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U.S. Department of Homeland Security
20 Mass, Rm. A3042, 425 I Street, N.W.
Washington, DC 20536

U.S. Citizenship
and Immigration
Services

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[redacted]

FEB 1 2 2004

FILE: EAC 02 182 51297 Office: VERMONT SERVICE CENTER Date:

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 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 insurance company that seeks to employ the beneficiary as an insurance sales agent. 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 because the proffered position is not a specialty occupation and the beneficiary was not qualified to perform the duties of the position, based on lack of licensure. On appeal, The petitioner states that the duties of insurance agent now also include financial services. The petitioner also provides further documentation on the beneficiary's licensure for both insurance and financial services.

The AAO will first address the director's conclusion that the position is not a specialty occupation.

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 insurance agent. Evidence of the beneficiary's duties includes: the I-129 petition; the petitioner's undated letter in support of the petition; and the petitioner's response to the director's request for evidence. According to the original petition, the beneficiary would perform duties that entail: building a base of clients through direct contact; assessing and evaluating the financial needs and goals of each client; explaining appropriate insurance products; building positive relationships with clients; offering counseling and advice on the sale or purchase of specific policies; explaining insurance terms and policies to less experienced clients; servicing policy holder accounts, writing all lines of insurance and working with underwriters and claims department; and monitoring industry developments to stay knowledgeable about insurance markets. The petitioner indicated that a qualified candidate for the job would possess a bachelor's degree in economics, finance or business.

In the petitioner's response to the director's request for further evidence, the petitioner identified the position as an insurance/financial service associate. In addition it indicated that the repeal of the Glass Steagall Act in 1999 did away with restrictions on the integration of banking, insurance and stock trading business activities. The petitioner then stated that the job of insurance agent had become much more specialized with licensure required not only for insurance sales, but also for securities sales. The petitioner submitted another breakdown of the duties of the position that indicated that forty percent of the beneficiary's time would be spent in working with clients to develop and execute business plans for these same individuals. The petitioner also indicated that another twenty per cent of the beneficiary's time would be spent recommending cross-selling financial and insurance solutions after performing financial needs analysis.

The director found that the proffered position was not a specialty occupation as the petitioner failed to establish any of the criteria found at 8 C.F.R. § 214.2(h)(4)(iii)(A). The director stated that the job advertisements submitted by the petitioner did not require a bachelor's degree for entry into the position. The director also did not find a list of the petitioner's employees to be persuasive evidence that the petitioner required a baccalaureate degree in a specific specialty for the position. Finally the director stated that, although counsel provided evidence that the job candidates with baccalaureates in financial fields were preferred by employers, it had not established that insurance agents as described in the instant petition normally required a baccalaureate degree for entry in to the position.

On appeal, the petitioner reiterates that the new job title for the position is insurance/financial service associate. The petitioner states that the petitioner now offers financial services as well as investment and backing products. With regard to the job advertisements that it submitted to the director in response to his request for further evidence, the petitioner stated it was not at all unusual to use a job advertisement that does not include specific academic prerequisites. Due to the petitioner's small budget for the job advertisements, the petitioner used fewer words and emphasized the licensing and language requirements for the job.

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. A review of the record reveals that the director requested additional evidence because there was insufficient evidence that the proffered position was a specialty occupation. In response, the petitioner submitted an expanded job title and a job description that included new duties. The position as initially described appeared to focus on the sale of insurance products. The expanded description of the job includes investment, financial, banking, and insurance instruments to be sold by the beneficiary.

CIS regulations affirmatively require a petitioner to establish eligibility for the benefit it is seeking at the time the petition is filed. *See* 8 C.F.R. § 103.2(b)(12). Any facts that come into being subsequent to the filing of a petition cannot be considered when determining whether the proffered position is a specialty occupation. *See Matter of Michelin Tire Corporation,* 17 I&N Dec. 248, 249 (Reg. Comm. 1978).

The purpose of the request for evidence is to elicit further information that clarifies whether eligibility for the benefit sought has been established. 8 C.F.R. § 103.2(b)(8). When responding to a request for evidence, a petitioner cannot offer a new position to the beneficiary, or materially change a position's title, its level of authority within the organizational hierarchy, or its associated job responsibilities. The petitioner must establish that the position that was offered to the beneficiary at the time the petition was filed merits classification as a specialty occupation. *Matter of Michelin Tire Corporation, id.* If significant changes are made to the initial request for approval, the petitioner must file a new petition rather than seek approval of a petition that is not supported by the facts in the record. In the instant petition, the petitioner expanded the job title of the proffered position, and also amplified the duties of the proffered position significantly beyond the original job responsibilities. For this reason, the analysis of the first criterion of 8 C.F.R. § 214.2 (h)(4)(iii)(A) will be based on the job description of insurance agent originally submitted with the original petition.

No evidence in the *Handbook* indicates that a baccalaureate or higher degree, or its equivalent, in a specific specialty is required for an insurance agent job. Neither the excerpt from the Department of Labor's (DOL) *Occupational Outlook Handbook* (*Handbook*) nor the excerpt from *Career Guides to Industries* established this fact. Both publications establish that employees prefer to hire college graduates and persons with proven sales ability, but neither establish that employers require a baccalaureate degree in a specific specialty for insurance agent positions.

Regarding parallel positions in the petitioner's industry, the petitioner submitted four Internet job postings for positions described as financial services sales professional, sales representative and insurance professionals. These positions appear similar to the proffered position; however, none of the four advertisements required a baccalaureate degree in a specific specialty. As previously stated, 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 job vacancy announcements are not considered persuasive testimony with regard to the industry standard. The record also does not include any evidence from professional associations regarding an industry standard, or documentation to support the complexity or uniqueness of the proffered position. While the letter from Mr. Dixon eloquently lays out the changes in the insurance industry and the need for a more highly educated workforce in the insurance industry, it does not

establish that such firms "routinely employ and recruit only degreed individuals." In addition, the job vacancies or job descriptions for other State Farm offices that the petitioner submitted to the record contain no information about any academic requirements for these jobs. 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 petitioner submitted a staff roster of four individuals, which the director did not consider persuasive testimony. On appeal, counsel clarifies that the proffered position is at a Licensed Service Associate (LSA) level of 4, and the petitioner has no other employees at this level. The director is at a higher level, while the remaining staff is at lower LSA levels or positions of responsibility. Thus, the petitioner has submitted no persuasive testimony that it has required candidates for the proffered position or persons who have held the proffered position to have a baccalaureate degree in a specific specialty.The record does not contain sufficient evidence of the petitioner's past hiring practices and therefore, the petitioner has not met its burden of proof in this regard.

Finally, the AAO turns to the criterion 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 of insurance agent 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. As previously stated, the duties of the proffered position are viewed as those of an insurance agent, and not as a combined insurance/financial services associate. The duties as described in the record are primarily sales within the specific market of insurance. 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 director also found that the beneficiary would not be qualified to perform the duties of the proffered position even if the job had been determined to be a specialty occupation. However, as the AAO is dismissing the appeal because the job is not a specialty occupation, it will not discuss the beneficiary's qualifications.

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.