



U.S. Citizenship
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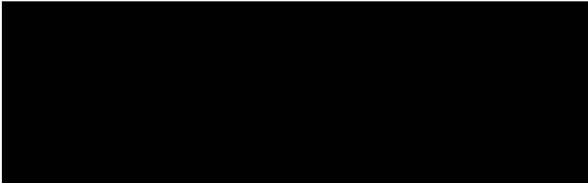
FILE: SRC 05 151 50627 Office: TEXAS SERVICE CENTER Date: APR 02 2007

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, Chief
Administrative Appeals Office

DISCUSSION: The Director, 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 dismissed. The petition will be denied.

The petitioner avers on the Form I-129: it operates a laundry and dry cleaning service; it employs one person; and its gross annual income is approximately \$147,827. It seeks to employ the beneficiary as a financial manager. Accordingly, 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).

On October 11, 2005, the director denied the petition determining that the record did not establish that the proffered position is a specialty occupation. On appeal, counsel for the petitioner asserts that the director's decision is in error and submits a brief. The issue in this matter is whether the petitioner has established that the proffered position is a specialty occupation.

The record contains: (1) the Form I-129 filed May 2, 2005 and supporting documentation; (2) the director's June 20, 2005 request for further evidence (RFE); (3) counsel's September 15, 2005 response to the director's RFE; (4) the director's October 11, 2005 denial decision; and (5) counsel's brief in support of the appeal. The AAO reviewed the record in its entirety before issuing its decision.

Preliminarily, the AAO observes that the beneficiary had been classified as an H-1B nonimmigrant to perform services for another company and that the classification was valid from May 1, 2002 to May 1, 2005. The petition in this matter was filed May 2, 2005; thus it appears that the beneficiary was out of status when the petition was filed. As this issue is not before the AAO on appeal, it will not be further addressed.

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 petitioner seeks the beneficiary's services as a "financial manager." To evidence the duties of the proffered position, the petitioner, in an April 20, 2005 letter appended to the Form I-129, stated that the beneficiary would function in the position of finance manager and listed his duties as:

Directs all financial activities of the company. Coordinates and implements company's financial policies and procedures. Conducts financial analysis to summarize and forecast company business activity in the areas of income, expenditure, and profits. Analyzes company's loss and profit statements on a monthly basis. Analyzes and evaluates company's financial information, such as assets, liabilities, and capital, to prepare financial reports, using MS Office, Excel, SAP, Peachtree BPCS, and other accounting/bookkeeping software related [sic]. Manages and maintains records related to fixed assets and depreciation. Implements a general accounting system of: quotations, invoicing, accounts receivable, accounts payable, and inventories. Implements proper working methods and techniques to reduce overhead and present budget analysis and production reports to management. Prepares and analyzes monthly expenditure reports for inventory, pay-roll, and administrative expenses.

In a September 2, 2005 attachment to counsel's September 15, 2005 response to the director's RFE, the petitioner listed the beneficiary's responsibilities as finance manager as follows:

Revenue Comptroller; Inventory Management; Management of store operations; Control over 86 machines; Cash flow management; Customer service manager; Collections & Accounts Payable control; Purchasing director; Outsourcing service director; Marketing & Sales manager.

The petitioner also identified individuals in the positions of president, accountant, technician, store supervisor, and two individuals in the position of customer service on an organizational chart. The petitioner provided two opinions evaluating the proffered position. In an August 22, 2005 opinion authored by [REDACTED] Academic Program Director, Graduate School of Business at Florida Metropolitan University, [REDACTED] repeats the petitioner's description of the position and concludes that to perform the duties of the position, an individual would need the knowledge obtained by acquiring a bachelor's degree in business administration/management or its equivalent. [REDACTED] bases his opinion on the described duties of the position. In an August 25, 2005 opinion authored by [REDACTED] [REDACTED] repeats the petitioner's description of the proffered position and opines: "[s]ince the proposed duties are highly specialized and extremely complex in nature, it is necessary to delegate the aforementioned job duties to someone who has at least completed a Bachelor's degree in Administration with a major in Finance, a closely related field or possess[es]the equivalent in professional experience." The petitioner also submitted a September 5, 2005 letter from the owner of a dry cleaning and laundry service. The author of the September 5, 2005 letter indicated that coin operated laundry services like the petitioner hire professional individuals with bachelor's degrees in business administration or the equivalent to run the financial operations of their stores.

On October 11, 2005, the director denied the petition determining that the description provided was vague and did not identify the day-to-day duties of the position. The director determined that the duties submitted in response to the director's RFE did not appear so complex that a baccalaureate degree or higher would be required to perform them. The director found that the list of duties provided appeared to correspond more closely to the duties of a general manager, not a financial manager and that general management positions for a small laundry and dry cleaning business did not require a bachelor's degree in a specific specialty. The director noted the opinions provided but found them unpersuasive in establishing that the proffered position required a baccalaureate degree or higher to perform the duties of the position.

