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FILE: WAC 04 800 57889 Office: CALIFORNIA SERVICE CENTER Date: **APR 12 2006**

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 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 provides automobile oil change and tune-up services. It seeks to employ the beneficiary as a manager. 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 the proffered position is not a specialty occupation. On appeal, counsel submits a brief and additional evidence.

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 a manager. Evidence of the beneficiary's duties includes: the Form I-129; the attachments accompanying the Form I-129; the petitioner's support letter; and the petitioner's response to the director's request for evidence. According to this evidence, the beneficiary would perform duties as follows:

- Plan, direct, and coordinate supportive services of oil change, smog check, and tune-up services: plan and assign duties and daily work for auto mechanics and smog check and lube technicians; plan and arrange for substitute/replacement workers; supervise, evaluate, and make periodic reports about the services of technicians and mechanics; and supervise the receptionist.
- Plan financing and supervise cash flow: supervise cashiers when receiving checks and cash; prevent or resolve issues with checks; ensure the petitioner makes timely payments; plan and decrease operational costs by negotiating with suppliers and manufacturers for equipment purchases; plan finances by arranging bank loans so as to increase the credit line and subsequent cash flow for business expansion; plan collections by monitoring accounts receivables.
- Plan and coordinate to furnish supplies, tools, and equipment; and satisfy environmental safety standards when disposing of materials.
- Plan, coordinate, and supervise promotion of business: plan, coordinate, and budget annual and periodic sales and business promotions with promotional representatives and supervise their performance; coordinate with the franchiser in promoting the petitioner's services; and monitor and respond to the website.
- Receive initial training and continuing education from the franchiser for the management of the lube and tune-up business.
- Evaluate and follow-up on customer service: conduct customer surveys; report to the president on customer opinions and suggestions; and adopt and implement new service policies.

The beneficiary will supervise approximately 13 staff. For the proposed position, the petitioner requires a bachelor's degree in business or a related field and at least two years of managerial experience.

In the denial letter, the director stated that the proposed position reflects the duties of an administrative manager as that occupation is portrayed in the Department of Labor's *Occupational Outlook Handbook* (the *Handbook*), and that the *Handbook* reveals that this occupation does not require a bachelor's degree in a specific specialty. The petitioner found the job postings inadequate in establishing the proposed position as a specialty occupation. The director disagreed with counsel's assertion that the proposed duties resemble those of a business analyst, a strategic management analyst, or a financial controller. The director stated that the proposed position is a general managerial job and that *Matter of Caron Int'l, Inc.*, 19 I&N Dec. 791 (1988) conveys that general managerial positions do not qualify as professional endeavors requiring a specific academic degree. According to the director, the petitioner established none of the four criteria under C.F.R. § 214.2(h)(4)(iii)(A).

On appeal, counsel states that the beneficiary will analyze and plan, and establish and implement policies and systems in operations, including inventory control, overhead costs, manpower, and marketing. Counsel asserts that in determining whether the offered position qualifies as a specialty occupation the director focused on the title of "administrative manager" instead of considering the beneficiary's duties. To show that the petitioner normally requires a degree or its equivalent for the position, counsel submits evidence of a baccalaureate degree relating to a prior employee. Counsel narrates the beneficiary's duties, describing the level of education required to perform them. Referring to the *Handbook*, counsel asserts that the duties of the proposed position are a combination of those of a management analyst, a market analyst, and a financial controller. Counsel turns to the *Occupational Information Network (O*NET)* to show that the proposed position qualifies as a specialty occupation. According to counsel, the beneficiary's duties are complex and unique because the petitioner plans to expand its business and requires organizational efficiency. Thus, counsel contends that the proposed position requires sophisticated management and knowledge of investment options, and he references a prior AAO case to substantiate his assertion.

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 is the normal minimum requirement for entry into the particular position; a 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. Factors often considered by CIS when determining these criteria include: whether the 2006-2007 edition of the *Handbook* reports that the industry requires a degree; 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)).

In determining whether a position qualifies as a specialty occupation, CIS looks beyond the title of the position and determines, from a review of the duties of the position and any supporting evidence, whether the position actually requires the theoretical and practical application of a body of highly specialized knowledge, and the attainment of a baccalaureate degree in a specific specialty as the minimum for entry into the occupation as required by the Act.

Counsel asserts that the director failed to properly evaluate the proposed duties in determining whether they qualify as those of a specialty occupation. Although the AAO disagrees with the director's conclusion that the proposed position resembles an administrative services manager, the AAO finds that the record reflects that the director properly evaluated the proposed duties in determining whether they qualify as those of a specialty occupation.

Based on the *Handbook's* information, the AAO disagrees with counsel's contention about the resemblance of the proposed duties with that of a management analyst, a market analyst, and a financial controller. The *Handbook* describes the educational requirements of management analysts as follows:

Educational requirements for entry-level jobs in this field vary widely between private industry and government. Most employers in private industry generally seek individuals with a master's degree in business administration or a related discipline. Some employers also require additional years of experience in the field or industry in which the worker plans to consult, in addition to a master's degree. Some will hire workers with a bachelor's degree as a research analyst or associate.

