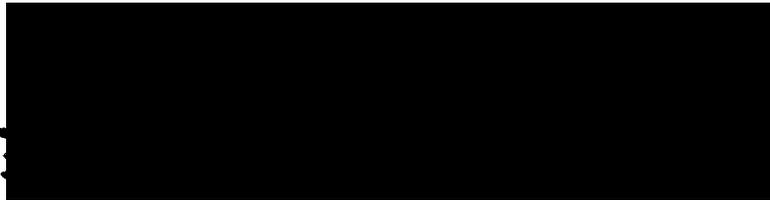


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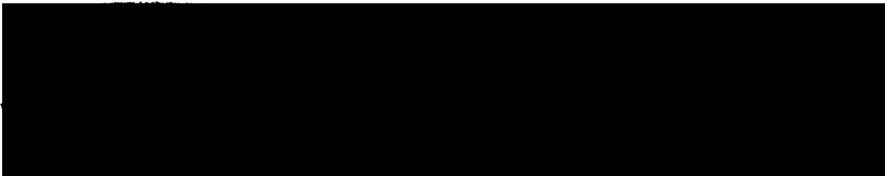
*D2*

FILE: WAC 02 244 51266 Office: CALIFORNIA SERVICE CENTER Date: **SEP 19 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 materials have been returned to the office that originally decided your case. Any further inquiry must be made to that office.

*Robert P. Wiemann*

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 a fast-food restaurant business. It seeks to employ the beneficiary as a human resource director and to classify her 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 record failed to establish that the proffered position qualifies 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 indicated that it is the franchise owner of two Arby's Roast Beef Restaurants in Hayward and Milpitas, California. The petitioner stated that it had twelve full-time employees and gross sales of \$600,000 in 2001, and proposed to hire a human resource director to manage all aspects of personnel activities. The functions of the position were described as follows:

Focus on strategic uses of human resources to accelerate sales and new business and propose corresponding policies relating to recruitment, promotions and benefits. Establish sales development teams, team goals and objectives; and improve overall employee performance. Prepare reports to the President on employee performance issues, behavioral issues, and compensation issues. Develop performance standards and methodologies for management to evaluate and improve sales and employee performance, as well as to handle performance problems. Investigate complaints against employees from customers and co-workers, and ensure actions taken are consistent with established policies and practices.

According to the petitioner the proffered position requires a bachelor's degree in psychology or human behavior. The beneficiary has a bachelor of science degree, with a major in psychology, from Centro Escolar University in Manila, the Philippines, granted on March 22, 1994.

In response to the RFE the petitioner listed the specific duties and responsibilities of the human resource director, and the percentage of time required by each, as follows:

- 30%** Responsible for the strategic uses of human resources to accelerate sales and new business and propose corresponding policies relating to recruitment, promotions and benefits in accordance with the petitioner's administrative policies. Establish sales development teams, team goals and objective(s).
- 20%** With knowledge of the restaurant business and how a restaurant should be managed, recommend office policies, practices and procedures and the necessary changes in the existing ones, if any; and implement such policies/changes.
- 20%** Determine the need to hire and fire additional staff as well as evaluate the qualifications of staff to be hired; prepare the work schedules and evaluate the work of such staff. Prepare reports to the President on employee performance issues, behavioral issues, and compensation issues.
- 15%** Responsible for developing performance standards and methodologies for management to evaluate and improve sales and employee performance, as well as for handling performance problems.
- 15%** Prepare and submit a budget to justify expenditures for restaurant equipment, supplies, and personnel.

The petitioner asserted that the position was a specialty occupation because it entailed the theoretical and practical application of specialized knowledge in human resource management, training and development.

Based on the petitioner's description of the proffered position, the director determined that the duties of the position reflected those of a human resources specialist, as described in the Department of Labor (DOL)'s *Occupational Outlook Handbook (Handbook)*. According to the director, the information in the *Handbook* indicated that a bachelor's degree in a specialized field of study is not the normal, minimum, industry-wide standard for entry into the occupation of human resource specialist. The record did not show that the petitioner normally required applicants for the position to possess a specialty degree, the director continued, or that the duties and responsibilities of the position indicated complexity or authority beyond that normally encountered in the occupational field. The director concluded that the proffered position did not meet any of the criteria of a specialty occupation enumerated at 8 C.F.R. § 214.2 (h)(4)(iii)(A).

In determining whether a position meets the statutory and regulatory criteria of a specialty occupation, CIS routinely consults the DOL *Handbook* 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, Inc. v. Reno, id.*, at 1165-66.

On appeal counsel asserts that the director erred in finding that a bachelor's degree in a specialized field of study is not a normal, minimum, industry-wide requirement for entry into the occupation of human resource director and that the proffered position is not a specialty occupation. According to counsel the *Handbook's* description of the educational requirements for human resources managers and specialists clearly indicate that a baccalaureate degree in a limited set of specialty areas is the minimum requirement for entry into such positions, thereby making the proffered position a specialty occupation. Counsel reiterates that the beneficiary has a bachelor's degree in one of those specialty areas and is therefore qualified to perform the services of the specialty occupation.

As indicated in the DOL *Handbook*, human resources managers and specialists are part of a broad occupational category (which also includes training and labor relations managers and specialists) and the duties of individual positions vary considerably depending on the nature of the company and the scale of its operations. Reflecting the broad 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 . . . .

Because an interdisciplinary background is appropriate in this field, a combination of courses in the social sciences, business, and behavioral sciences is useful. Some jobs may require a more technical or specialized background in engineering, science, finance, or law, for example . . . .

An advanced degree is increasingly important for some jobs. Many labor relations jobs require graduate study in industrial or labor relations. A strong background in industrial relations and law is highly desirable for contract negotiators, mediators, and arbitrators; in fact, many people in these specialties are lawyers. A background in law also is desirable for employee benefits managers and others who must interpret the growing number of laws and regulations. A master's degree in human resources, labor relations, or in business administration with a concentration in human resources management is highly recommended for those seeking general and top management positions.

The AAO does not agree with counsel that the foregoing description of the educational requirements for human resources managers and specialists indicates that a bachelor's degree in a specific specialty is the normal minimum requirement for such a position. While a bachelor's degree in some field does appear to be a minimum requirement, the widely varying examples in the *Handbook* indicate that both the level of the degree and the area of desired educational specialty depend on such factors as the nature of the hiring entity, its line of business and scale of operations, and the complexity of its organizational structure. Thus, different employers look for different educational credentials in hiring entry-level human resources managers and specialists, and some look simply for "a well-rounded liberal arts education." Based on the information in the *Handbook*, the AAO concludes that a baccalaureate or higher degree in a specific specialty is not the normal minimum requirement for entry into a position of human resources manager or specialist. Accordingly, 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 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. 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 director 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).

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 in a specific specialty. Based on the information in the *Handbook* and the evidence of record – including the petitioner's line of business, scale of operations, and description of the proffered position – the AAO concludes that the duties of the position could be performed by an experienced individual 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 at 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.