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U.S. Citizenship
and Immigration
Services

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FILE: EAC 06 151 51277 Office: VERMONT SERVICE CENTER Date: MAR 03 2008

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, Vermont Service Center, denied the nonimmigrant visa petition. The matter is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed. The petition will be denied.

The petitioner refurbishes used trucks and installs water tanks on them for the construction industry. It seeks to employ the beneficiary as an industrial production manager 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 determining that the petitioner failed to establish the proffered position as a specialty occupation. Counsel for the petitioner submits a statement and documentation in support of the appeal.

The record of proceeding before the AAO contains: (1) the Form I-129 filed April 26, 2006 with supporting documentation; (2) the director's May 8, 2006 request for additional evidence (RFE); (3) the petitioner's May 10, 2006 response to the director's RFE; (4) the director's June 2, 2006 denial letter; and (5) the Form I-290B, with counsel's statement and documentation in support of the appeal. The AAO reviewed the record in its entirety before issuing its decision.

The 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) 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 an industrial production manager. In an April 1, 2006 letter appended to the petition, the petitioner described the duties of the position as:

Manage, develop, and coordinate the instruction of on and off highway truck specifications in the ordering and training of prison inmates at the Southern Desert and High Desert Correctional Centers of the State of Nevada, actively engaged in the refurbishing of used trucks and installation of AGM water tanks on these trucks for the construction industry.

Review and approve truck purchases, type, make and model, review specifications for application and installation of AGM water tanks and accessories.

Manage, direct, and develop protocol for refurbishment of used, heavy road trucks and motor scrapers.

Manage, direct, and coordinate start up and systems applications.

Develop and implement procedures to check and account for all incoming and outgoing goods to identify any shortages or damaged goods.

Create protocol to deal with any necessary claims within 3 working days.

Manage and oversee that the workshop supervisor's work [is] within accepted health and safety regulations.

Manage, coordinate, and develop training protocol for supervisors to follow when training inmates in the workshop.

Will manage, coordinate, and instruct supervisors in the selection of future staff, as the workload demands increases in workshop staff levels.

Will develop and set standards of production schedules in an effort to meet agreed upon output levels.

Will manage and coordinate workshop management, administrative staff, and parts department.

Will liaise with prison management to ensure the smooth running of the workshops and maintenance of prison security of the workshops.

Ensure all health and safety standards are met.

Forecast operating costs of department and direct preparation of budget requests.

Develop and integrate procedures for the safe and efficient assembly of products at minimum cost.

Utilize experience in Microsoft Word, Office, Excel, Publisher, Access, and PowerPoint.

The petitioner added:

The position requires a combination of advanced business administrative skills and engineering experience on heavy equipment machinery; engineering experience on heavy road trucks; management experience and information technology skills; ability to impart technical skills to workshop employee(s); experience with water handling products; good communication skills since the beneficiary will have to deal with inmates at correctional facilities.

The petitioner noted that in this position, the beneficiary would supervise a workshop supervisor, parts manager, workshop clerk, administration manager, workshop inmate employee(s) and would liaise with the prison workshop guard over workshop security matters. The petitioner also provided copies of company brochures, its business license, and its permits.

In a May 10, 2006 response to the director's RFE, the petitioner referenced the Department of Labor's *Online O*NET* discussion of the occupation of industrial production manager and provided copies of eight advertisements to show that a directly related bachelor's degree is common within its industry. The eight job descriptions included positions for: (1) a production manager for a manufacturing company that strongly preferred a four year college degree in business, industrial engineering, or a related field; (2) a production manager for a manufacturing company that required a BA/BS in operations, manufacturing management, industrial engineering, business administration or equivalent; (3) a production supervisor for a specialty adhesives supplier that required a bachelors degree in a related field such as chemistry or engineering; (4) a

production supervisor for a fiber-cement technology supplier that indicated a bachelors degree is a plus; (5) a production manager for a manufacturing concern that required a master of business administration, industrial engineering, or industrial management and one year of experience; (6) a production manager for a fiber-cement technology supplier that indicated the successful candidate would have a bachelor's degree in mechanical engineering, paper science and engineering, chemical engineering, industrial engineering, electrical engineering, civil engineering or other applicable engineering degree as well as ten years of experience; (7) an industrial performance manager for a factory that listed a bachelor's degree in the education field but did not specify a field of study or indicate whether the degree was preferred or required; and (8) a production/process manager for a manufacturing facility that required a bachelor's degree in an engineering discipline.

