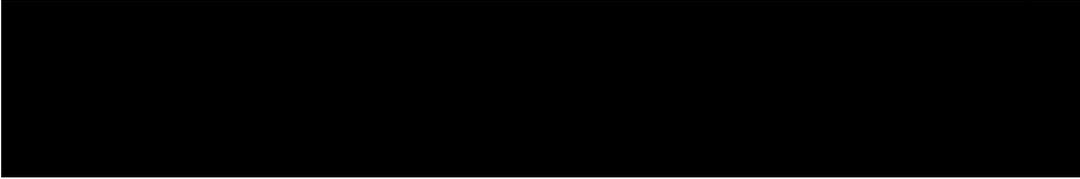




U.S. Citizenship
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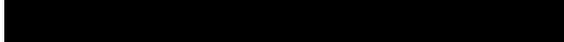
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FILE: WAC 02 195 51481 Office: CALIFORNIA SERVICE CENTER Date: **SEP 03 2005**

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, Director
Administrative Appeals Office

DISCUSSION: The director 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 moving company that seeks to employ the beneficiary as a human resources specialist. 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, stating that “[w]hile it is not for USCIS to make a determination as to the business necessity of a given position in adjudicat[ing] this classification of visa petition, the petitioner does, of course, need to establish that the position actually exists.” The director went on to state that “[i]t is not clear, in this case, that there is a bona fide position.”

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) the petitioner’s RFE response and supporting documentation; (4) the director’s denial letter; and (5) the Form I-290B and supporting documentation. The AAO reviewed the record in its entirety before issuing its decision.

On appeal, the petitioner submits additional evidence to establish that there is in fact a position to be filled. The petitioner states the following:

We take pride in our high quality performance and competitive prices which have been one of the major factors for our growth in the industry. But in order to maintain this high level of success in this field, not only do we have to continually be reliable and competitive, but also efficient in our personnel management.

During the past few years, we have experienced encouraging customer growth. However, we have also had difficulties with high employee turnover. We have recently lost 5 employees within the past year and these employees need to be replaced so we can continue to provide our customers with the quality service they deserve. This has resulted in a reduction in the level of service my company offer[s] our clients – a reduction my customers have noticed and they have requested that we both replace our lost employees and further expand our workforce so that we can continue to serve their needs.

In addition, in an effort to continue to grow and attract new customers, we are also planning to expand our target territory and this endeavor will undoubtedly require an even further expansion of our workforce of 25 employees.

Our Human Resource Specialist will improve morale and productivity and limit job turnover for my company. I would like to begin providing medical coverage, retirement benefits, and other bonuses to our staff for reaching monthly target quotas and perhaps other employee benefits as well. Also, I would like to start periodic review of current employee skills and, as necessary, provide training opportunities to enhance those skills. I am hoping that this plan, as described above, will boost employee satisfaction, as well as productivity, resulting both in lower turnover and higher revenue for the company.

Unfortunately, I do not currently have any employee with neither the time, nor the expertise, to implement this plan, which will require both time and specialized skills in wage research, commission research[,] and the design and implementation of an appropriate employee benefit plans, as well as the possible design of appropriate training schedules and reviews [sic]. Accordingly, I have decided to hire a part-time human resources specialist to handle the multitude of duties and tasks described above. I have concluded that, at this phase of the company's development, I need a specific human resources strategy as well as professional assistance to both assisting [sic] the design and the implementation and maintenance of this strategy (footnote omitted).

Our [h]uman [r]esources [s]pecialist will assist in determining staffing requirements, salary and commission levels, screening and interviewing candidates[,] and managing employee benefits to relieve me of these significant management responsibilities and allow me to focus on managing the firm's ever-growing market. Human Resources (HR) is a general term meant to cover a wide range of activities. . . .

The AAO accepts the petitioner's contention that it has a position to offer the beneficiary. However, the AAO does not accept the contention that this proposed position is a specialty occupation.

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 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:

[A]n 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), in order to qualify as a specialty occupation, the proposed 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 criteria at 8 C.F.R. § 214.2(h)(4)(iii)(A) to mean not just any baccalaureate or higher degree, but one in a specific specialty that is directly related to the proposed position.

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 *Occupational Outlook Handbook* (the *Handbook*) for its information about the duties and educational requirements of particular occupations.

In its discussion of the occupational grouping “Human Resources, Training, and Labor Relations Managers and Specialists,” the *Handbook* states the following:

Attracting the most qualified employees and matching them to the jobs for which they are best suited is important for the success of any organization. However, many enterprises are too large to permit close contact between top management and employees. Human resources, training, and labor relations managers and specialists provide this link. In the past, these workers have been associated with performing the administrative function of an organization, such as handling employee benefits questions or recruiting, interviewing, and hiring new personnel in accordance with policies and requirements that have been established in conjunction with top management. Today’s human resources workers juggle these tasks and, increasingly, consult top executives regarding strategic planning. They have moved from behind-the-scenes staff work to leading the company in suggesting and changing policies. Senior management is recognizing the importance of the human resources department to their financial success.

