the position, the petitioner has satisfied the first criterion of 8 C.F.R. § 214.2(h)(4)(iii)(A). That is, the evidence of record establishes the proffered position as one for which a baccalaureate or higher degree in a specific specialty is a normal minimum requirement. The petitioner has overcome the basis of the director’s denial of the petition.

To determine whether a particular job qualifies as a specialty occupation, CIS does not simply rely on a position’s title. The specific duties of the proffered position, combined with the nature of the petitioning entity’s business operations, are factors to be considered. 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 nor 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.

The record reflects that the petitioner is an enterprise that was recently formed to acquire the assets of the [REDACTED], and thereafter to continue and expand the business formerly operated by [REDACTED], which had annual gross revenues of more \$22,000,000.00 and employed more than 150

¹ *Occupational Outlook Handbook*, 2006-2007 Edition, at www.bls/oco/ocos012.htm.

persons. The petitioner seeks the beneficiary's services as a chief executive officer/president. Evidence of the beneficiary's duties includes: the Form I-129; the petitioner's December 9, 2005 letter in support of the petition; and the petitioner's December 27, 2005 response to the director's request for evidence. The petitioner initially described the proffered position's duties as requiring the beneficiary to:

- Determine and formulate all of the petitioner's policies and strategies, subject only to the oversight of the board of directors;
- Formulate and implement policies in areas including human resources, administration, operations and finance;
- Ensure financial stability and maximize profits;
- Represent the petitioner in negotiations with vendors, customers and other stakeholders, as well as in dealings with its owners and the board of directors; and
- Supervise all of the petitioner's employees, through subordinate executives and managers.

The petitioner provided further clarification of the above duties in its response to the director's request for evidence. The response highlighted the prominence of the beneficiary's responsibility for the formulation and direction of the petitioner's financial management and growth strategies. As outlined by the petitioner, the beneficiary's role in securing and improving the petitioner's financial position would require the beneficiary to:

- Create goals and strategies to increase operating margins, reduce expenses, increase efficiency and maximize productivity;
- Determine strategies to allocate financial resources to maximize net revenues;
- Determine strategy for raising capital to fund acquisitions or expansion;
- Make investment decisions regarding new technologies or machinery based on financial assessments; and
- Minimize the petitioner's liabilities by managing risk exposure through changing operations and financial structure, and types of insurance, including casualty and business interruption.

That the beneficiary would specialize in the financial management of the petitioner's enterprise is clearly indicated in the following statements in the petitioner's December 27, 2005 reply to the director's request for additional evidence:

More specifically [the beneficiary] will focus on enhancing and improving the company's profitability. The strategies and goals that he creates, in all areas of the company's operations, are ultimately focused on increasing operating margins, reducing expenses, increasing efficiency, and maximizing productivity. A major responsibility of CEO, as the most senior executive, is to determine how to allocate the firm's financial and human resources among different areas, so that they are used as effectively as possible to maximize the firm's net revenues. For example, the CEO will determine how to raise capital at the lowest possible cost to fund acquisition or expansion. He will determine whether to invest in new technologies or machinery, based on his assessment of their cost and potential increase in revenues. He will ensure that the firm's contingent liabilities are minimized, most

importantly by managing the firm's risk exposure through changing the firm's operations and financial structure and through casualty, business interruption, and other types of insurance.

Although the CEO is responsible for all areas of the company's operations, he is not directly responsible for any area other than finance. The CEO supervises senior managers in the areas of Sales and Marketing, Operations, Research, and Development, and others. These subordinate executives create the plans and strategies for their departments, within the financial and budgetary limitations set by the CEO, and the CEO provides ultimate approval. The Chief Financial Officer [CFO], a Certified Public Accountant, who also reports directly to the CEO, is responsible mainly for overseeing the budgeting and accounting functions of the company, and the CFO is also responsible for overseeing the firm's administration, such as collections, information technology, and human resources.

In short, this is not a generalist position but a highly focused job, in which the CEO has specific primary responsibility for the firm's financial condition, plans, and strategies for financial growth. Ensuring the company's financial health and future financial growth, are the primary responsibilities of the CEO. The CEO does not directly manage other areas of the company's operations, although he does have final approval over all major corporate decisions, primarily to ensure that they are consistent with the overall strategy of maximizing profitability.

[REDACTED] was purchased in a leveraged buyout and therefore requires the close attention of a CEO trained in Finance and Business Administration. In the case of [REDACTED] and in particular at this point in the firm's growth, the CEO will have extensive responsibility for financial matters. Furthermore, the company is poised for significant growth and expansion, and the purchase of [REDACTED] by the new entity is occurring so that the company can take advantage of new ownership, new capital funds, and new financial strategies both internally and externally. The new CEO, [the beneficiary], will be the person who manages the financial and operational restructuring of the company in the coming years. He will assess the company's current financial and budgetary condition, analyze the allocation of resources within the company, and create new financial and operational strategies that are necessary to improve the company's revenues and decrease costs.