On June 2, 2006, the director denied the petition. The director found that the Department of Labor's *Occupational Outlook Handbook (Handbook)* discussed the occupation of "industrial production manager" and noted that there was no standard preparation for a position as an industrial production manager, although a college education is helpful for the position. The director determined that this information did not establish that a directly related baccalaureate or higher degree would normally be the minimum requirement for the occupation. The director also considered the eight job announcements submitted, observing that the advertising employers were not similar to the petitioner's industry and the advertised jobs were not parallel to the proffered position. The director noted, as well, that the advertisements did not establish that a baccalaureate degree in a specific discipline was commonly required for the occupation of industrial production manager. The director noted further that the proffered position was a new position, thus the record did not contain information regarding the petitioner's normal hiring practices. The director determined that the description of the proffered position did not include specialized or complex elements that required the attainment of a bachelor's or higher degree in a specific discipline. The director concluded that the petitioner had not established the proffered position as a specialty occupation.

On appeal, the petitioner submits a position evaluation dated June 15, 2006, prepared by [REDACTED] Ph.D. of the Frank G. Zarb School of Business at Hofstra University. [REDACTED] repeats the petitioner's description of duties for the proffered position and notes that the beneficiary would be: "responsible for a comprehensive range of operational, administrative and production management duties for the firm's truck refurbishing and conversion operation," and further: "that the position requires both a strong technical background in the truck refurbishing business and managerial expertise in such areas as operational planning and coordination, budgeting, human resources development and training, forecasting and related areas." Dr. Spieler opines: "that management professionals who will be responsible for the job duties specified above are required to demonstrate bachelor's-level training in operations management, industrial management, or a related area, in order to competently execute the required job duties." [REDACTED] states further: "[g]eneralized knowledge of management alone is not sufficient in enabling the Industrial Production Manager to successfully meet the functional position requirements." [REDACTED] expresses his opinion that:

Bachelor's-level training in operations management, industrial management, or a related field enables the manager to handle the in-depth operational and production analysis, coordination and policy-making, budget analysis and planning, forecasting and human resources management duties associated with the analysis, planning, and optimization of truck

refurbishing workshop operations. Indeed, given the functional, financial, and analytical aspects of the position, it would be impractical to employ an Industrial Productions Manager for the subject position who lacks a suitable educational and professional background in operations management, industrial management, or a related field.

opines further that the job duties require that the individual in the proffered position be familiar with theoretical and academic concepts in operations management, industrial management, and relations disciplines, concepts typically taught in bachelor's-level classes in operations management, industrial management, engineering management, budget management, forecasting, human resources management, personnel management, finance, business and production planning and related subjects.

The petitioner also submits an additional 11 Internet job advertisements for positions labeled "production manager" from a variety of companies, including manufacturing plants, a textile facility, and a concrete pipe, box supplier. The advertising companies list a range of requirements, some employers listing a generic bachelor's degree or professional degree without specifying if the degree is preferred or required and without noting a particular field of study, while some employers list a bachelor's degree in a specific field of study with some indicating the field of study was preferred and some indicating the field of study was required.

The petitioner also submits a June 5, 2006 letter from the deputy director of industrial programs for the Nevada Department of Corrections indicating that the individual in the proffered position "needs to fully understand the institutional requirements regarding security, the unique culture within a prison and be able to interact with prison officials appropriately." The deputy director provides his opinion that the upper management position could not be effectively performed by a person without the appropriate level of education, such as a bachelor's degree or equivalent in business administration, management, or engineering.

Counsel for the petitioner asserts that a bachelor's degree is normally the minimum requirement for entry into the proffered position and that the duties are so specialized and/or complex that a bachelor's degree or its equivalent in the specialty is required, specifically in business administration, or management or engineering. Counsel contends that the job postings submitted with the very same general requirements for the position establish that a bachelor's degree is normal for the proffered and similar positions. Counsel also notes that the president of the petitioner previously performed the duties of an administrative manager and industrial production manager and he held a bachelor's degree in science from the University of Oregon.

