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U.S. Department of Homeland Security
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Washington, DC 20536

U.S. Citizenship and Immigration Services

[redacted]

FILE: LIN 03 083 53114 Office: NEBRASKA SERVICE CENTER Date: APR 07 2004

IN RE: Petitioner: [redacted]
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:

SELF-REPRESENTED

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 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 woodworking construction company that seeks to employ the beneficiary as an interpreter and sales representative. 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 on the grounds that: (1) the proffered position is not a specialty occupation; and (2) the beneficiary is not qualified to perform the duties of a specialty occupation. On appeal, counsel submits a brief and additional evidence.

Section 214(i)(l) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1184 (i)(l), 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.

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 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 proffered position.

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

The petitioner is seeking the beneficiary's services as an interpreter and sales representative. Evidence of the beneficiary's duties includes: the Form I-129; the January 15, 2003 letter accompanying the Form I-129; and the petitioner's response to the director's request for evidence. According to this evidence, the beneficiary would perform duties that entail interpretation and translation in the English and Russian languages, and contacting existing and potential customers. The petitioner implied that a qualified candidate for the job would possess a bachelor's degree in business administration.

The director found that the proffered position was not a specialty occupation because the petitioner failed to establish any of the criteria found at 8 C.F.R. § 214.2(h)(4)(iii)(A). In addition, the director found that the beneficiary was not qualified to perform the duties of a specialty occupation. The director stated that the beneficiary possesses a bachelor's degree in business administration in a generalized field of study - with no specialization - and that no evidence demonstrates otherwise.

On appeal, the petitioner contends that it has satisfied more than one of the criteria under 8 C.F.R. § 214.2(h)(4)(iii)(A). 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.

First, the AAO considers 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 Department of Labor's *Occupational Outlook Handbook* (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.Min. 1999)(quoting *Hird/Blaker Corp. v. Slattery*, 764 F. Supp. 872, 1102 (S.D.N.Y. 1991)).

The petitioner claims that it satisfies the first criterion at 8 C.F.R. § 214.2(h)(4)(iii)(A) because the beneficiary's duties require knowledge in management, business communication, sales and advertising, and fluency in the Russian language. A bachelor's degree in business administration may seem general, the petitioner states, but the beneficiary's coursework will benefit the company. Last, the petitioner states that, although translation will not demand very technical skills, this duty is vital to its business.

The petitioner's claims are unpersuasive. Foremost, as previously mentioned, 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 proffered position. Here, the petitioner's January 15, 2003 letter reveals that a candidate must possess a bachelor's degree for the proffered position; however, the petitioner does not require a bachelor's degree in a specific specialty. Furthermore, a petitioner must establish that the proffered position realistically requires knowledge, both theoretical and applied, which is almost exclusively obtained through studies at an institution of higher learning. The depth of knowledge and length of studies required are best typified by a degree granted by such institution at the baccalaureate level. However, it must be demonstrated that the 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 of generalized title, such as business administration or liberal arts, without further specification, does not establish eligibility. The mere

requirement of a college degree for the sake of general education, or to obtain what an employer perceives to be a higher caliber employee, also does not establish eligibility. *Matter of Micheal Hertz Associaties*, 19 I&N Dec. 558, 560 (Comm. 1988). No evidence in the record indicates that the petitioner requires a business administration degree with a specific specialization. Similarly, the petitioner's broad assertion that the beneficiary's coursework will benefit the company does not establish eligibility. The beneficiary's transcripts, submitted on appeal, from Lake Superior State University and North Central Michigan College portray a broad range of coursework without a specialization. The petitioner, therefore, fails to establish the first criterion.

The AAO routinely consults the *Handbook* for its information about the duties and educational requirements of particular occupations. According to the *Handbook*, the duties of the proffered position would not require a bachelor's degree in a specific specialty. The *Handbook* reports that the source of training for an interpreter/translator is long-term on-the-job training. Given that the petitioner mentioned that the beneficiary would not translate complex, technical documents, the *Handbook's* finding is appropriate. For sales representative positions, the *Handbook* mentions that they spend most of their time traveling to and visiting with prospective buyers and current clients. During a sales call, they discuss the client's needs and suggest how their merchandise or services can meet those needs. According to the *Handbook*, firms do not require a baccalaureate or higher degree in a specific specialty for a sales representative position. Consequently, the petitioner fails to establish the first criterion.

There is no evidence in the record that would establish that a degree requirement is common to the industry in parallel positions among similar organizations or show the proffered position is so complex or unique that it can be performed only by an individual with a degree.

The record contains no evidence that would establish the third criterion at 8 C.F.R. § 214.2 (h)(4)(iii)(A) - that the employer normally requires a degree or its equivalent for the position.

The petitioner's claim, that the position requires knowledge in management, business communication, sales and advertising, and fluency in the Russian language, does not establish that the nature of the specific duties is so specialized and complex that the knowledge required to perform the duties is usually associated with the attainment of a baccalaureate or higher degree in a specific specialty. As previously discussed, a bachelor's degree in business administration - without a specialization – fails to satisfy the requirement that the degree must be in a specific specialty. In addition, the *Handbook* reports that interpreters, translators, and sales representative positions do not require a bachelor's degree in a specific specialty. Accordingly, the petitioner fails to establish the fourth criterion set forth at 8 C.F.R. § 214.2 (h)(4)(iii)(A).

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