

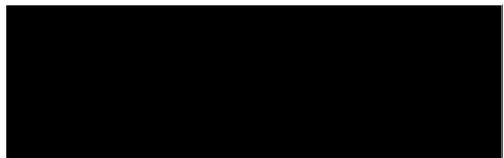
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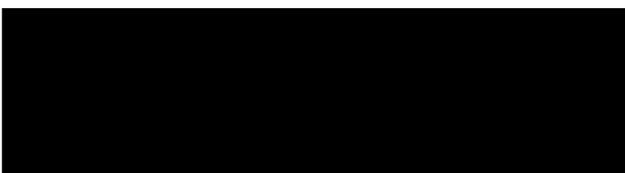
FILE: SRC 05 204 50479 Office: TEXAS SERVICE CENTER Date:

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 Blinzinger, for

Robert P. Wiemann, Chief
Administrative Appeals Office

DISCUSSION: The director of the 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 wholesaler and retailer of groceries and electrical/electronic products. It seeks to employ the beneficiary as a contract administrator. The petitioner, therefore, 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). The director denied the petition because the proffered position is not a specialty occupation and the beneficiary is not qualified to perform a specialty occupation.

The record of proceeding before the AAO contains: (1) the Form I-129 and supporting documentation; (2) the director's request for evidence (RFE); (3) counsel's response to the director's request; (4) the director's denial letter; and (5) the Form I-290B, with counsel's brief. The AAO reviewed the record in its entirety before reaching its decision.

The first issue before the AAO is whether the proffered position qualifies as a specialty occupation. To meet its burden of proof in this regard, the 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 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) consistently 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 seeks the beneficiary's services as a contract administrator. Evidence of the beneficiary's duties includes: the petitioner's July 13, 2005 letter in support of the petition and counsel's November 14, 2005 response to the director's request for evidence. As stated by the petitioner, the proposed duties are as follows:

1. Overall responsibility for entering into contracts regarding the sale and purchase of cell phones and accessories; review delivery schedules to ensure proper delivery and stocking at the petitioner's outlets;
2. Prepare bids and process specific requirements; review bids for conformity to contract requirements in determining acceptable bids; analyze pricing, financial reports, and other data to determine price proposals and bids;
3. Plan and direct sales programs to promote new markets, improve competitive position in area and provide fast and efficient customer service;
4. Negotiate contracts with manufacturers and suppliers; formulate and coordinate proposals and establish internal control and procedures; amend and/or extend contracts as needed;

5. Direct activities of personnel in sales, collections and logistical control, record keeping, receiving and shipping operations to execute the contracts; and
6. Liaise between customers and manufacturers to resolve issues regarding contracts.

In response to the director's RFE, counsel further describes the proposed duties as follows:

The beneficiary would perform services in areas of marketing, personnel, accounting, and financial matters. She [sic] would apply principles of employee and finance management as well as manage fund flows and perform analysis of financial management. Specifically, the proffered position is a contract administrator and sales manager. His duties would be to manage marketing, sales accounting, and human resources administration and management. He would provide specialized administration relating to contracts for purchasing, sale, and administrative accounting and management controls; analyze sales statistics to formulate policy and to assist dealers in promoting sales. He would coordinate sales distribution by establishing sales territories, quotas and goals; advise dealers, distributors, and clients concerning sales and advertising techniques. He would prepare bids, process specific requirements, and test and prepare progress reports; review bids for conformity to contract requirements in determining acceptable bids. He will negotiate contract with bidders, request and approve amendments and/or extensions to contracts and advise management of the contract rights and obligations; He will have overall responsibility over contracts with cell phones and accessories, manufacturers and distributors regarding sale, purchase, and delivery; examine performance requirements, delivery schedules, and cost estimates to ensure completeness and accuracy.

He would examine order requirements and delivery schedules. He would have managerial responsibility over staff, including promotions and benefits management. He would prepare reports and provide recommendations and procedures to reduce absenteeism and turnover; conduct training and need analysis, and evaluate training programs as well as prepare the budget of personnel operations. He would provide management leadership related to establishing human resources policies and procedures and to administer employee health, insurance, savings and hiring programs. He would also provide management training related to record keeping of insurance coverage and personnel movements, such as hiring, firing, promotions, and transfers.

The director found that the evidence of record does not establish that the proffered position is that of a contract administrator; rather the proposed duties are more similar to those duties of purchasing managers, buyers, and purchasing agents. Citing the Department of Labor's (DOL) *Occupational Outlook Handbook (Handbook)*, the director noted that the minimum requirement for entry into the position was not a baccalaureate degree or its equivalent in a specific specialty. The director concluded that the petitioner failed to establish any of the criteria found at 8 C.F.R. § 214.2(h)(4)(iii)(A).