Turning to the first criterion, whether a baccalaureate or higher degree or its equivalent is the normal minimum requirement for entry into the particular position, the AAO routinely consults the *Handbook* for information about the duties and educational requirements of particular occupations. The 2006-2007 edition of the Department of Labor's *Handbook* indicates: "[i]ndustrial production managers plan, direct, and coordinate the production activities required to produce millions of goods every year in the United States. They make sure that production proceeds smoothly and stays within budget." The *Handbook* states further:

Industrial production managers work closely with the other managers of the firm to implement the company's policies and goals. They also must work with the financial

departments in order to come up with a budget and spending plan. In particular, though, production managers work most closely with the heads of sales, procurement, and logistics.

The petitioner's description of the duties of the proffered position corresponds generally to the *Handbook's* discussion regarding industrial production managers. The petitioner indicates the beneficiary will develop protocols for the refurbishment of the trucks and training; set procedures for the production schedule, safety, and to check and account for all goods; manage instruction in training supervisors and inmates, forecast operation costs and direct preparation of budget requests, and coordinate management, administrative staff, and the parts department. These generally described duties encompass duties involved in planning, directing, and coordinating production activities and ensuring that production proceeds smoothly and stays within budget.

Regarding the educational requirements to obtain a position as an industry production manager, the *Handbook* reports:

Because of the diversity of manufacturing operations and job requirements, there is no standard preparation for this occupation. Some employers require a college degree, while other employers train promising apprentices or workers. However, most employers would prefer a college degree, even for those who have worked their way up through the ranks. Many industrial production managers have a college degree in business administration, management, industrial technology, or industrial engineering. Some are former production-line supervisors, who have been promoted and have taken employer-sponsored training classes. Although many employers prefer candidates with a business or engineering background, some companies hire well-rounded liberal arts graduates, who are willing to spend time in a production-related job.

The AAO observes that the diversity of degrees employers might require as well as the statement that there is no standard preparation for the occupation, precludes a conclusion that employers normally require a degree in a specific discipline to perform the duties of the proffered position. When a job, like that of industrial production manager, can be performed by a range of degrees or a degree of generalized title, without further specification, the position does not qualify as a specialty occupation. *Matter of Michael Hertz Associates*, 19 I&N Dec. 558 (Comm. 1988). To prove that a job requires the theoretical and practical application of a body of specialized knowledge as required by Section 214(i)(1) of the Act, a petitioner must establish that the position requires the attainment of a bachelor's or higher degree in a specialized field of study. As observed above, CIS interprets the degree requirement at 8 C.F.R. § 214.2(h)(4)(iii)(A) to require a degree in a specific specialty that is directly related to the proffered position. Moreover, employer preference is not synonymous with the "normally required" language of the first criterion at 8 C.F.R. § 214.2(h)(4)(iii)(A).

The AAO has reviewed _____ opinion that bachelor's-level training in operations management, industrial management, or a related field would enable the manager in the proffered position to perform the described duties, and that "[g]eneralized knowledge of management alone is not sufficient in enabling the Industrial Production Manager to successfully meet the functional position requirements," and "that management professionals who will be responsible for the job duties specified [in the petitioner's description]

are required to demonstrate bachelor's-level training in operations management, industrial management, or a related area, in order to competently execute the required job duties." However, offering a general opinion without analysis of each duty and statements explaining why a particular task(s) requires a college-level course in a specific discipline, does not demonstrate that a position is a specialty occupation. There is no indication that [REDACTED] interviewed the petitioner, reviewed company information regarding the details of the petitioner's business, or analyzed employment surveys for this occupation that were based on objective criteria and factual foundations. 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 AAO observes that the *Handbook* 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]'s opinion is insufficient to overcome the *Handbook's* finding that not all industrial production managers require an individual with a degree or a degree in a specific discipline.

The evidence submitted is insufficient to establish that the petitioner's proffered position is a position that normally requires a baccalaureate or higher degree in a specific discipline to perform the duties of the position. The record does not demonstrate that the petitioner has satisfied the criterion at 8 C.F.R. § 214.2(h)(4)(iii)(A)(1).

