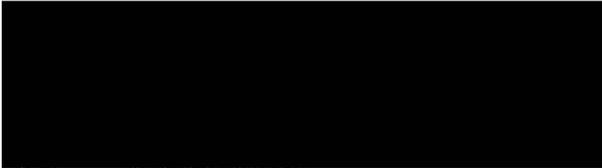




U.S. Citizenship
and Immigration
Services

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FILE: SRC 04 122 51943 Office: TEXAS SERVICE CENTER

Date: MAY 04 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:



INSTRUCTIONS:

This is the decision of the Administrative Appeals Office in your case. All materials have been returned to the office that originally decided your case. Any further inquiry must be made to that office.

Robert P. Wiemann, Chief
Administrative Appeals Office

DISCUSSION: The service center director denied the nonimmigrant visa petition. The matter is now on appeal before the Administrative Appeals Office (AAO). The appeal will be dismissed. The petition will be denied.

The petitioner is a provider of personnel relocation services. It seeks to employ the beneficiary as a human resources representative and to extend his classification 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 on the ground that the proffered position does not qualify as 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.

As provided in 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 evidence (RFE); (3) the petitioner's response to the RFE; (4) the notice of decision; and (5) Form I-290B, an appeal brief, and supporting materials. The AAO reviewed the record in its entirety before issuing its decision.

In its initial submission, including Form I-129 and an accompanying letter, the petitioner described itself as a business that specializes in relocating client companies' personnel and equipment to Brazil. The petitioner indicated that it was established in 2002, had three employees, and projected gross annual income of approximately \$690,000 by 2005. To facilitate its growth and manage the company's marketing and liaison functions, the petitioner stated that it requires the services of a human resources representative. The job was described as follows:

[The beneficiary] will liaise with established clients that are interested in moving personnel and equipment into Brazil and actively seek new clients at the corporate level. The position requires knowledge of Brazilian legislation and procedures and fluency in Portuguese. [The beneficiary] will compile and maintain records of clients' employees' information, such as personal data, compensation, and benefits to assist with employee relocation.

The beneficiary is qualified to perform the services of the proffered position, the petitioner declared, based on twelve years of progressively responsible work experience for Brazilian companies in business administration, human resources management, and related areas, which is equivalent to a bachelor of science degree in human resources management, according to an evaluation by a professor of economics and finance at Baruch College, City University of New York. The record indicates that the beneficiary received H-1B classification in November 2002 pursuant to a petition filed by [REDACTED], and was working for that company in Houston, Texas, at the time the instant petition was filed.

In her decision the director referred to the Department of Labor (DOL)'s *Occupational Outlook Handbook (Handbook)*, noted that there was no defined standard for entry into the field of human resources, and based on that information determined that a baccalaureate degree in a specific specialty is not the normal minimum requirement for entry into the proffered position. The petitioner failed to establish that a baccalaureate degree is required by similar organizations in the industry, the director stated, or that the duties of the proffered position are so complex or unique that they can only be performed by an individual with a degree. The director concluded that the proffered position does not meet any of the criteria of a specialty occupation enumerated in 8 C.F.R. § 214.2(h)(4)(iii)(A).

On appeal counsel asserts that the proffered position qualifies as a specialty occupation under three of the four criteria enumerated in 8 C.F.R. § 214.2(h)(4)(iii)(A). Counsel contends that information in the DOL *Handbook* confirms that a bachelor's degree is required for human resources positions, thereby qualifying the proffered position as a specialty occupation under 8 C.F.R. § 214.2(h)(4)(iii)(A)(1). As evidence that a bachelor's degree is the common industry standard for human resources representatives, thereby qualifying the proffered position as a specialty occupation under 8 C.F.R. § 214.2(h)(4)(iii)(A)(2), counsel submits two letters (already in the record) from other companies who employ a human resources representative and approximately 60 internet job announcements for human resources representatives or related positions. As evidence that the duties of the proffered position are so specialized and complex that baccalaureate level knowledge is required to perform them, thereby qualifying the position as a specialty occupation under 8 C.F.R. § 214.2(h)(4)(iii)(A)(4), counsel submits a more detailed job description from the petitioner and resubmits an evaluation of the educational requirements of the position from a professor of marketing at Pace University's school of business. The petitioner's new job description of the proffered position, which it calls a human resources assistant, reads as follows:

The position of human resources assistant is a highly specialized position . . . [that] will be working within a highly complex niche of the industry, namely expatriate services This position requires a full range of knowledge of human resources issues associated with the transfer of executives, high-level managers and specially skilled employees abroad. Specifically, the candidate will guide the company in the selection of qualified employees for assignments abroad. The candidate must ensure that the employee is qualified for a visa to the foreign country and must make a determination as to the company's and the employee's tax, payroll, customs liabilities or special issues. As such, the candidate must have the ability to understand, interpret and apply foreign government regulations in order to qualify the appropriate employees and minimize the company's costs and liabilities.

