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U.S. Citizenship
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FILE: WAC 06 081 50764 Office: CALIFORNIA SERVICE CENTER Date:

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.

James Blunzinger, for

Robert P. Wiemann, Chief
Administrative Appeals Office

DISCUSSION: The director of the California 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 is a computer equipment wholesaler, with seven employees and a gross annual income of approximately \$2 million. It seeks to employ the beneficiary as a service director. The petitioner, therefore, endeavors to employ the beneficiary in the nonimmigrant classification as a 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 based on his determination that the proffered position was not 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) counsel's response to the director's request for evidence; (3) the director's denial letter; and (4) Form I-290B, with counsel's brief. The AAO reviewed the record in its entirety before reaching its decision.

The only 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, a 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 Immigration and Nationality Act (the Act), 8 U.S.C. § 1184(i)(1) defines the term "specialty occupation" as one 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.

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 petitioner states that it is seeking the beneficiary’s services as a service director. Evidence of the beneficiary’s duties includes: the Form I-129; a December 19, 2005 letter of support from the petitioner submitted at the time of filing; and counsel’s March 6, 2006 response to the director’s request for evidence.

At the time of filing, the petitioner described the proffered position as follows:

Our company is currently in need of [a] [customers] service director to direct the activities of customer’s relations and install training systems to ascertain quality service provided to customers.

* * *

As Customers service director, [the beneficiary] will direct the activities of customers. More specifically, the duties of this position include the job to handle customers’ complaint[s], determine sources of trouble and take corrective action, resolve employees’ conflicts and set up a program to ascertain [that] all the workers are well-trained. This position requires substantial knowledge and expertise. Our company therefore believes that the Master Degree in institutional management or its equivalency [sic]. Is an essential prerequisite to filling this position [sic].

Counsel for the petitioner, in his March 6, 2006 response to the director's request for further information regarding the duties of the proffered position, restated the duties previously identified by the petitioner and then expanded those duties, indicating that the proffered position also included training responsibilities for the petitioner's customer service department. Counsel for the petitioner asserts the following:

[The beneficiary] will be given the title of Customers Service Director of [the petitioner]. As such, she will be responsible for handling the various complaints that may arise from customers. Resolving conflicts is only one aspect of her job duties, for she will also be deemed responsible for determining sources of problems and rectify them accordingly. She will also be responsible for training various employees to work in [the petitioner's] Customer Service Department. In order to complete this task, [the beneficiary] will be required to create a rigorous course in order to properly train all customer service representatives for any kind of dissatisfaction that customers may exhibit. This is a full time job spanning 40 hours per week. Half of the time, the Customer Service Director must handle customer complaints, determine sources of trouble, and take corrective action. The remaining half of the time is devoted to the resolution of employee conflict and the establishment of a program to ensure the adequate training of all workers.

In addition, counsel for the petitioner submitted an organizational chart of the United States company that indicated that the beneficiary will be the head of the customer service department, which currently has no employees. Counsel for the petitioner stated that the petitioner is "currently in the process of recruiting customer service specialists." The petitioner did not submit documentation of this recruitment. The petitioner indicated that the beneficiary will spend half of her time "devoted to the resolution of employee conflict and the establishment of a program to ensure the adequate training of all workers." However, it is not clear when the petitioner will employ any individuals in the customers service department and how many employees the beneficiary will supervise. The petitioner must establish eligibility at the time of filing the nonimmigrant visa petition. A visa petition may not be approved at a future date after the petitioner or beneficiary becomes eligible under a new set of facts. *Matter of Michelin Tire Corp.*, 17 I&N Dec. 248 (Reg. Comm. 1978).

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 AAO finds that the proffered position is not a specialty occupation.

In determining whether a proposed position qualifies as a specialty occupation, CIS looks beyond the title of the position and determines, from a review of the duties of the position and any supporting evidence, whether the position actually requires the theoretical and practical application of a body of highly specialized knowledge, and the attainment of a baccalaureate degree in a specific specialty, as the minimum for entry into the occupation as required by the Act. The AAO routinely consults the Department of Labor's *Occupational Outlook Handbook* (the *Handbook*) for its information about the duties and educational requirements of particular occupations. In reviewing the 2006-2007 edition of the

Handbook, the AAO finds that the duties and responsibilities of the proposed position are encompassed within the *Handbook's* entry for three occupational groupings as discussed below.

