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U.S. Citizenship
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Services

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FILE: WAC 04 198 50516 Office: CALIFORNIA SERVICE CENTER Date: MAY 21 2013

IN RE: Petitioner: [Redacted]
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:



INSTRUCTIONS:

This is the decision of the Administrative Appeals Office in your case. All materials 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. The matter is now on appeal before the Administrative Appeals Office (AAO). The appeal will be dismissed. The petition will be denied.

The petitioner is an importer of Japanese restaurant products and restaurant computer services. It seeks to employ the beneficiary as a personnel specialist and to extend his classification 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 on the ground that the proffered position does not qualify as a specialty occupation.

Section 214(i)(1) of 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.

As provided in 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 evidence (RFE); (3) the petitioner's response to the RFE; (4) the notice of decision; and (5) Form I-290B, counsel's appeal brief, and supporting materials. The AAO reviewed the record in its entirety before issuing its decision.

In Form I-129 and an accompanying letter the petitioner described itself as an importer and wholesale distributor of Asian food products to retail businesses and restaurants, with several affiliates in Japan and the United States. The petitioner stated that it was a growing business, with over twenty employees and gross annual income (in 2002) of \$6,876,717, intended to open a new office in New York, and proposed to hire the beneficiary as a personnel specialist “to manage the international and bicoastal aspects of human resources . . . related to the company’s foreign operations and regional branch offices in the United States.” In its initial letter and in its subsequent response to the RFE, the petitioner described the duties of the proffered position, and the percentage of time required by each duty, as follows:

- **Operational and Organizational Development (20%)** – Preparation and implementation of organizational plans to expand and start up the New York office, as well as draft personnel plans for two more branch offices in Los Angeles and Hawaii. Determine which positions are necessary to fill in order to get the office up and running with minimal payroll expenditures and with an eye toward future expansion. Assist in implementing improved distribution of wholesale items and purchasing capabilities by reassignment of existing personnel. Research and collect data regarding each person’s job functions and determine how to optimize productivity and morale while cutting waste. Give input on employee functions regarding centralization of inventory, distribution and ordering. Assist in the expansion and operational development of several offices and facilitate employee training and relocation to New York. Create organizational flow chart and hierarchy to determine each branch office’s functions, and consolidate and centralize these functions to prevent the duplication of sales and distribution efforts at each location. Coordinate directly with the corporation’s Japanese affiliate, TMTC, in order to plan special promotions, evaluate regional distribution, and collaborate to expedite deliveries more efficiently to the United States.
- **Training Coordination (25%)** – Direct all training programs for [the petitioner’s] personnel including the training program for personnel temporarily assigned to the company from its overseas affiliate, TMTC. Every year TMTC sends approximately ten associates or executive consultants. Evaluate each person’s abilities and determine which regional office to place them with and what functions they will perform. Report directly to the Japanese affiliate in evaluating local training programs to insure that they meet [the petitioner’s] requirements that personnel assigned to the U.S. gain knowledge and understanding of [the petitioner’s] methods in international business, the import of Japanese and other Asian products to U.S. markets, and participation in buyer expos and business development. Monitor productivity of each trainee or consultant, and coordinate the cross training of executives. Determine which regular full-time employees will attend trainings or overseas meetings and when.
- **Training Development (30%)** – Conduct and supervise training and development programs for employees. Assist management in identifying and/or providing trainings that offer skills development, enhance productivity and improve quality of work. Research Japanese and U.S. career markets for career development experts and trainings. Organize on-site training program or send employee to conference or other job training forums in the United States, Japan, and elsewhere in the world. Due to the changing complexities of the [petitioner’s] work environment, technological changes of the services offered, and its recent expansion in establishing a New York office, planning and program development is an important part of

the personnel specialist's job. In order to identify and assess training needs within the firm, the personnel specialist may confer with managers and supervisors or conduct surveys, and must periodically evaluate training effectiveness.

- **Compensation Analysis (25%)** – Direct and oversee the assignment of all company personnel, review salary levels to insure that the same are competitive with industry standards, review and evaluate company benefits and other programs and, if necessary, modify and revise programs to meet legal requirements of employment and overtime pay laws. Research payroll tax law, compensation laws and employment laws of each state in which [the petitioner] conducts business. Conduct data analysis of compensation formulas and employment laws for Hawaii and other locations throughout the U.S. which are targeted for relocation and/or branch offices. Determine comparable wages for the San Francisco Bay area, New York, Hawaii, and Los Angeles, and determine moving costs and living costs for employees transferred to those regions. Determine cost effectiveness of hiring full-time permanent management for each location versus rotating executive managers to oversee operations. Determine cost effectiveness of using telecommunications, teleconferencing, and “virtual meeting” technology to eliminate the need for face-to-face corporate interaction. Develop scheduling system to track employee assignments and time spent on each function. Work to improve morale, productivity and limit job turnover, as well as advise on effective use of employee skills and provide training opportunities to enhance those skills.

The petitioner asserted that the minimum requirement for the personnel specialist position was a bachelor's degree in human resources administration, sociology, or social sciences. The beneficiary meets this requirement, the petitioner declared, by virtue of his degree from Nihon University in Japan, which awarded him a bachelor of arts in sociology on March 25, 1995.

In his decision the director declared that the duties of the proffered position were similar to those of a public relations manager, as described in the Department of Labor (DOL)'s *Occupational Outlook Handbook (Handbook)*. According to the *Handbook*, a baccalaureate degree in a specific specialty is not the normal minimum requirement for entry into a position of public relations manager. The proffered position also failed to meet the other alternative criteria of a specialty occupation, the director concluded. In the director's judgement, therefore, the proffered position did not qualify as a specialty occupation under 8 C.F.R. § 214.2(h)(4)(iii)(A).