On appeal, counsel disagrees with the director that the proffered position resembles the positions of purchasing managers, buyers, and purchasing agents. Counsel asserts that the proffered position is a contract administrator/sales manager. Counsel also asserts that the duties of a contract administrator are specialized and professional requiring the attainment of a bachelor's degree in business administration or a related field. Counsel cites a court decision to state that whether a position is professional is unrelated to the company's size, salary, or prior company history of maintaining the position.

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 proffered position is not a specialty occupation.

The AAO turns first to the criteria at 8 C.F.R. §§ 214.2(h)(4)(iii)(A)(1) and (2): a baccalaureate or higher degree or its equivalent is the normal minimum requirement for entry into the particular position; 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. Factors often considered by CIS when determining these criteria include: whether the DOL's *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)).

The AAO routinely consults the *Handbook* for its information about the duties and educational requirements of particular occupations. Although a review of the Administrative Services Managers training requirements in the *Handbook*, 2006-07 edition, finds that a manager of contract administration may qualify as a specialty occupation, the AAO does not concur with counsel that the proffered position is a specialty occupation. Nor does the AAO concur with the director that the proffered position is similar to purchasing managers, buyers, and purchasing agents. In this matter, the record is unclear as to the duties of the position in the context of the petitioner's business. On the petition, the petitioner claims that it is a wholesaler and retailer of groceries and electrical/electronic products, and has four employees and a gross annual income of \$310,000. The proposed duties entail "entering into contracts regarding the sale and purchase of cell phones and accessories, review[ing] delivery schedules to ensure proper delivery and stocking at the petitioner's outlets." The record, however, contains no evidence of the petitioner's business activities related to cell phones or electrical/electronics products, such as purchase contracts and delivery invoices. Nor does the record contain any evidence that the petitioner has outlet stores.¹ In addition, the record contains no evidence of the petitioner's claims that it has four employees and gross annual income of \$310,000, such as quarterly wage reports and federal income tax returns. Simply going on record without supporting documentary evidence is not sufficient for the purpose of meeting the burden of proof in these proceedings. *Matter of Soffici*, 22 I&N Dec.

¹ The description of duties in counsel's November 14, 2005 letter is almost identical to the duties described in another petition by a different petitioner represented by counsel: SRC 05 212 51409. Thus, the AAO must question the accuracy of the description of duties and whether the duties apply to a different petitioner and a different beneficiary. Doubt cast on any aspect of the petitioner's proof may, of course, lead to a reevaluation of the reliability and sufficiency of the remaining evidence offered in support of the visa petition. *Matter of Ho*, 19 I&N Dec. 582, 591 (BIA 1988).

158, 165 (Comm. 1998) (citing *Matter of Treasure Craft of California*, 14 I&N Dec. 190 (Reg. Comm. 1972)).

Counsel's assertion on appeal that the proffered position is a contract administrator/sales manager is noted. The record in this matter, however, is insufficient to establish the proffered position as a specialty occupation. As reflected in the above discussion, the petitioner, which reportedly is a wholesaler and retailer of groceries and electrical/electronic products, has described the proposed duties in generic terms that are not supported by documentation about the nature of the petitioner's business. The petitioner has not provided evidence of the nature of its business activities, described specific work that the beneficiary would perform, or exemplified how performance of that work upon those matters would require the theoretical and practical application of at least a bachelor's level of a highly specialized body of knowledge. Consequently, because the proposed duties are limited to generic terms that do not relate what they involve in actual performance to this specific petitioner's particular business matters, the petitioner has not provided sufficient information to satisfy any of the specialty occupation criteria. The petitioner must provide some evidence of the daily tasks the petitioner requires from the proffered position as it relates to its specific business. 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 petitioner does not relate the duties described to the specifics of the petitioner's business, or 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). As the duties of the proffered position are ill-defined and do not specifically correspond to the petitioner's business, the petitioner cannot establish a baccalaureate or higher degree or its equivalent is normally the minimum requirement for entry into the position. Accordingly, the petitioner has not established the proffered position as a specialty occupation under 8 C.F.R. § 214.2(h)(iii)(A)(1).

The AAO acknowledges counsel's citation of a court decision to state that whether a position is professional is unrelated to the company's size, salary, or prior company history of maintaining the position. However, the director's 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. Moreover, the complexity of the duties in relation to the petitioner's business must be analyzed. As the duties of the proffered position are ill-defined and do not specifically correspond to the petitioner's business, the petitioner has not established that the proposed duties are so complex as to require a baccalaureate degree in a specialty. 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)).

Regarding parallel positions in the petitioner's industry, the record contains Internet job postings for contract administrators, sales managers, and related positions. The record contains job postings for a variety of positions, including: a sales representative for Harley Davidson Footwear; a retail/wholesale planner for a global fashion corporation founded in 1924; and a vice president of sales with qualifications that include being an experienced executive in the high-end luxury market. The listings provided rely on duties unlike the duties listed by the petitioner and the businesses publishing the advertisements are not similar to the petitioner in size, number of employees, or level of revenue. The petitioner has not established that the duties listed in the advertisements are parallel to those described for the proffered position. The record also does not include any evidence from individuals, firms, or professional associations regarding an industry standard. Accordingly the petitioner has not established that the degree requirement is common to the industry in parallel positions among similar organizations.