On appeal, counsel for the petitioner asserts that denials based on a view that a petitioner is too small to require the services of a professional have proven unpopular with the federal courts. In addition, counsel cites an unpublished decision in support of his observation that the AAO has not found a petitioner's size, scope, and newness of operation as dispositive. Counsel contends that the job description provided by the petitioner was supported by the testimony of two experts in the field and the director ignored the opinions. Counsel also contends that CIS cannot arbitrarily and capriciously dismiss all evidence presented in the petition.

Counsel's assertions are not persuasive. The AAO finds the petitioner's initial description of the duties of the proffered position too general to conclude that the duties are those associated with that of a financial manager. The petitioner's initial description of the duties of the proffered position provides an overview of an occupation that may be associated with managing financial activities. This overview does not provide the detail necessary to determine that the actual daily duties of the position incorporate the duties of a specialty occupation. The petitioner does not provide documentary evidence of the reports generated and analyzed, does not provide documentary evidence of records managed and maintained, and does not provide documentary evidence of budget analysis and production reports. The record contains no evidence of the actual duties the petitioner's financial manager might perform. 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)).

Such a general overview of an occupation without the attendant detail relating the actual duties of the occupation to the petitioner's laundry and dry cleaning business is insufficient to establish the position as a specialty occupation. The description provided could be considered a general managerial position, as suggested by the director, or could be considered a bookkeeping or administrative managerial position, or a number of occupations that do not necessarily require the attainment of a bachelor's degree or higher in order to perform the duties of the position. When 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. In the instant matter, the petitioner's initial description does not progress further than a generalized outline of proposed tasks.

In response to the director's RFE, the petitioner provided a list of job titles including revenue comptroller, customer service manager, purchasing director, outsourcing service director, and marketing and sales manager. These job titles do not include a description of the daily duties required of the individual in these position(s). Moreover these job titles do not necessarily correspond to occupations that are considered specialty occupations. The petitioner's indication that the duties of the proffered position include inventory management, store operation management, control over 86 [washing] machines, and responsibility for cash flow management and collections and accounts payable, likewise do not correspond necessarily to occupations that are considered specialty occupations. Further, the record contains no information regarding the number of "stores," if more than one, the duties of an outsourcing service director or a marketing and sales manager for a dry cleaning or coin laundry business, or any duties pertaining to inventory management, cash flow management or collections and accounts payable as the duties would relate to a dry cleaning or coin operated laundry facility. Again, the petitioner failed to provide sufficient information regarding the proffered position and to effectively describe the actual duties the successful incumbent will perform for a dry cleaning and/or coin operated laundry facility.

To determine whether a particular job qualifies as a specialty occupation, CIS does not 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. In this matter, the petitioner's description of the proffered position is insufficient to establish the actual duties of the position. The AAO declines to speculate on the duties of the position or the particular and specific nature of the petitioner's business. The AAO declines to speculate on how the ill-defined duties impact the day-to-day activities of the petitioner.

The AAO notes that the petitioner has also provided inconsistent information regarding its number of employees. The petitioner initially indicated on the Form I-129 that the petitioner employed one individual. In response to the director's RFE, the petitioner listed seven filled positions, including the proffered position.

The petitioner however did not provide documentary evidence substantiating that it employed any of these individuals or that the individuals were employed when the petition was filed. It is incumbent upon the petitioner to resolve any inconsistencies in the record by independent objective evidence. Any attempt to explain or reconcile such inconsistencies will not suffice unless the petitioner submits competent objective evidence pointing to where the truth lies. *Matter of Ho*, 19 I&N Dec. 582, 591-92 (BIA 1988). Furthermore, a visa petition may not be approved based on speculation of future eligibility or after the petitioner or beneficiary becomes eligible under a new set of facts. See *Matter of Michelin Tire Corp.*, 17 I&N Dec. 248 (Reg. Comm. 1978); *Matter of Katigbak*, 14 I&N Dec. 45, 49 (Comm. 1971). In addition, as stated in *Matter of Izummi*, 22 I&N Dec. 169, 176 (Assoc. Comm. 1998), "[t]he AAO cannot consider facts that come into being only subsequently to the filing of the petition."

The AAO cannot accept a broad overview of a position as definitive of a particular occupation's daily duties. The petitioner must provide some evidence of the daily tasks the petitioner requires from the proffered position. To recite generalities, rather than specifics substantiated by the requirements of the particular petitioner, leads to the absurd result of petitioners indiscriminately labeling and summarizing positions in an effort to obtain specialty occupation classification. Each petitioner must detail its expectations of the proffered position and must provide evidence of what the duties of the proffered position entail on a daily basis. Such descriptions must correspond to the needs of the petitioner and be substantiated by documentary evidence. To allow otherwise, essentially requires acceptance of any petitioner's broadly stated description, rather than a detailed, comprehensive description demonstrating what the petitioner expects from the beneficiary and what the proffered position actually requires.

