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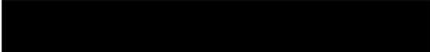
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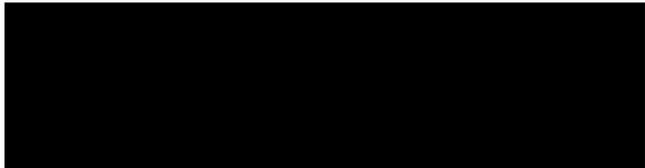
*D2*

FILE: EAC 06 183 54046 Office: VERMONT SERVICE CENTER Date: **NOV 28 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.

A handwritten signature in black ink, appearing to read "Robert P. Wiemann".

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 operates three wholesale locations in the Atlanta, Georgia area, employed nine people when the petition was filed, had gross receipts or sales in the amount of \$33,686,092 and ordinary income in the amount of \$769,284 in 2005. It seeks to employ the beneficiary as its regional 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 January 13, 2007, 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 the director's decision is in error.

The record includes: (1) the Form I-129 filed May 29, 2006 and supporting documentation; (2) the director's September 22, 2006 request for evidence (RFE); (3) the petitioner's December 13, 2006 response to the director's RFE; (4) the director's January 13, 2007 denial decision; and, (5) the Form I-290B and counsel's brief and supporting documentation in support of the appeal. The AAO reviewed the record in its entirety before issuing its decision.

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 regional manager. On the Form I-129 and in an April 14, 2006 letter appended to the Form I-129 petition, the petitioner stated:

A Regional Manager within our company will direct and coordinate activities of the businesses. He will be responsible for managing the three wholesale locations and supervising store managers. He will communicate with merchants and vendors regarding merchandise issues and needs. The Regional Manager will also be responsible for proper execution of all existing systems and procedures. He will review annual expense budgets to achieve profit goals for all of its stores. The Regional Manager will also monitor payroll and non-payroll expenses to achieve annual expense goals.

The petitioner included an excerpt from the Department of Labor's *Dictionary of Occupational Titles (DOT)* for the position of operations manager. The petitioner also provided three Internet job announcements for the positions of: (1) a business development manager for a pharmaceutical services company that identified specific detailed duties and required broad training in business administration, accountancy, sales, marketing, computer sciences, or similar vocations generally obtained through completion of a four-year bachelor's degree program or equivalent combination of experience and education; (2) a regional manager – retail sales for T-Mobile that did not provide a detailed description of the proposed position and listed a BA/BS or equivalent work experience as a qualification; and (3) a regional sales manager – retail – foodservice for a foodservice company that did not provide a description of the duties of the position and listed a bachelor's degree but did not indicate if a degree was preferred or required.

In a December 13, 2006 response to the director's RFE, the petitioner provided a similar description of the duties of the proffered position to the description initially provided, revised as follows:

As Regional Manager [the beneficiary] will direct and coordinate activities of each of our three (3) wholesale businesses. He will oversee the management of each wholesale location by supervising each of the three (3) store managers. Two of these Store Managers, whom the Regional Manager will supervise, hold Bachelor's degrees themselves. He will negotiate with

merchants and vendors regarding contractual obligations, prices and products. The Regional Manager will also be responsible for ensuring the proper execution of all existing company policies and procedures. Further, he will review and analyze annual expense budgets to achieve profit goals for all of our stores and will confer with senior management regarding profitability margins. Finally, he will review and monitor payroll and non-payroll expenses in an effort to achieve annual expense goals.

The petitioner provided copies of five additional Internet job announcements including job announcements for: (1) a regional manager for a national operator of bookstores that indicated the successful candidate would oversee sales, service, merchandising, and operations of a number of retail stores and indicated a bachelor's degree in an unspecified discipline was required; (2) a regional manager for a golf and tennis retailer that listed general duties for the position and listed a bachelor's degree but did not indicate if a degree was preferred or required; (3) a regional manager for a kiosk management company that provided a lengthy description of the advertised position and indicated that a bachelor's degree (B.A.) in business or relevant field is preferred; (4) a regional manager for a manufacturer and marketer of watches that provided a general description of the position and listed a BA/BS but did not indicate if it was preferred or required; and (5) a district manager for a merchandising organization that provided a lengthy description and required a bachelor's degree in business management or related as a minimum qualification.