A review of the duties of the proposed position finds them closely aligned to the responsibilities of two occupational groupings discussed in the *Handbook*: (1) customer service representatives; and, (2) human resources, training, and labor relations managers and specialists.

In its discussion of the duties of customer service representatives, the 2006-2007 edition of the *Handbook* states the following:

Customer service representatives are employed by many different types of companies throughout the country to serve as a direct point of contact for customers. They are responsible for ensuring that their company's customers receive an adequate level of service or help with their questions and concerns. These customers may be individual consumers or other companies, and the nature of their service needs can vary considerably.

All customer service representatives interact with customers to provide information in response to inquiries about products or services and to handle and resolve complaints. They communicate with customers through a variety of means—by telephone; by e-mail, fax, or regular mail correspondence; or in person. Some customer service representatives handle general questions and complaints, whereas others specialize in a particular area.

Many customer inquiries involve routine questions and requests. For example, customer service representatives may be asked to provide a customer with their credit card balance, or to check on the status of an order that has been placed. Obtaining the answers to such questions usually requires simply looking up information on their computer. Other questions are more involved, and may call for additional research or further explanation on the part of the customer service representative. In handling customers' complaints, customer service representatives must attempt to resolve the problem according to guidelines established by the company. These procedures may involve asking questions to determine the validity of a complaint; offering possible solutions; or providing customers with refunds, exchanges, or other offers, such as discounts or coupons. In some cases, customer service representatives are required to follow up with an individual customer until a question is answered or an issue is resolved.

Some customer service representatives help people decide what types of products or services would best suit their needs. They may even aid customers in completing purchases or transactions. Although the primary function of customer service representatives is not sales, some may spend a part of their time with customers encouraging them to purchase additional products or services. (For information on workers whose primary function is sales, see the statements on sales and related occupations elsewhere in the *Handbook*.) Customer service representatives also may

make changes or updates to a customer's profile or account information. They may keep records of transactions and update and maintain databases of information.

In addition, as noted by the director, the proffered position involves training and supervising employees in the customer service department and thus is also closely related to the *Handbook's* description of human resources, training, and labor relations managers and specialists. The *Handbook* describes the occupation of human resources, training, and labor relations managers and specialists as follows:

Training specialists plan, organize, and direct a wide range of training activities. Trainers respond to corporate and worker service requests. They consult with onsite supervisors regarding available performance improvement services and conduct orientation sessions and arrange on-the-job training for new employees. They help all employees maintain and improve their job skills, and possibly prepare for jobs requiring greater skill. They help supervisors improve their interpersonal skills in order to deal effectively with employees. They may set up individualized training plans to strengthen an employee's existing skills or teach new ones. Training specialists in some companies set up leadership or executive development programs among employees in lower level positions. These programs are designed to develop leaders to replace those leaving the organization and as part of a succession plan. Trainers also lead programs to assist employees with job transitions as a result of mergers and acquisitions, as well as technological changes. In government-supported training programs, training specialists function as case managers. They first assess the training needs of clients and then guide them through the most appropriate training method. After training, clients may either be referred to employer relations representatives or receive job placement assistance.

The AAO finds the petitioner's description of the duties of its proffered position to reflect the type of activities generally performed by customer representatives (i.e., responsibility for ensuring that their company's customers receive an adequate level of service or help with their questions and concerns), and training specialists (i.e., responsibility for planning, organizing, and directing a wide range of training activities).

To make its determination as to whether the petitioner may qualify its 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 turns to the *Handbook*, at page 445, for its discussion of the educational requirements imposed on those seeking employment as customer service representative:

Most customer service representative jobs require only a high school diploma. However, due to employers demanding a higher skilled workforce, many customer service jobs now require an associate or bachelor's degree.

In addition, the *Handbook*, at page 52, discusses the educational requirements imposed on those seeking employment as human resources, training, and labor relations managers and specialists:

The educational backgrounds of human resources, training, and labor relations 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, human resources 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.

Although counsel, on appeal, asserts that the *Handbook* establishes the employment of a customer service director as a specialty occupation, the above description of the types of backgrounds that qualify individuals for entry-level employment does not support counsel's contention. The *Handbook* does not indicate that customer-service work, management of training in that area, or a combination of such duties normally requires at least a bachelor's degree in a specific specialty.