For example, when transferring an employee to Brazil, the human resources assistant must assure the company that its employees and payroll are consistent with the three-fifths rule . . . [which] requires . . . that at least three-fifths of the company's workforce is Brazilian . . . [and] . . . that no more than three-fifths of the company's payroll is paid to foreign workers. The definition of foreign workers depends on the type of work authorization granted, so the human resources assistant must also plan for and predict the types of visas necessary to assure compliance with this rule.

Another example is when transferring an employee to a country that has a bilateral "Social Security" treaty with the United States, such as most Western European countries. These treaties allow for a foreign employee to obtain a certificate of coverage from the United States government in order to avoid tax liabilities in the foreign country. The ability to obtain and qualify for such certificates depends on a number of factors, such as whether the employee has been on the U.S. payroll, whether worldwide income was reportable and necessary taxes were paid. As such, the human resources assistant is charged with reviewing complex payroll and tax documents and with planning to assure that employees will remain eligible for such certificates.

In determining whether a position meets the statutory and regulatory criteria of a specialty occupation, CIS routinely consults the DOL *Handbook* as an authoritative source of information about the duties and educational requirements of particular occupations. Factors typically considered are whether the *Handbook* indicates a degree is required by the industry; 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)). CIS also analyzes the specific duties and complexity of the position at issue, with the *Handbook's* occupational descriptions as a reference, as well as the petitioner's past hiring practices for the position. See *Shanti, Inc. v. Reno, id.*, at 1165-66.

As indicated in the *Handbook*, 2006-07 edition, human resources managers and specialists comprise a broad occupational category and the duties of individual positions vary considerably depending on the nature of the company and the scale of its operations. Of particular relevance for the proffered position in this case, the *Handbook* states that: "In a small organization, a human resources generalist may handle all

aspects of human resources work, and thus require an extensive range of knowledge.” The occupational sub-categories closest to the proffered position are “employment, recruitment, and placement specialists,” and the *Handbook* also recognizes, as an emerging specialty, “*international human resources managers*, who handle human resources issues related to a company’s foreign operations.”

Reflecting the broad range of positions within the occupation, educational requirements for human resources specialists also vary. As explained in the *Handbook*, 2006-07 edition:

The educational backgrounds of human resources . . . managers and specialists vary considerably because of the diversity of duties and levels of responsibility. 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.

. . . .

Because an interdisciplinary background is appropriate in this field, a combination of courses in the social sciences, business, and behavioral sciences is useful

. . . .

For many specialized jobs in the human resources field, previous experience is an asset. . . . The field offers clerical workers opportunities for advancement to professional positions. Responsible positions occasionally are filled by experienced individuals from other fields, including business, government, education, social services administration, and the military.

As indicated in the *Handbook*, different employers look for different educational credentials in hiring entry-level human resources managers and specialists. In addition, relevant work experience is highly valued and can sometimes substitute for formal education. Based on the foregoing information, the AAO determines that a baccalaureate or higher degree in a specific specialty is not the normal minimum requirement for entry into a position as human resources representative (or human resources assistant). Thus, the proffered position does not meet the first alternative criterion of a specialty occupation at 8 C.F.R. § 214.2(h)(4)(iii)(A)(1).

As for the second alternative criterion of a specialty occupation, at 8 C.F.R. § 214.2(h)(4)(iii)(A)(2), the record includes identically-worded letters from the international human resources managers of two companies in Mesquite, Texas – Diamond Offshore and GlobalSantaFe Corporation – who state the following:

Our company’s human resources department hires representatives to handle the international transfer of key employees. Given the skills required and the importance of the employees being transferred, we always hire representatives with no less than a bachelor’s degree in human resources or a closely related field.

Both companies have human resources departments and thus appear to be considerably larger than the petitioner’s three-employee operation. Furthermore, neither company appears to be in the petitioner’s line of business – *i.e.*, an employee relocation service. In addition, neither letter identifies any specific individuals the company has hired as international human resources representatives, or provides evidence

of their baccalaureate degrees. Thus, the industry letters in the record fail to establish that the requirement of a baccalaureate or higher degree in a specific specialty is common to the petitioner's industry in parallel positions among similar organizations, as required for the proffered position to qualify as a specialty occupation under the first prong of 8 C.F.R. § 214.2(h)(4)(iii)(A)(2). With respect to the approximately 60 internet job announcements for human resources representatives or similar positions, most if not all of the companies are considerably larger than the petitioner and most of the companies are in different lines of business from the petitioner. Moreover, the advertisements are far from uniform as to their educational requirements. While some specify that a bachelor's degree in human resources or a related specialty is required, others indicate that such a degree is only preferred, and some only state that a bachelor's degree is required without indicating any area of specialty. Like the industry letters, therefore, the internet job announcements fail to establish that the requirement of a baccalaureate or higher degree in a specific specialty is common to the petitioner's industry in parallel positions among similar organizations, as required for the proffered position to qualify as a specialty occupation under the first prong of 8 C.F.R. § 214.2(h)(4)(iii)(A)(2).