The petitioner also provided a December 12, 2006 assessment of the proffered position authored by [REDACTED] and Dinos Eminent Scholar Chair in the Coles College of Business at Kennesaw State University. [REDACTED] repeated the petitioner's initial description of the proffered position; noted that the petitioner operated three wholesale locations that deal in and distribute products sold by retail stores such as convenience stores; indicated the petitioner had \$30 million in annual sales; and had three store managers whom the applicant would supervise in the role of regional manager. [REDACTED] opined: "[i]n general according to U.S. national standards, the position of a Regional Manager of a \$30M+ wholesaler requires a bachelor's degree (or its foreign equivalent) with multiple years of experience in the field." [REDACTED] added: "given the complexity and intensity of requirements for a regional manager most certainly require a Bachelor of Business Administration (BBA) degree in management, accounting, or a closely related field, or the foreign equivalent, to qualify for this position." [REDACTED] concluded: "[t]he specific duties of the Regional Manager at a relatively large wholesaler like [the petitioner] with sales of \$30 million annually are consistent with national standards and as such the position requires a candidate with the minimum of a Bachelor of Business Administration degree in Management or a closely related field or the foreign equivalent."

On January 13, 2007, the director determined that the duties of the proffered position corresponded to the duties of a general manager as discussed in the Department of Labor's *Occupational Outlook Handbook (Handbook)*. The director noted, however, that the *Handbook* reported that a wide range of formal education and experience was suitable for such positions. The director found that the petitioner had not provided evidence to demonstrate that the overall nature of the position was specialized or unique. The director noted the advertisements submitted by the petitioner and determined that the advertisements involved a wide range of responsibility with specialization in no particular field of knowledge. The director determined that the mere requirement of a baccalaureate degree is insufficient to qualify a position as a specialty occupation; and that to be considered a specialty occupation, the position must evidence both the theoretical and practical

application of a body of highly specialized knowledge and require at least a baccalaureate degree, in a specific specialty as a minimum for entry into the occupation in the United States. The director concluded that the petitioner had not established that the proffered position satisfied any of the criteria at 8 C.F.R. § 214.2(h)(4)(iii)(A).

On appeal, counsel for the petitioner asserts that the petitioner has provided sufficient documentation to establish the proffered position is a specialty occupation. Counsel references the opinion submitted by [REDACTED] and contends that [REDACTED] opinion confirms that a bachelor's degree in business administration or a related field is common to the industry in parallel positions among similar organizations and that the nature of the position is such that the duties of the position can only be performed by an individual with a bachelor's degree in business administration or a related field. Counsel observes that the director failed to directly address [REDACTED] opinion when determining that the petitioner had not submitted documentary evidence to demonstrate that the proffered position met at least one of the criteria for consideration as a specialty occupation.

Counsel also takes issue with the director's determination that the petitioner had not supplied evidence that a regional manager position required a degree in a specific specialty. Counsel re-submits two Internet job advertisements for: (1) a regional manager for a kiosk management company that provided a lengthy description of the advertised position and indicated that a bachelor's degree (B.A.) in business or relevant field is preferred; and (2) a district manager for a merchandising organization that provided a lengthy description and indicated a bachelor's degree in business management or related as a minimum qualification. Counsel asserts these two advertisements and an additional three Internet job advertisements submitted on appeal show the requirement of a bachelor's degree in business or a related field and are evidence that the position of regional manager must be considered a specialty occupation. The three additional Internet job advertisements are for: (1) a regional sales manager for a wholesale company that provides a lengthy description and indicates a B.S. in business, engineering or other related degree or a combination of education and equivalent are required; (2) a regional sales manager for Genie Industries that provides a general description of a sales manager and requires a bachelor's degree in business, engineering or equivalent specialty; and (3) a wholesale manager for an international truck and engine corporation that provides a general description for a sales manager that requires a bachelor's degree in business or marketing or at least 5 years of sales administration or sales operations experience.