In addition, although several companies require a degree from a training manager, the petitioner's job description is vague as to the beneficiary's training duties and at the time of filing, the beneficiary did not have any employees to train, thus, it is unclear if the proffered position qualifies as a training manager. As evident in the excerpts from the record earlier in this decision, the petitioner's information about the proposed duties is general in nature. As such, it precludes the AAO from determining precisely what tasks the beneficiary would perform for the petitioner on a daily basis. For example, although the petitioner has stated that the beneficiary would be responsible for "handling the various complaints that may arise from customers," and "training various employees to work in [the petitioner's] Customer Service Department," it offers no indication of what the petitioner would require of the beneficiary in completing such a training program and handling the customer service complaints. Without this type of description, the AAO is unable to reasonably determine that performance of the proffered position would require the beneficiary to hold the minimum of a baccalaureate or higher degree in a specific specialty. Reciting the beneficiary's vague job responsibilities or broadly-cast business objectives is not sufficient. The petitioner has failed to provide any detail or explanation of the beneficiary's activities in the course of his daily routine. The actual duties themselves will reveal the true nature of the employment. *Fedin Bros. Co., Ltd. v. Sava*, 724 F. Supp. 1103, 1108 (E.D.N.Y. 1989), *aff'd*, 905 F.2d 41 (2d. Cir. 1990).

The petitioner's response to the director's request for evidence also indicated his belief that the petitioner had met its burden of proof regarding the first criterion as a result of its statements in its March 6, 2006 letter of support. The petitioner asserts, "because of the gravity of these responsibilities, our company believes it is necessary for this position to be filled by an individual who has completed higher education." However, simply going on record without supporting documentation is not sufficient for the 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)). While a petitioner may believe that a proffered position requires a degree, that opinion cannot establish the position as a specialty occupation. Were CIS limited solely to reviewing a petitioner's self-imposed requirements, then any individual with a bachelor's degree could be brought to the United States to perform any occupation as long as the employer required the individual to have a baccalaureate or higher degree. *See Defensor v. Meissner*, 201 F. 3d 384 (5th Cir. 2000).

For all of these reasons, the AAO finds that the position does not qualify as a specialty occupation on the basis of a degree requirement under the first criterion set forth at 8 C.F.R. § 214.2(h)(4)(iii)(A).

The AAO now turns to a consideration of whether the petitioner, unable to establish its proposed position as a specialty occupation under the first criterion set forth at 8 C.F.R. § 214.2(h)(iii)(A), may qualify it under one of the three remaining criteria: a degree requirement as the norm within the petitioner's industry or the position is so complex or unique that it may be performed only by an individual with a degree; the petitioner normally requires a degree or its equivalent for the position; or the duties of the position are so specialized and complex that the knowledge required to perform them is usually associated with a baccalaureate or higher degree.

The proposed position does not qualify as a specialty occupation under either prong of 8 C.F.R. § 214.2(h)(4)(iii)(A)(2).

The first prong of this regulation requires a showing that a specific degree requirement is common to the industry in parallel positions among similar organizations. Counsel has failed to consider the specific requirements at 8 C.F.R. § 214.2(h)(4)(iii)(A)(2) for establishing a baccalaureate or higher degree as an industry norm. To meet the burden of proof imposed by the regulatory language, a petitioner must establish that its degree requirement exists in positions that are parallel to the proffered position and found in organizations similar to the petitioner.

On appeal, counsel contends "because of the difficulty and intricacy of these jobs, companies typically seek out college graduates with at least a Bachelor's Degree in order to fill these positions." He asserts that the DOL *Handbook's* discussion of the occupation of customer service representative and training manager satisfies the requirements of the first prong as it asserts that "keen competitions for jobs is expected because of the plentiful supply of qualified college graduates and experienced workers." The AAO does not agree. The fact that "keen competition" for jobs exists is not synonymous with a finding that a bachelor's degree, or its equivalent, is normally required in parallel positions at similar organizations.

The petitioner has failed to submit any evidence to the record that would serve as proof that the petitioner's degree requirement for the proffered position is common to its industry in parallel positions among similar organizations. Accordingly, the proposed position does not qualify for classification as a specialty occupation under the first prong of 8 C.F.R. § 214.2(h)(4)(iii)(A)(2).

