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FILE: WAC 04 045 52421 Office: CALIFORNIA SERVICE CENTER Date: MAR 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:  
[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.

*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 printing company that seeks to employ the beneficiary as a production manager. 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 a production manager. Evidence of the beneficiary's duties includes: the I-129 petition; the petitioner's November 26, 2003 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: directing and coordinating the activities of employees engaged in production; coordinating the on-site printing production process to assure efficiency of production; planning and establishing staffing needs, work schedules, assignments and production sequences to meet production goals and deadlines; acting in an advisory capacity in the operation of the business, with authority to affect business economics through pricing procedures, costing estimations and operating management that includes hiring and firing employees and creating work and production schedules; coordinating production of work orders, including contract negotiations with clients; carrying out project development from start to finish and supervising the workers; determining standards, production and rates based on company policy, equipment and labor availability, and workload; maintaining data, such as time, production and cost records and preparing management reports; procuring and maintaining equipment; and inspecting finished products to detect defects or malfunctions. The petitioner indicated that a qualified candidate for the job would possess a bachelor's degree or its equivalent in industrial management or a related field.

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 director analyzed the incorrect position in determining that the proffered position was not a specialty occupation. Counsel asserts that the director's decision discusses the educational requirements of advertising, marketing, promotions, public relations and sales managers, as described in the Department of Labor's *Occupational Outlook Handbook (Handbook)*. Counsel states that the proffered position is a production manager and not an advertising, marketing or sales manager. Counsel further states that the director ignored two letters from scholars within the fields of industrial engineering and management, both of which stated that the proffered position would require an individual with a bachelor's degree in industrial engineering or industrial management.

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 *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.Min. 1999)(quoting *Hird/Blaker Corp. v. Sava*, 764 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. The AAO concurs with counsel that the proffered position is not an advertising, marketing or sales manager, and that the director erred in his determination that the position is not a specialty occupation based on the criteria for those positions.

The AAO does not find, however, that the proffered position is a specialty occupation. The petitioner has identified its position as that of a production manager, but its description of the beneficiary's duties lacks the specificity and detail necessary to support the petitioner's contention.

The *Handbook* indicates that a degree in a specific specialty is not required for industrial production managers:

Because of the diversity of manufacturing operations and job requirements, there is no standard preparation for this occupation. Some employers require a college degree, while other employers train promising apprentices or workers. However, most employers would prefer a college degree, even for those who have worked their way up through the ranks. Many industrial production managers have a college degree in business administration, management, industrial technology, or industrial engineering. Some are former production-line supervisors who have been promoted and have taken employer-sponsored training classes. Although many employers prefer candidates with a business or engineering background, some companies hire well-rounded liberal arts graduates, who are willing to spend time in a production-related job.

At the time of filing, the petitioner offered a list of the beneficiary's production manager duties. The AAO notes that six of the ten duties were essentially identical to the duties the beneficiary described in his declaration as having performed for his previous employer. It seems unlikely that there would be identical duties for two different employers, even within the same field, which raises the question of what duties the beneficiary would actually be performing for the petitioner. The director found this description insufficient to establish the position as a specialty occupation and asked for further information, specifically requesting a more detailed description of the work to be done, including specific job duties. In its response, the petitioner restated the same list of duties provided in its letter of support. Counsel stated that the proffered position was a specialty occupation, but failed to offer a detailed description of the beneficiary's duties as they relate to the petitioner's business. Some of the duties relate to coordinating the activities of other employees and planning work schedules and assignments, and counsel's response to the director's request for evidence stated that "[t]he beneficiary will supervise employees as needed according to project-to-project basis as the position entails one who works well independently as well as one who can manage production workers." However, the petitioner's list of employees includes the president, general manager, two graphic designers and a press operator. It is not clear who the 'production workers' are, or whom the

beneficiary would supervise. In addition, there is no evidence in the record regarding exactly what the petitioner produces.

A petitioner cannot establish its employment as a specialty occupation by describing the duties of that employment in the same general terms as those used by the *Handbook* in discussing an occupational title, e.g., a production manager coordinates the activities of employees engaged in production. As noted above, it is also unclear how the duties of the proffered position could be identical to the duties of the beneficiary's previous position. This type of generalized description is necessary when defining the range of duties that may be performed within an occupation, but cannot be relied upon by a petitioner when discussing the duties attached to specific employment. In establishing a position as a specialty occupation, a petitioner must describe the specific duties and responsibilities to be performed by a beneficiary in relation to its particular business interests. The record of proceeding does not contain specific information about the petitioner's particular business operations and substantive work that the beneficiary would actually perform in managing them. Instead, and despite the director's request for additional information, the petitioner limited its description of the proposed duties to abstract statements such as: "Direct and coordinate the activities of employees engaged in production"; "Coordinate the on-site printing production process to ensure efficiency of production"; and "Carry out project development from start to finish and supervise the workers."