Counsel asserts the evidence submitted is sufficient to establish that the proffered position meets at least one of the criteria for a specialty occupation.

Counsel's assertions are not persuasive. The petitioner has not provided sufficient evidence to establish that the proffered position is a specialty occupation. 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 (5<sup>th</sup> Cir. 2000).

The AAO turns first to the description of the duties of the proffered position. The AAO routinely consults the *Handbook* for information about the duties and educational requirements of particular occupations. The AAO

finds that the petitioner's initial description of the duties of the proffered position and counsel's description in response to the director's RFE provided a general overview of a position resembling an office or general manager. The *Handbook* reports that office managers plan the work and supervise staff, and oversee the work to ensure it is proceeding on schedule and meeting established quality standards. The *Handbook* indicates that general managers plan, direct, or coordinate the operations of companies, manage daily operations and plan the use of materials and human resources. The petitioner's indication that its regional manager: "will direct and coordinates activities of the business;" "manage and supervise three locations and the store managers;" and "will also be responsible for ensuring the proper execution of all existing company policies and procedures" are broadly-worded statements that comport generally with the duties of a general manager or a supervisor. Likewise, the petitioner's indication that its regional manager: "will review and analyze annual expense budgets to achieve profit goals for all of our stores;" "negotiate with merchants and vendors regarding contractual obligations, prices and products;" and "will review and monitor payroll and non-payroll expenses in an effort to achieve annual expense goals" are generally described duties associated with an individual in the role of a general manager. The petitioner's indication that the beneficiary will supervise each of the three (3) store managers suggests that the beneficiary will be supervising and overseeing work to ensure it is proceeding on schedule and meeting established quality standards, duties of an office manager.

Turning to the *Handbook's* discussion in relation to the educational requirements for office managers the *Handbook* reports that most firms fill office managerial positions by promoting office or administrative support workers from within their organizations, looking for individuals who provide strong teamwork, problem-solving, leadership, and communication skills as well as those who possess the ability to organize and coordinate work efficiently, set priorities, and motivate others. The *Handbook* does not indicate that an individual must possess a bachelor's or higher degree in a specific discipline to perform the services of an office manager. Likewise, the *Handbook* indicates that the educational requirements for general managers, under the *Handbook's* discussion of top executives, varies widely, and that many top executives have a bachelor's or higher degree in business administration or liberal arts while many top executive positions are filled from within the organization by promoting experienced, lower-level managers. The *Handbook* notes, for example, that in retail trade or transportation industries it is possible for individuals without a college degree to work their way up within the company and become managers.

Thus, a baccalaureate or higher degree or its equivalent is not normally the minimum requirement for entry into an office or general manager position as required by the criterion at 8 C.F.R. § 214.2(h)(4)(iii)(A)(1). The AAO notes counsel's reference to the beneficiary's supervision of two individuals who hold bachelor's degrees; however supervision of an individual with a bachelor's degree does not establish eligibility under this criterion. Moreover, the petitioner does not support this statement with documentary evidence demonstrating that two of the regional manager's subordinates have bachelor's degrees or that their positions require bachelor's degrees. 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)). Further, the petitioner's description of its general manager's duties, although sufficient to suggest that the position is that of a general or office manager, is insufficient to show that the position includes duties that require the theoretical and practical application of a body of highly specialized knowledge attained through a four-year course of study in a specific specialty at university level.

The AAO acknowledges the petitioner's submission of an excerpt from the *DOT* regarding the occupation of operations manager. However, the AAO does not consider the *DOT* to be a persuasive source of information as to whether a job requires the attainment of a baccalaureate or higher degree (or its equivalent) in a specific specialty. *DOT* provides only general information regarding the tasks and work activities associated with a particular occupation, as well as the education, training, and experience required to perform the duties of that occupation. A Specific Vocational Preparation (SVP) rating does not provide information regarding how the cumulative years are to be divided among training, formal education, and experience and it does not specify the particular type of degree, if any, that a position would require. Again, the record does not demonstrate that the occupation of a regional manager/general manager would require the beneficiary to have attained a bachelor's degree or its equivalent in a specific specialty.