The AAO will not address the two referenced district court decisions, as the basis of this decision does not rely on the nature or size of the petitioner to conclude that the proffered position does not meet any of the requirements for a specialty occupation. Furthermore, in contrast to the broad precedential authority of the case law of a United States circuit court, the AAO is not bound to follow the published decision of a United States district court in matters arising within the same district. See *Matter of K-S-*, 20 I&N Dec. 715 (BIA 1993). Although the reasoning underlying a district judge's decision will be given due consideration when it is properly before the AAO, the analysis does not have to be followed as a matter of law. *Id.* at 719.

In this matter, the petitioner has provided a generic rather than detailed job description; 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).

The petitioner does not relate the nonspecific responsibilities described to the specifics of the petitioner's business nor does the petitioner define how these general duties apply to a specific discipline. Nor does the petitioner provide evidence of what the beneficiary does on a day-to-day basis. Only a detailed job description will suffice to meet the burden of proof in these proceedings. *Defensor v. Meissner*, 201 F. 3d 384 (5th Cir. 2000). The petitioner cannot establish that a baccalaureate or higher degree or its equivalent is normally the minimum requirement for entry into the position as the proffered position is too ill-defined to correspond to a particular occupation.

The AAO observes that the two opinions offered in support of the proffered position as a specialty occupation rely solely on the petitioner's broad description of the proffered position. Neither opinion addresses nor do

the authors analyze the description as to the actual duties that might be performed when carrying out the duties of the position. Neither author of the opinions relates the duties of the position to the petitioner's business. Neither author lists the specific coursework associated with the generally described duties or explains why a four-year university degree is required to perform the broadly stated duties for a coin operated laundry or dry cleaning business. Neither author indicates that he has interviewed the petitioner, visited the site, or reviewed company information about the petitioner. Neither professor gives sufficient details about the complexity of the duties in relation to the petitioner's laundry business to substantiate his conclusions. There is thus an inadequate factual foundation established to support the opinions. 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).

The record does not establish that a baccalaureate or higher degree or its equivalent is normally the minimum requirement for entry into the generally described position. Accordingly, the petitioner has not established the criterion at 8 C.F.R. § 214.2(h)(4)(iii)(A)(1).

The AAO now turns to a consideration of the proffered position pursuant to the criterion at 8 C.F.R. § 214.2(h)(4)(iii)(A)(2), whether a degree requirement is common to the industry in parallel positions among similar organizations or that a particular position is so complex or unique that only an individual with a degree can perform the duties associated with the position. Factors often considered by CIS when determining the industry standard include: 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)).

Without a meaningful job description, the petitioner has not established that the position's duties are parallel to any degreed positions within similar organizations in its industry or can be distinguished as more complex or unique than similar, but non-degreed, employment, as required by alternate prongs of the second criterion. The September 5, 2005 letter from the owner of a dry cleaning and laundry service does not provide evidence or any factual foundation to support his conclusion that coin operated laundry services like the petitioner hire professional individuals with bachelor's degrees in business administration or the equivalent to run the financial operations of their stores. The record does not contain information establishing the authority or expertise of the owner of a dry cleaning/laundry service as it relates to industry standards for coin operated laundry services. Neither does the record contain evidence that the author of the letter has hired individuals with bachelor's degrees to run the financial operations of his dry cleaning and laundry business. Thus, the September 5, 2005 letter from the owner of a dry cleaning and laundry service does not provide a factual foundation to support a conclusion that facilities in the coin operated laundry industry "routinely employ and recruit only degreed individuals." The author of the letter does not substantiate his conclusion by providing evidence that his particular business is both similar to the petitioner's and that he has hired only degreed individuals for positions parallel to the proffered position. Again, 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. at 165. The petitioner has not established the criterion at 8 C.F.R. § 214.2(h)(4)(iii)(A)(2).

Counsel indicates that the petitioner has not previously hired personnel to staff the proffered position; thus the record contains no evidence of the petitioner's prior hiring practices. Accordingly, the petitioner has not established the third criterion at 8 C.F.R. § 214.2(h)(4)(iii)(A)(3) based on its normal hiring practices.

Neither has the petitioner satisfied the requirements of the fourth criterion by distinguishing the proffered position based on the specialization and complexity of its duties. Again, the petitioner's general iteration of the duties of the proffered position cannot, without further detail, establish that the proffered position's duties are so specialized and complex that the knowledge required to perform the duties is usually associated with the attainment of a baccalaureate or higher degree. As previously observed, the description of the petitioner's proffered position is general and provides no understanding of how the duties relate to the specific needs of the petitioner. The petitioner has not provided sufficient information to establish that the duties as generally described are duties that correspond to a position that is so complex or unique that only an individual with a degree in a specific specialty can perform them. Accordingly, the petitioner has failed to establish the criterion at 8 C.F.R. § 214.2(h)(4)(iii)(A)(4).

The petition will be denied and the appeal dismissed for the above stated reason. 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. Accordingly, the director's decision will be affirmed.

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