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. In the instant petition, the petitioner has submitted insufficient documentation to distinguish the proffered position from similar but non-degreed employment. 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 now turns to the criterion at 8 C.F.R. § 214.2(h)(4)(iii)(A)(3) – the employer normally requires a degree or its equivalent for the position. As counsel does not address this issue on appeal, it will not be discussed further. The evidence of record does not establish this criterion.

Finally, the AAO turns to the criterion at 8 C.F.R. § 214.2(h)(4)(iii)(A)(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.

The AAO here incorporates its discussion regarding the lack of concrete evidence substantiating the actual duties of the proffered position. As indicated in the discussion above, the record of proceeding lacks evidence of specific duties that would establish such specialization and complexity. To the extent that they are depicted in the record, the duties do not appear so specialized and complex as to require the highly specialized knowledge associated with a baccalaureate or higher degree in a specific specialty. Therefore, the evidence does not establish that the proffered position is a specialty occupation under 8 C.F.R. § 214.2(h)(4)(iii)(A)(4).

As related in the discussion above, the petitioner has failed to establish that the proffered position is a specialty occupation.

Section 214(i)(2) of the Act, 8 U.S.C. § 1184(i)(2), states that an alien applying for classification as an H-1B nonimmigrant worker must possess full state licensure to practice in the occupation, if such licensure is required to practice in the occupation, and completion of the degree in the specialty that the occupation requires. If the alien does not possess the required degree, the petitioner must demonstrate that the alien has

experience in the specialty equivalent to the completion of such degree, and recognition of expertise in the specialty through progressively responsible positions relating to the specialty.

Pursuant to 8 C.F.R. § 214.2(h)(4)(iii)(C), to qualify to perform services in a specialty occupation, an alien must meet one of the following criteria:

- (1) Hold a United States baccalaureate or higher degree required by the specialty occupation from an accredited college or university;
- (2) Hold a foreign degree determined to be equivalent to a United States baccalaureate or higher degree required by the specialty occupation from an accredited college or university;
- (3) Hold an unrestricted state license, registration or certification which authorizes him or her to fully practice the specialty occupation and be immediately engaged in that specialty in the state of intended employment; or
- (4) Have education, specialized training, and/or progressively responsible experience that is equivalent to completion of a United States baccalaureate or higher degree in the specialty occupation, and have recognition of expertise in the specialty through progressively responsible positions directly related to the specialty.

The director also found that the beneficiary was not qualified for the proffered position because the beneficiary does not hold a bachelor's degree or an equivalent thereof that qualifies him for the specialty occupation. On appeal, counsel states, in part, that the beneficiary is qualified for the position because his education in human resources management and mathematics, and his professional work experience are equivalent to a U.S. bachelor's degree in human resources management and mathematics, as demonstrated by the credentials evaluation.

The record contains the following documentation pertaining to the beneficiary's qualifications:

- A credentials evaluation from Worldwide Education Evaluators, Inc., dated July 14, 2005, based on the beneficiary's foreign education, concluding that the beneficiary holds the U.S. equivalent of a Bachelor of Science in Human Resource Management and Mathematics degree;
- Copies of the beneficiary's Bachelor of Science degree and corresponding transcript, conferred by an Indian university, reflecting coursework in mathematics, statistics, and physics;
- Copies of the beneficiary's Post-Graduate Diploma for Labor Laws and Personnel Management and corresponding transcript, conferred by an Indian university; and

- A letter from the financial controller of Elite Express Courier & Cargo L.L.C., dated September 10, 2004, certifying the beneficiary's ongoing employment as its area manager from June 1994.

The AAO accepts the credentials evaluation concluding that the beneficiary holds the U.S. equivalent of a Bachelor of Science in Human Resource Management and Mathematics degree. As discussed above, however, the petitioner has not provided evidence of the exact nature of its business activities or of the proposed duties that specifically correspond to the petitioner's business. As such, the AAO is unable to determine whether the beneficiary is qualified to perform the duties of the proffered position. The petitioner has not submitted argument or documentation on appeal sufficient to overcome the director's decision on this issue. For this additional reason, the petition will not be approved.

Accordingly, the AAO shall not disturb the director's denial of the petition.

The petition will be denied and the appeal dismissed for the above stated reasons, with each considered as an independent and alternative basis for the decision. In visa petition proceedings, the burden of proving eligibility for the benefit sought remains entirely with the petitioner. Section 291 of the Act, 8 U.S.C. § 1361. Here, that burden has not been met.

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