On appeal counsel asserts that the director erred in finding that the duties of the proffered position were those of a public relations manager. According to counsel the record demonstrates that the position falls under the *Handbook*'s occupational category entitled “human resources, training and labor relations managers and specialists,” that a specialty degree is required for such positions within the meaning of 8 C.F.R. § 214.2(h)(4)(iii)(A)(1), and that the proffered position qualifies as a specialty occupation under the alternative criteria at 8 C.F.R. § 214.2(h)(4)(iii)(A)(2), (3), and (4) as well.

In determining whether a position meets the statutory and regulatory criteria of a specialty occupation, CIS routinely consults the *Handbook, supra*, as an authoritative source of information about the duties and educational requirements of particular occupations. Factors typically considered are whether the *Handbook* indicates a degree is required by the industry; 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.Minn. 1999) (quoting *Hird/Blaker Corp. v. Sava*, 712 F.Supp. 1095, 1102 (S.D.N.Y. 1989)). CIS also analyzes the specific duties and complexity of the position at issue, with the *Handbook*’s occupational descriptions as a reference, as well as the petitioner’s past hiring practices for the position. See *Shanti, id.*, at 1165-66.

Based on the evidence of record, the AAO agrees with counsel that the proffered position is not that of a public relations manager. It is clear from the duties of the position that the personnel specialist fits within the *Handbook*’s description of human resources, training and labor relations managers and specialists. This is a broad occupational category, as indicated in the *Handbook*, and the duties of individual positions vary considerably depending on the nature of the company and the scale of its operations. Reflecting the wide range of positions within the occupational category, educational requirements also vary. As explained in the *Handbook*, 2004-05 edition, at page 49:

Because of the diversity of duties and levels of responsibility, the educational backgrounds of human resources, training, and labor relations managers and specialists vary considerably. In filling entry-level jobs, many employers seek college graduates who have majored in human resources, personnel administration, or industrial and labor relations. Other employers look for college graduates with a technical or business background or a well-rounded liberal arts education.

According to the *Handbook*, therefore, different employers look for different educational credentials in hiring entry-level human resources managers and specialists. The record does not establish that a baccalaureate or higher degree in a specific specialty is the normal minimum requirement for entry into a position of human resources specialist. Thus, the proffered position does not meet the first alternative criterion of a specialty occupation, set forth in 8 C.F.R. § 214.2 (h)(4)(iii)(A)(1).

With respect to the second alternative criterion of a specialty occupation, set forth in 8 C.F.R. § 214.2 (h)(4)(iii)(A)(2), there is no evidence in the record demonstrating that a baccalaureate degree in a specific specialty is common to the industry in parallel positions among similar organizations. Nor does the record show that the proffered position in this case is so complex or unique that it can only be performed by an individual with a baccalaureate degree in a specific specialty. Counsel refers to an expert opinion by [REDACTED] an assistant professor of business administration at Mercy College, in Dobbs Ferry, New York, who declares that the personnel specialist position requires the services of an individual with a bachelor’s degree in human resources management or a related field. This conclusion, however, conflicts with counsel’s argument, and the petitioner’s own job announcement, that a general degree in sociology like that earned by the beneficiary is sufficient for the position. CIS may, in its discretion, use as advisory opinions statements from universities, professional organizations, or other sources submitted in evidence as expert testimony. When an opinion is not accord with other information or is in any way questionable, however, CIS is not required to accept or may give less weight to that evidence. See *Matter of Caron International, Inc.*, 19 I&N Dec. 791, 795 (Comm. 1988). Based on the petitioner’s detailed description of the position, the AAO concludes that it could be performed by an individual – like the beneficiary – with experience in the field of human resources but without a baccalaureate degree in a specific job-related specialty. Thus, the proffered position does not qualify as a specialty occupation under either prong of 8 C.F.R. § 214.2 (h)(4)(iii)(A)(2).

As indicated in the record, the position of human resources specialist was newly created at the time of filing. Since there is no hiring history for the job, the petitioner cannot establish that it normally requires a specialty degree or its equivalent for the position, as required for the position to meet the third alternative criterion of a specialty occupation at 8 C.F.R. § 214.2(h)(4)(iii)(A)(3). Moreover, the petitioner's job announcement for the proffered position states that a baccalaureate degree in either human resources, sociology, or social science was required. Thus, the petitioner is clearly not requiring a degree in a specific specialty.

Finally, the record does not establish that the duties of the human resources specialist are so specialized and complex that the knowledge required to perform them is usually associated with a baccalaureate degree. Based on the evidence of record, the AAO concludes that the duties of the position could be performed by an experienced individual – like the beneficiary – without baccalaureate level knowledge in a specific specialty. Thus, the proffered position does not meet the fourth alternative criterion of a specialty occupation at 8 C.F.R. § 214.2(h)(4)(iii)(A)(4).

For the reasons discussed above, the record fails to demonstrate that the proffered position meets any of the criteria enumerated in 8 C.F.R. § 214.2(h)(4)(iii)(A) to qualify as a specialty occupation. The petitioner has not established that the beneficiary will be coming temporarily to the United States to perform services in a specialty occupation, as required under section 101(a)(15)(H)(i)(b) of the Act, 8 U.S.C. § 1101(a)(15)(H)(i)(b).

The petitioner bears the burden of proof in these proceedings. *See* section 291 of the Act, 8 U.S.C. § 1361. The petitioner has not sustained that burden. Accordingly, the AAO will not disturb the director's decision denying the petition.

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