The AAO also concludes that the record does not establish that the proposed position is a specialty occupation under the second prong of 8 C.F.R. § 214.2(h)(4)(iii)(A)(2), which requires a demonstration that the position is so complex or unique that it can only be performed by an individual with a degree. There has been no demonstration that the proposed position is more complex or unique than the general range of customer service representatives, or human resources, training and labor relations managers and specialists in other, similar organizations, which would not normally require a degreed individual. The *Handbook* indicates that such positions generally do not normally require at least a baccalaureate degree in a specific specialty; and the evidence of record does not establish the proposed position as unique from or more

complex than the general range of such positions. Accordingly, the petitioner cannot establish its position as a specialty occupation under the second prong of the second criterion.

The proposed position does not qualify as a specialty occupation under 8 C.F.R. § 214.2(h)(4)(iii)(A)(3), which requires a showing that the petitioner normally requires a degree or its equivalent for the position. To determine a petitioner's ability to meet this criterion, the AAO normally reviews the petitioner's past employment practices, as well as the histories, including names and dates of employment, of those employees with degrees who previously held the position, and copies of those employees' diplomas. As noted by the director, since the U.S. company is a new company, the petitioner did not present any documentation of its past employment practices. In the instant case, the petitioner has submitted no evidence regarding its past hiring practices with regard to the proffered position or other similarly situated employees. Accordingly, the evidence of record has not established the proffered position as a specialty occupation under the third criterion at 8 C.F.R. § 214.2(h)(4)(iii)(A). The petitioner's degree requirement for the proffered position is not evidence of its normal hiring practices.

While the petitioner states that a degree is required, the petitioner's creation of a position with a perfunctory bachelor's degree requirement will not mask the fact that the position is not a specialty occupation. 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 or 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. To interpret the regulations in any other way would lead to absurd results: if CIS were limited to reviewing a petitioner's self-imposed employment requirements, then any alien with a bachelor's degree could be brought into the United States to perform a menial, non-professional, or an otherwise non-specialty occupation, so long as the employer required all such employees to have baccalaureate or higher degrees. *See id.* at 388.

The fourth criterion at 8 C.F.R. § 214.2(h)(4)(iii)(A) requires that a petitioner establish that the nature of the specific duties of the position is so specialized and complex that the knowledge required to perform them is usually associated with the attainment of a baccalaureate or higher degree. In his response to the director's request for evidence, the petitioner asserts, "because of the gravity of these responsibilities, our company believes it is necessary for this position to be filled by an individual who has completed higher education." However, this statement does not satisfy the requirements of the fourth criterion. Simply going on record without supporting documentary evidence is not sufficient for the purposes of meeting the burden of proof in these proceedings. *Matter of Soffici*, 22 I&N Dec. at 165.

On appeal, counsel points to the discussion of the occupation of customer service representative, training manager, and labor relations managers in the *Handbook* as proof that the duties of the proffered position meet the specialized and complex threshold established by the fourth criterion. Once again, the AAO does not agree. As reflected in this decision's earlier excerpts from and discussions about the *Handbook*, the sections upon which counsel relies do not indicate a usual association with a bachelor's or higher degree in a specific specialty. Further, as reflected in this decision's comments about the record's generic and generalized descriptions of the proposed duties, the petitioner has not described the proposed duties

with sufficient specificity to establish that their performance would require knowledge usually associated with a bachelor's degree or higher in a specific specialty. To the limited extent that they are described in the record, the proposed duties do not elevate the proffered position about those for which the *Handbook* indicates as usually associated with a bachelor's or higher degree in a specific specialty.

The generalized description of the duties of the proffered position, which precluded consideration of the proffered position under the first criterion at 8 C.F.R. § 214.2(h)(4)(iii)(A) also makes it impossible to evaluate these duties under the specialized and complex threshold of the fourth criterion. Accordingly, the AAO concludes that the proffered position is not a specialty occupation under the requirements at 8 C.F.R. § 214.2(h)(4)(iii)(A)(4).

Therefore, for the reasons related in the preceding discussion, the proposed position does not qualify for classification as a specialty occupation under any of the four criteria set forth at 8 C.F.R. §§ 214.2(h)(4)(iii)(A)(1), (2), (3), and (4), and the petition was properly denied. The proposed position in this petition is not a specialty occupation, so the beneficiary's qualifications to perform its duties are inconsequential. Accordingly, the AAO will 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.

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