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U.S. Citizenship
and Immigration
Services

[redacted]

D2 JAN 28 2005

FILE: LIN 03 253 51946 Office: NEBRASKA SERVICE CENTER Date:

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 specializes in the design and printing of grand format graphics that seeks to employ the beneficiary as a plant 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 does not qualify as a specialty occupation. On appeal, counsel states that the offered position qualifies as a specialty occupation and submits additional evidence.

The issue to be discussed in this proceeding is whether the proffered position qualifies as a specialty occupation.

Section 101(a)(15)(H)(i)(b) of the Act, 8 U.S.C. § 1101(a)(15)(H)(i)(b), provides, in part, for the classification of qualified nonimmigrant aliens who are coming temporarily to the United States to perform services in a specialty occupation.

Section 214(i)(l) of 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.

The term "specialty occupation" is further defined at 8 C.F.R. § 214.2(h)(4)(ii) as:

> [A]n occupation which requires theoretical and practical application of a body of highly specialized knowledge in fields of human endeavor including, but not limited to, architecture, engineering, mathematics, physical sciences, social sciences, medicine and health, education, business specialties, accounting, law, theology, and the arts, and which requires the attainment of a bachelor's degree or higher in a 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 are 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) the 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) the Form I-290B with supporting documentation. The AAO reviewed the record in its entirety before issuing its decision.

The petitioner is seeking the beneficiary's services as a plant manager. Evidence of the beneficiary's duties includes the Form I-129 petition with attachment and the petitioner's response to the director's request for evidence. According to the evidence the beneficiary would direct and coordinate printing operations, maintain production areas and equipment, and perform functions associated with managerial administration. The duties of the position were explained in much greater detail in the petitioner's letter in support of the H-1B petition, and in its response to the director's request for evidence. The AAO reviewed this evidence in its entirety. The petitioner does not state that it requires a degree in a specific specialty for entry into the proffered position, but indicates that the beneficiary is qualified for the position in that he holds the equivalent of a bachelor's degree in operations management.

Upon review of the record, the petitioner has failed to establish that a baccalaureate or higher degree or its equivalent is normally the minimum requirement for entry into the offered position, or that a degree requirement is common to the industry in parallel positions among similar organizations, as asserted by the petitioner. Factors often considered by CIS when determining these criteria include: whether the Department of Labor's *Occupational Outlook Handbook (Handbook)* reports that the industry requires a degree; whether an industry 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/Baker Corp. v. Slattery,* 764 F. Supp. 872, 1102 (S.D.N.Y. 1991)).

The AAO routinely consults the Department of Labor's *Occupational Outlook Handbook (Handbook)* for information about the duties and educational requirements of particular occupations. The petitioner asserts, and the director agreed, that the duties of the proffered position were essentially those of an industrial production manager. The *Handbook* notes that because of the diversity of manufacturing operations and job requirements, there is no standard preparation for this occupation. A college degree is, however, required even for managers who work their way up through the ranks. Many industrial production managers have a college degree in business administration, management, industrial technology, or industrial engineering. Others have a master's degree in industrial management or business administration. Although many

employers prefer candidates with a business or engineering background, some companies hire well-rounded liberal arts graduates. It is, therefore, apparent from the *Handbook* that a baccalaureate or higher degree, in a specific specialty, is not the minimum requirement for entry into the offered position. A degree in a wide range of educational disciplines will suffice. The petitioner has failed to establish the first criterion of 8 C.F.R. § 214.2(h)(4)(iii)(A).

The petitioner also makes reference to the Department of Labor's *Occupational Information Network (O*NET)* in support of the above referenced regulatory criterion. The *O*NET* reference to which the petitioner refers merely indicates that most, but not all, positions in that particular *O*NET* job classification require a four-year bachelor's degree. The classification does not state, however, that the degree for any particular position need be in any particular specialty, and cannot be used for the purpose of establishing H-1B classification.

The petitioner has also failed to establish that a degree requirement, in a specific specialty, is common to the industry in parallel positions among similar organizations. 8 C.F.R. § 214.2(h)(4)(iii)(A)(*2*). In support of this assertion the petitioner submitted copies of four job advertisements. Of those advertisements, one indicates that a degree in printing or a related field is required. Another states that a degree in engineering is required. The remaining two simply indicate that a bachelor's degree is required, but do not state that a degree in any specific specialty is necessary for the positions advertised. The advertisements, though limited in scope, are consistent with the *Handbook* and show that degrees in any number of educational disciplines will qualify an individual for the proffered position. For example, the degrees noted in the two advertisements listing a specific degree requirement (printing and engineering) are unrelated. The petitioner has failed to establish the criterion at 8 C.F.R. § 214.2(h)(4)(iii)(A)(*2*).

The petitioner does not state that it normally requires a degree in a specific specialty for the proffered position, and offers no evidence in this regard as the position is new with the company. The petitioner has, therefore, failed to establish the criterion at 8 C.F.R. § 214.2(h)(4)(iii)(A)(*3*).

Finally, the duties to be performed by the beneficiary are not so specialized or complex that knowledge required to perform them is usually associated with the attainment of a baccalaureate or higher degree in a specific specialty. Nor are the duties so complex or unique that they can be performed only by an individual with a degree in a specific specialty. The duties are routine for the position in the industry. The petitioner has failed to establish the criteria at 8 C.F.R. §§ 214.2(h)(4)(iii)(A)(*2*) or (*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 failed to sustain that burden and the appeal shall accordingly be dismissed.

ORDER: The appeal is dismissed. The petition is denied.