Nor does the record show that the proffered position in this case is so complex or unique that it can only be performed by an individual with a baccalaureate degree in a specific specialty, as required for it to qualify as a specialty occupation under the second prong of 8 C.F.R. § 214.2(h)(4)(iii)(A)(2).

As indicated in the record, the position of human resources specialist was newly created at the time of filing. Since there is no hiring history for the job, the petitioner cannot establish that it normally requires a specialty degree or its equivalent for the position, as required for the position to meet the third alternative criterion of a specialty occupation at 8 C.F.R. § 214.2(h)(4)(iii)(A)(3).

Finally, the record does not establish that the duties of the human resources specialist are so specialized and complex that the knowledge required to perform them is usually associated with a baccalaureate or higher degree in a specific specialty, as required for the position to meet the fourth alternative criterion of a specialty occupation at 8 C.F.R. § 214.2(h)(4)(iii)(A)(4). Though the petitioner claims that knowledge of Brazilian employment law and the Portuguese language is essential for the job, the record does not demonstrate that such knowledge is usually associated with a baccalaureate or higher degree in a specific specialty. Counsel cites the evaluation of the proffered position by James S. Gould, a professor of marketing at Pace University's Lubin School of Business, which was originally submitted in response to the RFE. Professor Lubin finds that the position "involves[s] the application of intensive analytic concepts and practical techniques of human resources administration and related fields" which requires a bachelor's degree in human resources administration or a related field, or its functional equivalent in professional experience. "Generalized knowledge of human resources administration alone," Professor Gould declares, "is not sufficient for a human resources representative to successfully meet the functional position requirements." According to Professor Lubin, "[t]he duties required for the instant position necessitate that an individual be familiar with theoretical and academic concepts in human resources administration, and related areas" that are typically taught in baccalaureate degree programs or learned through on-the-job training and work in the field. The author of the evaluation is a professor of marketing at a business school, who states that he teaches courses in marketing, management, finance, accounting, and business administration. The record does not show that he has expertise in the field of human resources.

CIS may, in its discretion, use as advisory opinions statements from universities, professional organizations, or other sources submitted in evidence as expert testimony. When an opinion does not accord with other information or is in any way questionable, however, CIS is not required to accept or may give less weight to that evidence. See *Matter of Caron International, Inc.*, 19 I&N Dec. 791, 795 (Comm. 1988). The record shows that the beneficiary's knowledge of Brazilian employment law – which Professor Gould deems sufficient for the proffered position – was acquired exclusively through prior work experience in the human resources field and was performed without a baccalaureate level education or equivalent knowledge. The record does not demonstrate that the employment law-related duties of the proffered position are so specialized and complex that they require baccalaureate level knowledge in a specific specialty. As for the beneficiary's knowledge of the Portuguese language, that was acquired by growing up in Brazil as a native speaker. It is not a body of specialized knowledge associated with a baccalaureate or higher degree. The AAO concludes that the evaluation from Professor Gould is not persuasive evidence that baccalaureate level knowledge of human resources administration or a related specialty is required to perform the duties of the proffered position. Based on the evidence of record, the AAO determines that the duties could be performed by an experienced individual without baccalaureate level knowledge in a specific specialty. Thus, the proffered position does not meet the fourth alternative criterion of a specialty occupation at 8 C.F.R. § 214.2(h)(4)(iii)(A)(4).

For the reasons discussed above, the record fails to demonstrate that the proffered position meets any of the criteria enumerated in 8 C.F.R. § 214.2(h)(4)(iii)(A) to qualify as a specialty occupation. The petitioner has not established that the beneficiary will be coming temporarily to the United States to perform services in a specialty occupation, as required under section 101(a)(15)(H)(i)(b) of the Act, 8 U.S.C. § 1101(a)(15)(H)(i)(b).

The record indicates that the beneficiary has previously been employed in H-1B status by another U.S. employer. Notwithstanding the approval of the prior H-1B petition, the current petition cannot be approved unless the record establishes current eligibility. Each nonimmigrant petition is a separate proceeding with a separate record. See 8 C.F.R. § 103.8(d). The AAO is not required to approve applications or petitions in which eligibility has not been demonstrated merely because of a prior approval that may have been erroneous. See, e.g. *Matter of Church Scientology International*, 19 I&N Dec. 593, 597 (Comm. 1988). The record in the instant proceeding does not show that the proffered position qualifies as a specialty occupation.

The petitioner bears the burden of proof in these proceedings. See section 291 of the Act, 8 U.S.C. § 1361. The petitioner has not sustained that burden. Accordingly, the AAO will not disturb the director's decision denying the petition.

ORDER: The appeal is dismissed. The petition is denied.