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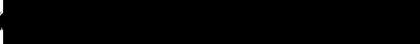
U.S. Citizenship
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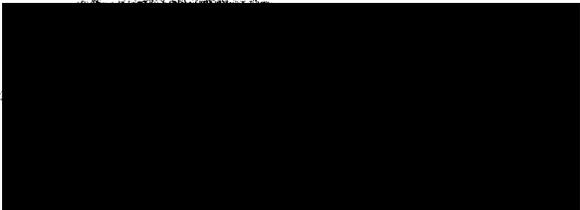


FILE: SRC 03 090 50189 Office: TEXAS SERVICE CENTER Date: **APR 20 2005**

IN RE: Petitioner: 
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:



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 director of the service center 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 hospitality company that seeks to employ the beneficiary as an administrative assistant. 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: (1) the proposed position is not a specialty occupation; and (2) the beneficiary is not qualified to perform a specialty occupation. On appeal, counsel submits a brief.

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.

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 administrative assistant. The petitioner's April 7, 2003 letter described the duties of the proffered position, some of which are to analyze, coordinate, and administer the office's operations, procedures, and services; improve the workflow, systems, and overall efficiency; prepare reports and budgets; and handle personnel. This letter indicated that the beneficiary is qualified for the position because his employment experience is equivalent to a baccalaureate degree in business administration.

The director determined that the proposed position is not a specialty occupation because the Department of Labor's *Occupational Outlook Handbook* (the *Handbook*) shows that an administrative assistant, in the context of the petitioner's business, would not qualify as a specialty occupation. The director further determined that the beneficiary is not qualified for a specialty occupation because the beneficiary's work experience is not equivalent to a U.S. baccalaureate degree. The director denied counsel's subsequent motions.

In the appeal brief, counsel contends that the furnished evidence, which the director dismissed without due consideration, shows that the proposed position is a specialty occupation. Counsel points to the evaluation from Dr. Kenneth E. Knight of Seattle Pacific University to show that the proposed position is a specialty occupation, and the beneficiary is qualified to perform the position. Counsel also references the credentials evaluation from the Foundation for International Services, Inc. (FIS) to establish the beneficiary's qualifications. According to counsel, the director did not properly consider whether the proposed position qualifies as a specialty occupation. Counsel asserts that the Fair Labor Standards Act, 29 U.S.C. 201-219, defines a professional position as one that requires specialized study or involves work that is creative and original in character. This principle was followed, counsel states, in *Full Gospel Portland Church vs. Thornburgh*, 730 F. Supp. 441 (D.D.C. 1988). Counsel asserts that the court in *Hong Kong T.V. Video vs. Ilchert*, 685 F. Supp. 712 (N.D. Cal. 1988) concluded:

Congress clearly intended to permit a broad spectrum of occupations or positions with varying educational requirements to be treated as professions.

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 first considers the criteria at 8 C.F.R. §§ 214.2(h)(4)(iii)(A)(1) and (2): a baccalaureate or higher degree or its equivalent in a specific specialty is the normal minimum requirement for entry into the particular position; a specific 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 in a specific specialty.

Counsel states that the court's decision in *Hong Kong T.V. Video* permits a broad spectrum of occupations with varying educational requirements to be treated as professions and that the Fair Labor Standards Act (FLSA) defines a professional position as one that requires specialized study or involves work that is creative and original in character. As previously noted, Section 214(i)(1) of the Act, 8 U.S.C. § 1184(i)(1), defines the term "specialty occupation" as an occupation that requires theoretical and practical application of a body of highly specialized knowledge, and 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 FLSA's definition of a professional position does not apply in the context of the Act.

In the April 7, 2003 letter, the petitioner asserts that the beneficiary is qualified for the proffered position based on the determinations by Dr. Knight and FIS, which state that the beneficiary holds the educational equivalent to a U.S. bachelor's degree in business administration. The AAO finds that the petitioner's educational requirement for the position is not enough to establish that the proposed position qualifies as a specialty occupation. As stated by the court in *Matter of Michael Hertz Assocs.*, 19 I&N Dec. 558, 560 (Comm. 1988), for a position to qualify as a specialty occupation:

A petitioner must establish that the position realistically requires knowledge, both theoretical and applied, which is almost exclusively obtained through studies at an institution of higher learning. The depth of knowledge and length of studies required are best typified by a degree granted by such institution at the baccalaureate level. It must be demonstrated that the position requires a precise and specific course of study which 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 of generalized title, such as business administration or liberal arts, without further specification, does not establish eligibility.

In this case, the petitioner accepts the educational equivalent to a baccalaureate degree of generalized title, business administration, without indicating further specification. As discussed in *Matter of Michael Hertz Assocs.*, this educational requirement is not enough to satisfy any of the criteria at 8 C.F.R. § 214.2(h)(4)(iii)(A): (1) that a baccalaureate or higher degree or its equivalent *in a specific specialty* is the normal minimum requirement for entry into the particular position; (2) that a specific degree requirement is common to the industry in parallel positions among similar organizations or, in the alternative, that the position is so complex or unique that it can be performed only by an individual with a degree in a specific specialty; (3) that the petitioner establish that it normally requires a degree or its equivalent in a specific specialty for the proffered position; or (4) show that the nature of the specific duties is so specialized and complex that the knowledge required to perform the duties is usually associated with the attainment of a baccalaureate or higher degree in a specific specialty.

The proposed position is not specialty occupation; thus, whether the beneficiary is qualified to perform the position is inconsequential.

As related in the discussion above, the petitioner has failed to establish that the proposed 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.