The AAO has reviewed [REDACTED] evaluation of the proffered position and observes that [REDACTED] opinion is couched in generalities. [REDACTED] relies only on the petitioner's description of the duties of proffered position and the petitioner's gross sales receipts for one year. [REDACTED] also references national standards for the position of a regional manager of a \$30 million wholesaler but does not cite his source(s) substantiating those national standards. Unlike the *Handbook* which offers an overview of national hiring practices, draws on personal interviews with individuals employed in the occupation or from websites, published training materials and interviews with the organizations granting degrees, certification, or licenses in the field, to reach its conclusions regarding the nation's employment practices, [REDACTED] concludes without analysis that there is a "general" national standard for regional managers who work for wholesales with \$30 million in gross receipts.

In addition, a general description such as the one provided by the petitioner and one year of sales receipts of \$30 million is insufficient to establish that the position is complex or intense. [REDACTED] does not indicate he interviewed individuals employed by the petitioner, visited the sites of the three store locations, or otherwise reviewed company information about the petitioner, its method of business, its net income, or its organizational structure. There is thus an inadequate factual foundation established to support his opinion. 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). Dr. Mescon's opinion is insufficient to overcome the *Handbook's* finding that not all general managers require a degreed individual or a degreed individual who studied a specific discipline. The petitioner has not provided sufficient evidence to establish that the proffered position requires a baccalaureate or higher degree or its equivalent as the normal minimum requirement for entry into the position as required by the criterion at 8 C.F.R. § 214.2(h)(4)(iii)(A)(1).

The AAO next turns 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 a particular position is so complex or unique that it can be performed only by an individual with a degree. To determine whether the petitioner's degree requirement is shared within its industry, CIS often considers 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.Minn. 1999)(quoting *Hird/Blaker Corp. v. Sava*, 712 F. Supp. 1095, 1102 (S.D.N.Y. 1989)).

In this matter as observed above, the *Handbook* does not report that an office or general manager normally requires a baccalaureate degree. With regard to parallel positions in industries similar to the petitioner's wholesale business, the petitioner has submitted a total of eleven Internet job announcements. A review of the job announcements reveals the companies involved are involved in the pharmaceutical industry, a major telecommunications company, a foodservice company, an operator of national bookstores, a golf and tennis retailer, a kiosk management company, a manufacturer and marketer of watches, a merchandising company, a wholesale company, Genie Industries, and an international truck and engine corporation. The advertisements submitted do not identify the size of the companies, the number of company employees, or provide a thorough description of the companies' business nature. The AAO does not find that the petitioner has established that its organization is similar to any of the organizations advertising. In addition, the eleven job announcements do not describe positions that are parallel to the petitioner's generally described regional manager position. Although some of the job advertisements indicate the open position is for general manager, the job announcements either provide a lengthy detailed description, a lengthy general description, or very little description of the duties of the advertised position at all. Further, several of the advertisements correspond more closely to a position of sales manager, which include duties not described by the petitioner for its regional manager in this matter. The petitioner has not established that the positions advertised are parallel to its proffered position or that the companies advertising are similar to its organization.

Moreover, the advertisements confirm the *Handbook's* statement the educational requirements for a managerial position vary widely, with many positions not requiring a bachelor's degree or not requiring a bachelor's degree in a specific discipline. Of the eleven Internet job announcements, the advertisers for four of the positions did not indicate if a degree was preferred or required; two indicated that a bachelor's degree would be a minimum qualification but did not specify a particular discipline, one indicated a bachelor's degree in business or a relevant field is preferred; and four for sales or district manager positions listed either a bachelor's degree in business, or in business and engineering, or in business or marketing as required. The variety of minimum qualifications for these positions, largely dependent upon the nature of the company and the type of managerial position, does not establish a common degree requirement in the petitioner's industry. The petitioner has not satisfied the first prong of the criterion at 8 C.F.R. § 214.2(h)(4)(iii)(A)(2).