In the instant case, the petitioner has offered no description of the duties of its proffered position beyond the generalized outline it provided at the time of filing, and the outline does not relate those generally described duties to the petitioner's particular business and specific operational matters there encountered. It cannot, therefore, establish that the position meets any of the requirements for a specialty occupation set forth at 8 C.F.R. § 214.2(h)(4)(iii)(A). While counsel contends that the letters submitted by two scholars stating that the proffered position is of sufficient complexity to establish it as a specialty occupation, these cannot substitute for a description of the specific duties to be performed by the beneficiary. As previously noted, CIS must examine the actual employment of an alien, i.e., the specific tasks to be performed by that alien, to determine whether a position qualifies as a specialty occupation. However, the petitioner's description of the duties of its position is so generic that it is not possible for the AAO to reasonably conclude that they satisfy any criterion of 8 C.F.R. § 214.2(h)(4)(iii)(A). Without a reliable description of the position's duties, the AAO is unable to determine whether the performance of those duties meets the statutory definition of a specialty occupation – employment requiring the theoretical and practical application of a body of highly specialized knowledge and the attainment of a bachelor's or higher degree in the specific specialty (or its equivalent) as a minimum for entry into the occupation. As a result, the AAO finds the petitioner has failed to establish that it has a specialty occupation for which it is seeking the beneficiary's services.

The AAO finds that the opinions offered by the two professors on the educational requirements for performance of the proffered position are not probative. There is no evidence that either professor reviewed either the petitioner's specific operations or any specific tasks that the beneficiary would perform. Rather, the Seattle Pacific University professor's letter indicates that his review of the petitioner's operations and the proffered position was limited to "review of the [petitioner's] H-1B extension petition"; and the only information that the Rochester Institute of Technology professor cites about the proffered position is the list

of generic duties that the petitioner initially presented on filing of the Form I-129. As already noted in this decision, the AAO finds that such abstract and generic terms as those to which the petitioner has limited its information about the proffered position do not demonstrate any highly specialized knowledge that the beneficiary would apply in his work, nor does it demonstrate that the beneficiary's work would require at least a bachelor's degree or the equivalent in a specific specialty. Accordingly, as the professors have not demonstrated any greater knowledge about the beneficiary's work than the petition's abstractly described duties, the AAO finds that they have not established that their opinions merit any special weight. They neither substantiate nor corroborate the petitioner's assertion of a specialty occupation.

Further, as the professors' opinions are based on such generic descriptions of industrial production manager duties, they suggest that the professor' opinions conflict with the authoritative information in the *Handbook* by indicating that industrial production manager positions generically and generally require at least a bachelor's degree in a specific specialty. Yet the professors neither address the *Handbook's* contrary information nor provide an explanation for their disagreement with it. The AAO may, in its discretion, use as advisory opinion statements submitted as expert testimony. However, where an opinion is not in accord with other information or is in any way questionable, the AAO is not required to accept or may give less weight to that evidence. *Matter of Caron International*, 19 I&N Dec. 791 (Comm. 1988).

Therefore, for the reasons related in the preceding discussion, 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. Section 214(i)(2) of the Act, 8 U.S.C. § 1184(i)(2), states that an alien applying for classification as an H-1B nonimmigrant worker must possess full state licensure to practice in the occupation, if such licensure is required to practice in the occupation, and completion of the degree in the specialty that the occupation requires. If the alien does not possess the required degree, the petitioner must demonstrate that the alien has 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.

Pursuant to 8 C.F.R. § 214.2(h)(4)(iii)(C), to qualify to perform services in a specialty occupation, an alien must meet one of the following criteria:

- (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.

Upon review of the record, the petitioner has not established that the beneficiary is qualified to perform an occupation that requires a baccalaureate degree in marketing or a related field. The beneficiary does not hold a baccalaureate degree from an accredited U.S. college or university in any field of study, or a foreign degree determined to be equivalent to a baccalaureate degree from a U.S. college or university in any field of study. Therefore, the petitioner must demonstrate that the beneficiary meets the criterion at 8 C.F.R. § 214.2(h)(4)(iii)(C)(4).

Pursuant to 8 C.F.R. § 214.2(h)(4)(iii)(D), equating the beneficiary's credentials to a United States baccalaureate or higher degree shall be determined by one or more of the following:

- (1) An evaluation 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;
- (2) The results of recognized college-level equivalency examinations or special credit programs, such as the College Level Examination Program (CLEP), or Program on Noncollegiate Sponsored Instruction (PONSI);
- (3) An evaluation of education by a reliable credentials evaluation service which specializes in evaluating foreign educational credentials;
- (4) Evidence of certification or registration from a nationally-recognized professional association or society for the specialty that is known to grant certification or registration to persons in the occupational specialty who have achieved a certain level of competence in the specialty;
- (5) A determination by the Service that the equivalent of the degree required by the specialty occupation has been acquired through a combination of education, specialized training, and/or work experience in areas related to the specialty and that the alien has achieved recognition of expertise in the specialty occupation as a result of such training and experience.

