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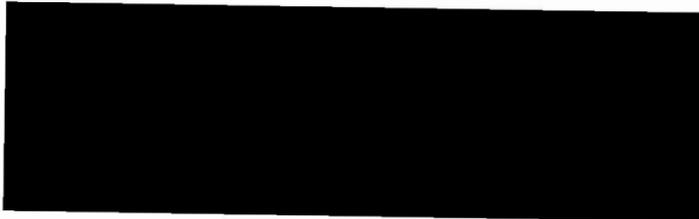
U.S. Department of Homeland Security
20 Mass. Ave., N.W., Rm. 3000
Washington, DC 20529



U.S. Citizenship
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Services

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FILE: WAC 04 253 51817 Office: CALIFORNIA SERVICE CENTER Date: SEP 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:



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, Chief
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 involved in the import and wholesale distribution of Asian foods, sundries and related products. It seeks to employ the beneficiary as a production manager and endeavors to classify him 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 position did not qualify as a specialty occupation. On appeal, counsel submits a brief asserting that the proffered position is a specialty occupation.

The issue to be discussed in this proceeding is whether the proffered position qualifies as a specialty occupation.

Section 101(a)(15)(H)(i)(b) of the Act, 8 U.S.C. § 1101(a)(15)(H)(i)(b), provides, in part, for the classification of qualified nonimmigrant aliens who are coming temporarily to the United States to perform services in a specialty occupation.

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.

The term "specialty occupation" is further defined at 8 C.F.R. § 214.2(h)(4)(ii) as:

[A]n 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 are 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) the Form I-129 and supporting documentation; (2) the director’s request for additional evidence; (3) the petitioner’s response to the director’s request for additional evidence; (4) the director’s denial letter; and (5) the Form I-290B with 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 was set forth in the petitioner’s support letter dated September 16, 2004, and in response to the director’s request for evidence. According to this evidence the beneficiary would:

- Coordinate plant production activities and resources, including having final responsibility for production scheduling and planning production operations;
- Analyze personnel requirements, determine equipment availability, and schedule work assignments;
- Authorize overtime to meet shipping and delivery requirements while maintaining strict financial budgets for food manufacturing operations;
- Hire, fire and make other personnel decisions and estimate required staffing levels;
- Direct the procurement of materials and supplies to meet production requirements;
- Direct the maintenance of manufacturing equipment;
- Direct food and inventory quality control procedures; and
- Reduce inventory losses and insure the proper rotation of inventory.

The duties of the position are further detailed in the petitioner’s support letter of September 16, 2004. The petitioner requires a minimum of a bachelor’s degree in business administration or industrial management or a similar degree for entry into the offered position.

Upon review of the record, the petitioner has failed to establish that a baccalaureate or higher degree or its equivalent is normally the minimum requirement for entry into the offered position, or that a degree

requirement is common to the industry in parallel positions among similar organizations as set forth in 8 C.F.R. § 214.2(h)(4)(iii)(A)(1) and (2). 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 an industry 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." *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 information about the duties and educational requirements of particular occupations. The duties of the proffered position are essentially those noted for industrial production managers who plan, direct, and coordinate the production activities required to produce goods. These individuals make sure that production proceeds smoothly and stays within budget. They oversee production, reducing costs wherever possible and make sure products are produced on time and are of good quality. This requires the production manager to analyze plant personnel and capital resources to select the best way of meeting production goals. The industrial production manager must determine which machines will be used, whether production requires the purchase of new machinery, the production sequences to be followed, and staffing levels needed. The *Handbook* notes that 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 others train promising apprentices or workers. However, most employers 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 will hire well-rounded liberal arts graduates who are willing to spend time in a production related job. A degree in a specific specialty is not required for entry into the proffered position. Degrees in a wide range of unrelated disciplines are acceptable for positions actually requiring a degree. The petitioner has failed to establish the first criterion of 8 C.F.R. § 214.2(h)(4)(iii)(A).

The petitioner asserts that a degree in a specific specialty is common to the industry in parallel positions among similar organizations. In support of this assertion, the petitioner submitted copies of nine job advertisements. **The record does not establish that any of the advertisements submitted are from organizations similar in nature and scope to that of the petitioner.** Further, three of the advertisements state that a degree is required but do not state that the degree need be in any specific educational discipline. **One states that a degree is desirable. The remainder find the following degrees acceptable:** industrial administration; mechanical administration; business administration; industrial engineering; industrial management; operations management; engineering; food science; dairy science; business finance; biochemistry; biology; microbiology; and chemistry. The advertisements confirm the educational requirements set forth for the position in the *Handbook*, that positions requiring degrees find acceptable degrees in a wide range of unrelated disciplines. The petitioner has not established the referenced criterion at 8 C.F.R. § 214.2(h)(4)(iii)(A)(2).

The petitioner does not assert that it normally requires a degree in a specific specialty for entry into the offered position as the position is a new position, and offers no evidence in this regard. The petitioner has not established the criterion at 8 C.F.R. § 214.2(h)(4)(iii)(A)(3).

Finally, the duties to be performed by the beneficiary are not so specialized or complex that knowledge required to perform them is usually associated with the attainment of a baccalaureate or higher degree in a specific specialty. Nor are the duties so complex or unique that they can be performed only by an individual with a degree in a specific specialty. The petitioner indicates that it is expanding its business and recently acquired a food processing and manufacturing operation which will require the services of a food production manager. No proof of the business expansion or the production facility is of record. Simply going on the 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 190 (Reg. Comm. 1972)). The petitioner has not distinguished the duties of its production manager or established that a degree in a specific specialty is required to perform them. The duties described by the petitioner are routine in the industry for industrial production managers in the petitioner's work environment, and are regularly performed by individuals with education in a wide range of educational disciplines, as well as by individuals with less than a baccalaureate level education. The petitioner has, therefore, failed to establish the referenced criteria at 8 C.F.R. §§ 214.2(h)(4)(iii)(A)(2) or (4).

The petitioner has failed to establish that the offered position meets any of the criteria listed at 8 C.F.R. § 214.2(h)(4)(iii)(A). Accordingly, the AAO shall not disturb the director's denial of the petition.

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 and the appeal shall accordingly be dismissed.

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