In the alternative, the petitioner may show that the proffered position is so complex or unique that only an individual with a degree can perform the work associated with the position. The record in this matter contains only a general overview of the duties of the position. The petitioner has not provided information regarding specific elements of the position that exceed the scope of an office or general manager who has a basic understanding of the wholesale business and who possesses supervisory skills. The AAO acknowledges that some regional manager positions may require a bachelor's degree in a specific discipline; in this matter, however, the petitioner has not provided sufficient details regarding the complexity or the uniqueness of the duties of the position that would distinguish the position from that of a typical office manager or general manager, positions that do not normally require a degree in a specific discipline.

The AAO has again reviewed [REDACTED] opinion regarding national standards for regional manager positions to determine whether his opinion could establish that the proffered position is more complex or unique than that of a typical general manager. The AAO notes again that [REDACTED] bases his opinion on the petitioner's general description of the proffered position and does not detail any elements that are complex or unique to the petitioner's business or position. Without a detailed discussion of the complexity and the

intensity of duties for a regional manager, [REDACTED] opinion has not established the proffered position satisfies the second prong of the criterion at 8 C.F.R. § 214.2(h)(4)(iii)(A)(2).

A review of the evidence of record finds it insufficient to establish the proposed duties as a position that is identifiable with an industry-wide educational standard, or distinguishable, by its unique nature or complexity, from similar but non-degree-requiring positions. The petitioner has failed to establish the proffered position as a specialty occupation under either prong of the criterion at 8 C.F.R. § 214.2(h)(4)(iii)(A)(2).

The AAO 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 to assist in determining whether the petitioner has satisfied the criterion at 8 C.F.R. § 214.2(h)(4)(iii)(A)(3). In this matter, the petitioner acknowledges that this is a new position and that it has not previously hired anyone to fill the position. Thus, the petitioner has not established that its past employment practices incorporate a requirement of a bachelor's degree or its equivalent for the position. Moreover, the AAO finds that 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 at 384. The petitioner has failed to establish the referenced criterion at 8 C.F.R. § 214.2(h)(4)(iii)(A)(3).

Finally, the AAO turns to the criterion at 8 C.F.R. § 214.2(h)(iii)(A)(4) which requires that the petitioner establish that 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. The petitioner has not provided sufficient documentary evidence that the duties of the proffered position contain elements different from that of a generic office or general manager. Neither does the position, as described, represent a combination of jobs that would require the beneficiary to have a unique set of skills beyond those of a typical office or general manager. The petitioner has not described complex projects or specialized duties that incorporate knowledge that is gained only through coursework at the university level. 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 AAO has once again reviewed [REDACTED] opinion to determine whether his review of the duties of the proffered position should be given probative value; upon review the AAO relies upon its initial discussion of [REDACTED] opinion. [REDACTED] has not provided an analysis of why the generally described duties of the proffered position require a bachelor's degree in business administration or management. The AAO notes further that a petitioner must demonstrate that the proffered position requires a precise and specific course of study that relates directly and closely to the position in question. Since there must be a close corollary between the required specialized studies and the position, the requirement of a degree with a generalized title, such as business administration or liberal arts, without further specification, does not establish the position as a specialty occupation. *Matter of Michael Hertz Associates*, 19 I&N Dec. 558 (Comm. 1988). The record, including [REDACTED] opinion, is insufficient to establish that study in a general discipline such as business

administration, even if usually associated with a regional manager position – which it is not, would elevate this position to one that is a specialty occupation.

The description of duties as depicted in the record does not demonstrate that the nature of the 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 in a specific discipline. Without such evidence, the petitioner has not established the criterion at 8 C.F.R. § 214.2(h)(4)(iii)(A)(4).

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.