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U.S. Department of Homeland Security

Citizenship and Immigration Services

ADMINISTRATIVE APPEALS OFFICE
CIS, AAO, 20 Mass, 3/F
425 Eye Street, N.W.
Washington, DC 20536

[redacted]

File: WAC-02-235-54198 Office: CALIFORNIA SERVICE CENTER Date: FEB 06 2004

IN RE: Petitioner:
Beneficiary: [redacted]

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 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.

If you believe the law was inappropriately applied or the analysis used in reaching the decision was inconsistent with the information provided or with precedent decisions, you may file a motion to reconsider. Such a motion must state the reasons for reconsideration and be supported by any pertinent precedent decisions. Any motion to reconsider must be filed within 30 days of the decision that the motion seeks to reconsider, as required under 8 C.F.R. § 103.5(a)(1)(i).

If you have new or additional information that you wish to have considered, you may file a motion to reopen. Such a motion must state the new facts to be proved at the reopened proceeding and be supported by affidavits or other documentary evidence. Any motion to reopen must be filed within 30 days of the decision that the motion seeks to reopen, except that failure to file before this period expires may be excused in the discretion of Citizenship and Immigration Services (CIS) where it is demonstrated that the delay was reasonable and beyond the control of the applicant or petitioner. *Id.*

Any motion must be filed with the office that originally decided your case along with a fee of $110 as required under 8 C.F.R. § 103.7.

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 a real estate brokerage/sales/financing company that seeks to employ the beneficiary as an administrative services manager. The petitioner, therefore, endeavors to classify the beneficiary as a nonimmigrant worker in a specialty occupation pursuant to section 101(a) 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)(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.

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 entirely before issuing its decision.

The petitioner is seeking the beneficiary's services as an administrative services manager. Evidence of the beneficiary's duties includes: the I-129 petition; the petitioner's July 3, 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: analyzing and formulating procedural and policy improvements; coordinating activities of personnel for distribution of work; studying and recommending cost savings methods; preparing budgetary and operational reports; and coordinating training seminars. The petitioner indicated that a qualified candidate for the job would possess a bachelor's degree in a related field.

The director found that the proffered position was not a specialty occupation. According to the director, managerial and executive duties are not befitting of a specialty occupation unless they involve supervising persons employed in specialty occupations or are of a scope and complexity exceeding those normally encountered in the occupation. Citing to the Department of Labor's *Occupational Outlook Handbook* (*Handbook*), 2002-2003 edition, the director noted that the educational requirements for managers vary widely, and noted further that the *Handbook* does not state that a bachelor's degree in a specific and specialized area would be required for the proffered position.

On appeal, counsel states that it is common in the industry to require a bachelor's degree for the proffered position. Counsel states further that the policy of the Immigration and Naturalization Service (the Service) and the rule of the AAO is to examine the duties of the proffered position to determine whether the position is a specialty occupation. According to counsel, the beneficiary's duties require "a bachelor's degree in the specialized field of entry." Moreover, counsel claims that the AAO has found that the administrative services manager position contains substantial elements of the duties of an operation research analyst, a specialty occupation. Accordingly, counsel maintains that the petition should be approved.

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 *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 AAO routinely consults the *Handbook* for its information about the duties and educational requirements of particular occupations. The AAO does concur with counsel that it is the duties of the proffered position, not the title of the position, that determines whether a bachelor's degree in a specific specialty is required to enter the occupation. Nevertheless, the AAO disagrees with counsel's assertion that a bachelor's degree in a specialized field is required to enter the proffered position. A review of the administrative services manager description in the *Handbook* confirms the accuracy of the director's assessment that educational requirements vary widely. No evidence in the *Handbook* suggests that a bachelor's degree in a specialized field is required to enter the occupation.

Counsel's claim, that the AAO has found duties of operation research analysts comparable to administrative services managers' duties, is without merit. Each nonimmigrant petition is a separate proceeding with a separate record. *See* 8 C.F.R. § 103.8(d).

Another of counsel's claims is that the industry commonly requires a bachelor's degree for the proffered position. Nearly all of the petitioner's advertisements, except two, require a bachelor's degree in any field. However, Section 214(i)(1) of the Immigration and Nationality Act, 8 U.S.C. § 1184 (i)(1), specifically defines the term "specialty occupation" as requiring a bachelor's or higher degree in the specific specialty. Nor does the record contain any evidence from professional associations regarding an industry standard, or

documentation to support the complexity or uniqueness of the proffered position. The petitioner has, thus, not established the criteria set forth at 8 C.F.R. § 214.2(h)(4)(iii)(A)(*1*) or (*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. The record does not contain any evidence of the petitioner's past hiring practices and therefore, the petitioner has not met its burden of proof in this regard. *See Matter of Treasure Craft of California,* 14 I&N Dec. 190 (Reg. Comm. 1972).

Finally, the AAO turns to the criterion set forth at 8 C.F.R. § 214.2(h)(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. 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, or its equivalent, 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. 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.