In an effort to improve morale and productivity and to limit job turnover, they also help their firms effectively use employee skills, provide training opportunities to enhance those skills, and boost employees’ satisfaction with their jobs and working conditions. Although some jobs in the human resources field require only limited contact with people outside the office, dealing with people is an essential part of the job.

In a small organization, a *human resources generalist* may handle all aspects of human resources work, and thus require a broad range of knowledge. The responsibilities of human resources generalists can vary widely, depending on their employer’s needs. In a large corporation, the top human resources executive usually develops and coordinates personnel programs and policies. (Executives are included in the *Handbook* statement on top executives.) These policies usually are implemented by a director or manager of human resources and, in some cases, a director of industrial relations.

The duties of the proposed position appear closely aligned to those of human resources generalists, as discussed in the *Handbook*.

As such, the proposed position does not qualify for classification as a specialty occupation under 8 C.F.R. § 214.2(h)(4)(iii)(A)(1), which requires a demonstration that a baccalaureate or higher degree or its equivalent is normally the minimum requirement for entry into the particular position. As conveyed earlier in this decision, CIS interprets the term “degree” in the criteria at 8 C.F.R. § 214.2(h)(4)(iii)(A) to mean not just any baccalaureate or higher degree, but one *in a specific specialty* that is directly related to the proposed position. A review of the *Handbook’s* discussion regarding the credentials necessary in order to enter this field discloses that a baccalaureate degree *in a specific specialty* is not required:

Because of the diversity of duties and levels of responsibility, the educational backgrounds of human resources, training, and labor relations managers and specialists vary considerably. In filling entry-level jobs, many employers seek college graduates who have majored in human resources, personnel 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.

When a range of degrees, e.g., the liberal arts, or a degree of generalized title without further specialization, e.g., business administration, can perform the duties, 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 specific course of study.

Accordingly, the proposed position does not meet the first criterion required for classification as a specialty occupation under 8 C.F.R. § 214.2(h)(4)(iii)(A)(1).

Nor does the proposed position 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 submits three letters to satisfy this prong of the second criterion: one from [REDACTED], a second from Mr. [REDACTED], and a third from [REDACTED] Inc. Counsel, however, 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 parallel positions among similar organizations.

The first two letters do not satisfy this prong. Two letters are too few to be indicative of an industry-wide practice, and they do not indicate a common requirement for a degree in a specific specialty, as neither letter states that a degree is required. The fact that an employer “prefers” to hire an individual with a degree is not synonymous with an actual degree requirement.

Nor does the third letter satisfy this prong. That letter, written by [REDACTED] comes from a staffing agency. Ms. [REDACTED] states the following:

Based on our agency's experience, it is my opinion that it is a common industry practice among similarly sized organizations to employ a Human Resource Specialists [sic]. Moreover, I have observed that most employers prefer to hire individuals possessing a [b]achelor's degree or its equivalent for the position.

Again, the fact that an employer "prefers" an individual with a degree is not synonymous with an actual degree requirement. Further, the letter does not indicate that the degree need be in a specialty, and thus corroborates the information in the *Handbook* that a broad range of degrees is acceptable.

The second prong of the second criterion requires that the petitioner prove that the duties of the proposed position are so complex or unique that only an individual with a degree can perform them. Again, the *Handbook* reveals that the proposed position is analogous to those of human resources, training, or labor relations specialists or managers, which are occupations that do not require a degree in a specific specialty.

Therefore, counsel has not established that the proposed position qualifies for classification as a specialty occupation under either prong of 8 C.F.R. § 214.2(h)(4)(iii)(A)(2).

Nor does the proposed position 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. None of these items were submitted.

In order to establish that the proposed position qualifies for classification as a specialty occupation under this criterion, counsel submits an internal job posting from the petitioner's office, and a letter from the petitioner stating the following: "[t]his is to certify that it is our company's hiring policy to require a [b]achelor's degree or its equivalent for the [h]uman [r]esource [s]pecialist position."

Neither of these items satisfies the third criterion, as no evidence is submitted to document the assertions contained therein. Simply 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)).

In order to establish eligibility under this criterion, the petitioner must demonstrate that it normally hires individuals with a bachelor degree or its equivalent for the position. If the petitioner has never before filled the position, then it cannot qualify under this criterion. Based upon the assertions made by the petitioner on appeal, it appears to the AAO that the petitioner has never before filled this position.

Accordingly, the proposed position does not qualify as a specialty occupation under 8 C.F.R. § 214.2(h)(4)(iii)(A)(3).

The fourth criterion, 8 C.F.R. § 214.2(h)(4)(iii)(A)(4), requires the petitioner to establish that the nature of the proposed position's duties 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 the specialty. As previously discussed, the *Handbook* indicates that employers do not normally require a baccalaureate degree in a specific specialty for human resources, training, and labor specialist or manager positions, and no evidence has been submitted to demonstrate that the duties of the proposed position are more specialized and complex

than those of the aforementioned positions. Thus, the proposed position does not qualify for classification as a specialty occupation under 8 C.F.R. § 214.2(h)(4)(iii)(A)(4).

The petitioner has failed to establish that the proposed position qualifies 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). 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.