The 32-page [REDACTED] & Company "Confidential Information Memorandum," which contains extensive information regarding [REDACTED] income, growth, operations, customer base, finances, and growth potential, supports the petitioner's perspective on the substantive role a top management position specializing in financial management will play in the petitioner's transition from leverage takeover into a successful and growing enterprise.

The January 26, 2006 "Professional Evaluation" proffered position by an assistant professor of finance includes a persuasive discussion, consistent with the evidence of record, of why the proffered position should be viewed as, in this expert's words, "a professional level finance position."

The AAO routinely consults the *Handbook* as an authoritative source on the duties and educational requirements of a wide variety of occupations. The AAO finds that the proffered financial management aspects of the proffered position align with the financial manager occupation as described in the *Handbook*. The *Handbook* states, in part:

[t]he duties of financial managers vary with their specific titles, which include controller, treasurer or finance officer, credit manager, cash manager, and risk and insurance manager. *Controllers* direct the preparation of financial reports that summarize and forecast the organization's financial position, such as income statements, balance sheets, and analyses of future earnings or expenses *Treasurers and finance officers* direct the organization's financial goals, objectives, and budgets. They oversee the investment of funds, manage associated risks, supervise cash management activities, execute capital-raising strategies to support a firm's expansion, and deal with mergers and acquisitions. *Credit managers* oversee the firm's issuance of credit, establishing credit-rating criteria, determining credit ceilings, and monitoring the collections of past-due accounts. Managers specializing in international finance develop financial and accounting systems for the banking transactions of multinational organizations.

Cash managers monitor and control the flow of cash receipts and disbursements to meet the business and investment needs of the firm *Risk and insurance managers* oversee programs to minimize risks and losses that might arise from financial transactions and business operations undertaken by the institution. They also manage the organization's insurance budget.

While, as previously noted, the *Handbook* does not indicate that the occupation of top executives would impose a degree requirement on the beneficiary, it reports the following regarding the academic preparation required for employment as a financial manager:

A bachelor's degree in finance, accounting, economics, or business administration is the minimum academic preparation for financial managers. However, many employers now seek graduates with a master's degree, preferably in business administration, economics, finance, or risk management. These academic programs develop analytical skills and provide knowledge of the latest financial analysis methods and technology.

Therefore, the proffered position is established as employment that would require the beneficiary to hold the minimum of a baccalaureate degree in a directly related field. Accordingly, the petitioner has established the proffered position as a specialty occupation under the first criterion at 8 C.F.R. § 214.2(h)(4)(iii)(A) – a baccalaureate or higher degree or its equivalent is normally the minimum requirement for entry into the particular position.

The AAO now turns to the issue of whether the beneficiary is qualified to perform the duties of a specialty occupation. In making this determination, CIS looks to the petitioner to prove that the beneficiary meets one of the requirements set forth at Section 214(i)(2) of the Act, 8 U.S.C. § 1184(i)(2) – full state licensure to

practice in the occupation, if such licensure is required; completion of a degree in the specific specialty; or experience in the specialty equivalent to the completion of such degree and recognition of expertise in the specialty through progressively responsible positions relating to the specialty.

Further discussion of discussion of how an alien qualifies to perform services in a specialty occupation is found at 8 C.F.R. § 214.2(h)(4)(iii)(C), and requires the individual to:

- (1) Hold a United States baccalaureate or higher degree required by the specialty occupation from an accredited college or university;
- (2) Hold a foreign degree determined to be equivalent to a United States baccalaureate or higher degree required by the specialty occupation from an accredited college or university;
- (3) Hold an unrestricted state license, registration or certification which authorizes him or her to fully practice the specialty occupation and be immediately engaged in that specialty in the state of intended employment; or
- (4) Have education, specialized training, and/or progressively responsible experience that is equivalent to completion of a United States baccalaureate or higher degree in the specialty occupation, and have recognition of expertise in the specialty through progressively responsible positions directly related to the specialty.

To establish the beneficiary as qualified to perform the duties of its proffered position, the petitioner has submitted a copy of the beneficiary's 2002 master's degree in business administration from Northwestern University in Evanston, Illinois. The record, therefore, establishes that the petitioner has satisfied the requirements of the first criterion at 8 C.F.R. § 214.2(h)(4)(iii)(C) – the beneficiary holds a U.S. baccalaureate or higher degree required by the specialty occupation from an accredited college or university.

For reasons related in the preceding discussion, the petitioner has established both that the proffered position is a specialty occupation under the requirements at 8 C.F.R. § 214.2(h)(4)(iii)(A)(1) and that the beneficiary is qualified to perform the duties of a specialty occupation pursuant to 8 C.F.R. § 214.2(h)(4)(iii)(C)(2). Accordingly, the appeal shall be sustained, and the petition shall be approved.

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 sustained that burden.

ORDER: The appeal is sustained. The petition is approved.