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U.S. Citizenship and Immigration Services

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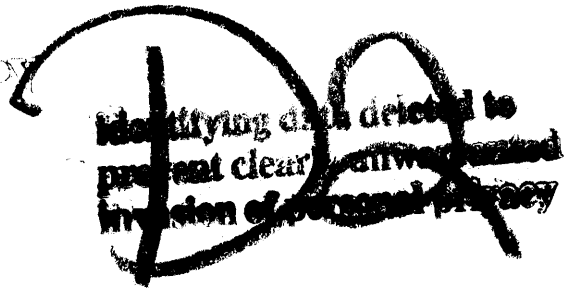

FILE: WAC 02 172 50548 Office: CALIFORNIA SERVICE CENTER Date: JUN 0 3 2004

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.

Mari Johnson

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 gas station that seeks to employ the beneficiary as an office 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; 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 office manager. Evidence of the beneficiary's duties includes: the I-129 petition; the petitioner's April 4, 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: maintaining computerized records of data used for payroll and gasoline and supply inventory; handling certain personnel and budget responsibilities; supervising staff; scheduling deliveries; and managing the gas station, auto shop, grocery store, parking lot, and security. The petitioner indicated that a qualified candidate for the job would possess a bachelor's degree in an unspecified field.

The director found that the proffered position was not a specialty occupation. Citing to the Department of Labor's *Occupational Outlook Handbook* (*Handbook*), 2002-2003 edition, the director noted that the minimum requirement for entry into managerial positions varied widely, and in some cases, a baccalaureate degree was not needed at all. The director concluded 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 asserts that the petitioner has a genuine need for an office manager with a bachelor's degree. Counsel states that the size of the petitioner's organization should not be a determinative factor in the analysis of the petition. Upon review of the record, however, the petitioner has failed to establish that the proffered position is a specialty occupation.

First, the AAO notes that the petitioner did not state which specific specialty it requires for the instant position. If the required specific specialty is either industrial engineering or industrial education, as these are the fields in which the petitioner holds degrees, the petitioner has not explained how these areas of study relate to the duties of the proffered position. A petitioner must demonstrate that the proffered 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 with a generalized title, such as business administration or liberal arts, without further specification, does not establish the position as a specialty occupation. *Matter of Michael Hertz Associates*, 19 I&N Dec. 558 (Comm. 1988). Here, in fact, the petitioner apparently does not required any particular specific specialty; thus, the instant position cannot be considered a specialty occupation.

Moreover, it is clear from the director's decision that the petitioner's size was not the determinative factor in denying the petition. In its description of administrative services managers, the *Handbook* notes that in smaller organizations, experience may be the only requirement for entry into the instant position. No matter what the size of the employer's organization, however, a bachelor's degree in a specific specialty is not a prerequisite. The *Handbook* emphasizes that educational requirements for administrative services managers vary widely, while experience in the field is a must. Notwithstanding the size of the petitioner's business, it has not demonstrated that the duties of the proffered position require or are associated with a bachelor's degree in a specific specialty.

There is no evidence on the record that meets any of the standards described at 8 C.F.R. § 214.2(h)(4)(iii)(A)(*4*). Therefore, the evidence does not 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.