Counsel asserts that the beneficiary is qualified to perform a specialty occupation pursuant to 8 C.F.R. § 214.2(h)(4)(iii)(D)(1) and/or (5)(i).

The petitioner submitted an evaluation from [REDACTED] a company that specializes in evaluating academic credentials. The evaluator concluded that the beneficiary possesses the equivalent of a bachelor's degree in industrial management. The only evaluations that CIS recognizes as probative from a credentials evaluation service are evaluations of an alien's education. See 8 C.F.R. §§ 214.2(h)(4)(iii)(1) and (3). Accordingly, the AAO will accept that portion of the evaluation that analyzes the beneficiary's foreign education as equivalent to a high school diploma. With respect to that portion of the evaluation analyzing the beneficiary's work experience, the evaluation carries no weight in these proceedings. CIS uses an evaluation by a credentials evaluation organization of a person's foreign education as an advisory opinion only. Where an evaluation is not in accord with previous equivalencies or is in any way questionable, it may be discounted or given less weight. *Matter of Sea, Inc.*, 19 I&N Dec. 817 (Comm. 1988).

In response to the director's request for evidence, the petitioner submitted letters from two professors, each stating that the beneficiary's work experience was equivalent to a bachelor's degree in industrial management. The professor from Seattle Pacific University provided a letter of support from the university indicating that he has the authority to grant credit for work experience, and that the university has a program for granting credit for work experience. However, that letter, dated January 2, 2001 – more than three years prior to the March 10, 2004 evaluation for which it is submitted – is stale. It merits no weight, as it does not address university policy at the time when the evaluation was issued.<sup>1</sup> The AAO further finds that the beneficiary's declaration, the letter of verification of employment, the letter of recommendation from a previous employer, and the petitioner's letter of support do not contain sufficient information for the AAO to reasonably conclude that the professors adequately or correctly determined that the beneficiary's work experience included the theoretical and practical application of specialized knowledge required by a specialty occupation or that the alien's experience was gained while working with peers, supervisors, or subordinates who have a degree or its equivalent in the specialty occupation. CIS may, in its discretion, use as advisory opinions statements submitted as expert testimony. However, as previously noted, 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*.

When CIS determines an alien's qualifications pursuant to 8 C.F.R. § 214.2(h)(4)(iii)(D)(5), three years of specialized training and/or work experience must be demonstrated for each year of college-level training the alien lacks. It must be clearly demonstrated that the alien's training and/or work experience included the theoretical and practical application of specialized knowledge required by the specialty occupation; that the alien's experience was gained while working with peers, supervisors, or subordinates who have a degree or

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<sup>1</sup>The AAO has independently verified on two occasions that the only such "program" that the university has is an internship program where a student can earn college credit for certain work under the university's supervision. Therefore, the professor does not meet the terms of 8 C.F.R. § 214.2(h)(4)(iii)(D)(1), which requires that an evaluation 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."

its equivalent in the specialty occupation; and that the alien has recognition of expertise in the specialty evidenced by at least one type of documentation such as:

- (i) Recognition of expertise in the specialty occupation by at least two recognized authorities in the same specialty occupation<sup>2</sup>;
- (ii) Membership in a recognized foreign or United States association or society in the specialty occupation;
- (iii) Published material by or about the alien in professional publications, trade journals, books, or major newspapers;
- (iv) Licensure or registration to practice the specialty occupation in a foreign country; or
- (v) Achievements which a recognized authority has determined to be significant contributions to the field of the specialty occupation.

Again, the AAO notes that the petitioner has not clearly demonstrated that the beneficiary's work experience included the theoretical and practical application of specialized knowledge required by a specialty occupation or that the alien's experience was gained while working with peers, supervisors, or subordinates who have a degree or its equivalent in a specialty occupation. The two letters from the professors state that the beneficiary's experience included the theoretical and practical application of specialized knowledge, but the beneficiary's letter of recommendation from his former employer and his declaration about his duties do not reflect this. Furthermore, the evidence of record does not contain any of the documentation required to establish recognition of a beneficiary's expertise in accordance with subparagraphs (i) to (v) above.

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.

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<sup>2</sup> *Recognized authority* means a person or organization with expertise in a particular field, special skills or knowledge in that field, and the expertise to render the type of opinion requested. A recognized authority's opinion must state: (1) the writer's qualifications as an expert; (2) the writer's experience giving such opinions, citing specific instances where past opinions have been accepted as authoritative and by whom; (3) how the conclusions were reached; and (4) the basis for the conclusions supported by copies or citations of any research material used. 8 C.F.R. § 214.2(h)(4)(ii).