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U.S. Citizenship and Immigration Services

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[redacted]

FILE: SRC 02 169 53461 Office: TEXAS SERVICE CENTER Date: FEB 3 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:

[redacted]

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 service center 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 an Indian specialty grocery and general merchandise store that seeks to employ the beneficiary as general manager. 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).

The director denied the petition because the proffered position is not a specialty occupation. On appeal, counsel submits a brief.

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; (5) Form I-290B and supporting documentation. The AAO reviewed the record in its entirely before issuing its decision.

The petitioner is seeking the beneficiary's services as a general manager. Evidence of the beneficiary's duties includes: the I-129 petition; the petitioner's April 18, 2002 letter in support of the petition; and the

petitioner's response to the director's request for evidence. According to this evidence, the beneficiary would perform duties that entail: personnel and budget management, merchandising, and assistance with procurement. The petitioner indicated that a qualified candidate for the job would possesses a bachelor's degree in a business-related field.

The director found that the proffered position was not a specialty occupation. The director found 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 states that the proffered position requires the application of highly specialized knowledge usually associated with a bachelor's degree, and thus, it should be considered a specialty occupation. Upon review of the record, however, 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 to the criteria cited by counsel on appeal, 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 routinely consults the Department of Labor's *Occupational Outlook Handbook (Handbook)* for its information about the duties and educational requirements of particular occupations. The duties of the proffered position, with its variety of managerial responsibilities, appear to fit the *Handbook's* definition of a sales worker supervisor. The *Handboo*k states, "In small or independent companies and retail stores, sales worker supervisors not only directly supervise sales associates, but are also responsible for the operation of the entire company or store." Even for this type of overall store manager, the *Handbook* does not indicate that a baccalaureate or higher degree, or its equivalent, is a minimum requirement. To the extent that they are depicted in the record, the duties do not appear more specialized or complex than those of the position described in the *Handbook*; thus, the record does not demonstrate that the position requires the highly specialized knowledge associated with a baccalaureate or higher degree, or its equivalent, in a specific specialty. 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. 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.