The AAO next considers whether a degree requirement is common to the industry in parallel positions among similar organizations or, in the alternative, the petitioner's particular position is so complex or unique that it can be performed only by an individual with a degree, as required by the criterion at 8 C.F.R. § 214.2(h)(4)(iii)(A)(2). The AAO has considered the Internet job announcements submitted in response to the director's RFE and on appeal in this context and finds that the job announcements do not provide sufficient information to enable the AAO to conclude that the businesses advertising the positions are similar to the petitioner in size, number of employees, or level of business. Going on the record without supporting documentary evidence is not sufficient for purposes of meeting the burden of proof in these proceedings. *Matter of Soffici*, 22 I&N Dec. 158, 165 (Comm. 1998) (citing *Matter of Treasure Craft of California*, 14 I&N 190 (Reg. Comm. 1972)). In addition, many of the advertisements provide a brief overview of the position of production manager, industrial production manager, or production supervisor, while others provide significantly more detail regarding the advertised position, than the detail provided for the proffered position. Thus, the AAO is unable to accurately assess the similarity of the proffered position to the advertised positions. Moreover, the AAO observes that the advertisements confirm the *Handbook's* report that preparation for the occupation of industrial production manager is diverse. The advertisements indicate a range of degrees may qualify an applicant to perform the duties of the occupation and some advertisements indicate only that a degree is preferred, not required. Based upon a review of these advertisements, the petitioner has not established that a degree requirement in a particular discipline is common in the petitioner's industry for a position parallel to the proffered position.

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 this matter, the petitioner and

the deputy director of industrial programs for the Nevada Department of Corrections suggest that the institutional prison environment requires an individual in the proffered position to understand security, the prison culture, and the appropriate interaction with inmates and prison officials. The AAO acknowledges the unique environment where the work will take place, but does not find that the skill set or expertise required in the proffered position to incorporate the theoretical and practical application of a body of highly specialized knowledge attained through study and completion of a bachelor's or higher degree in a specific specialty. The AAO does not find that the petitioner has provided evidence of particularly complex or unique duties that would elevate the proffered position to one that only an individual with a degree in a specific discipline could perform.

A review of the evidence of record finds it insufficient to establish that the proposed duties comprise a position that is identifiable with an industry-wide educational standard requiring a degree in a specific discipline, 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 next turns to the criterion at 8 C.F.R. § 214.2(h)(4)(iii)(A)(3), whether the employer normally requires a degree or its equivalent for the position. The AAO usually 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 making this determination. In this matter, the petitioner notes that it has not previously hired an individual to perform the duties of the position, but that the petitioner's president, who has a bachelor's degree in science, had performed the duties of an administrative manager and an industrial production manager previously. The record, however, does not contain evidence of the president's field of study, does not provide a description of the actual duties the president performed as an administrative manager or as an industrial production manager, or other evidence that the president's past duties in those positions compares to the duties of the proffered position. Again, going on the record without supporting documentary evidence is not sufficient for purposes of meeting the burden of proof in these proceedings. *Matter of Soffici*, 22 I&N Dec. at 165.

Further, the petitioner's desire to employ an individual with a bachelor's degree does not alleviate the necessity of establishing that the proffered position is a specialty occupation. Again, 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. To interpret the regulations 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 non-professional or non-specialty occupation, so long as the employer required all such employees to have baccalaureate or higher degrees. The evidence in the record shows that the proffered position is that of a typical industrial production manager. The petitioner has not established that the proffered position is a specialty occupation pursuant to the requirements of the criterion at 8 C.F.R. § 214.2(h)(4)(iii)(A)(3).

The AAO now turns to the fourth criterion and whether 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 finds that the beneficiary's duties correspond generally to that of an industrial production manager; the duties described do not contain a specialized element or component that elevates the position to one that requires a bachelor's degree in a specific discipline. Neither counsel nor the petitioner have described complex projects, represented that the nature of the position requires the beneficiary to have a unique set of skills beyond those of a typical industrial production manager, or otherwise described duties that are specialized or complex. The AAO again acknowledges the opinion of [REDACTED] and the environment the individual in the proffered position will work in. However, [REDACTED] does not substantiate that the duties of the proffered position differ from those of a typical industrial production manager and although the prison environment may require aptitude and skill in managing supervisors and managers, the record does not substantiate that these are specialized or complex duties associated with the attainment of a bachelor's or higher degree in a specific discipline. The petitioner has not established that the proffered position is a specialty occupation under 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. Accordingly, the appeal will be dismissed. The petition will be denied.

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