The *Handbook* conveys that employers in private industry require a master's degree in business administration or a related discipline for a management analyst. With the position offered here, the petitioner requires only a bachelor's degree in business or a related field. The AAO notes that the petitioner does not assert that the proposed duties are those of a research analyst or associate, which are occupations that require a bachelor's degree. Based on the *Handbook's* information, the AAO finds that the proposed duties differ from those of a management analyst.

The *Handbook* describes marketing analysts as follows:

Market, or marketing, research analysts are concerned with the potential sales of a product or service. Gathering statistical data on competitors and examining prices, sales, and methods of marketing and distribution, they analyze data on past sales to predict future sales. Market research analysts devise methods and procedures for obtaining the data they need. Often, they design telephone, mail, or Internet surveys to assess consumer preferences. They conduct some surveys as personal interviews, going door-to-door, leading focus group discussions, or setting up booths in public places such as shopping malls. Trained interviewers usually conduct the surveys under the market research analyst's direction.

As described by the petitioner, the beneficiary's time will not be devoted primarily to gathering statistical data on competitors and examining prices, sales, and analyzing "data on past sales to predict future sales." The record reflects that the beneficiary is more involved in managing the daily operations of the petitioner's business. Thus, the proposed duties do not resemble those of a market research analyst.

Counsel states that some of the proposed duties relate to a financial manager/controller. In the *Handbook*, a cash manager is portrayed as monitoring and controlling "the flow of cash receipts and disbursements to meet the business and investment needs of the firm" such as:

[C]ash flow projections [which] are needed to determine whether loans must be obtained to meet cash requirements or whether surplus cash should be invested in interest-bearing instruments.

On appeal, counsel highlights text in the *Handbook* which states that controllers:

[D]irect the preparation of financial reports that summarize and forecast the organization's financial position, such as income statements, balance sheets, and analyses of future earnings or expenses.

The AAO finds that the evidence in the record does not suggest that the beneficiary will prepare or direct the preparation of "income statements, balance sheets, and analyses of future earnings or expenses." Although the beneficiary will plan finances by arranging bank loans, the petitioner does not elaborate on this duty; thus, the AAO cannot determine whether it parallels that of a cash manager who provides cash flow projections. As such, the proposed duties are not those of a financial manager/controller as that occupation is depicted in the *Handbook*.

On appeal, counsel refers to the *O*NET* to show that the proposed position qualifies as a specialty occupation. Counsel's reference to and assertions about the relevance of information from the *O*NET* are not persuasive. Neither a specific vocational preparation (SVP) rating nor a Job Zone category indicates that a particular occupation requires the attainment of a baccalaureate or higher degree, or its equivalent, in a specific specialty as a minimum for entry into the occupation. An SVP rating and Job Zone category are meant to indicate only the total number of years of vocational preparation required for a particular position. Neither classification describes how those years are to be divided among training, formal education, and experience, nor specifies the particular type of degree, if any, that a position would require.

It is the *Handbook* that the AAO routinely consults for information about the duties and educational requirements of particular occupations. The *Handbook* reveals that the proposed duties, which involve responsibility for an automobile oil change and tune-up services business, are a combination of those of a general and operations manager and a marketing manager. For a general and operations manager position, the *Handbook* conveys:

General and operations managers plan, direct, or coordinate the operations of companies or public and private sector organizations. Their duties include formulating policies, managing daily operations, and planning the use of materials and human resources, but are too diverse and general in nature to be classified in any one area of management or administration, such as personnel, purchasing, or administrative services. In some organizations, the duties of general and operations managers may overlap the duties of chief executive officers.

A general and operations manager plans, directs, or coordinates operations; plans the use of materials and human resources; formulates policies; handles purchasing, and manages daily operations. The beneficiary's duties are encompassed within these areas. The beneficiary will manage daily operations by planning, directing, and coordinating oil change, smog check, and tune-up services; and by managing daily financial matters. He will plan the use of materials and human resources by assigning duties for employees and evaluating their work; and by purchasing and providing supplies, tools, and equipment.

The *Handbook* reports that a top executive, such as a general and operations manager, does not require a bachelor's degree in a specific academic field. For top executives, the *Handbook* states:

The formal education and experience of top executives varies as widely as the nature of their responsibilities. Many top executives have a bachelor's or higher degree in business administration or liberal arts.

The *Handbook* continues:

Because many top executive positions are filled by promoting experienced, lower level managers when an opening occurs, many top managers have been promoted from within the organization. In industries such as retail trade or transportation, for instance, it is possible for individuals without a college degree to work their way up within the company and become managers. However, many companies prefer that their top executives have specialized backgrounds and, therefore, hire individuals who have been managers in other organizations.

The *Handbook* explains that general and operations managers are not required to hold a bachelor's degree in a specific specialty, and employers accept degrees in business administration or the liberal arts or promote lower level managers who may not hold degrees. The AAO points out that the case of *Matter of Michael Hertz Assocs., 19 I&N Dec. 558, 560 (Comm. 1988)* conveys that "the requirement of a degree of generalized title, such as business administration or liberal arts, without further specification, does not establish eligibility." Thus, based on the *Handbook's* information and *Matter of Michael Hertz Assocs.*, the proposed position, which is similar to that of an operations and general manager, would not require a bachelor's degree in a specific specialty.

The *Handbook* describes a marketing manager as follows:

Marketing managers develop the firm's marketing strategy in detail. With the help of subordinates, including *product development managers* and *market research managers*, they estimate the demand for products and services offered by the firm and its competitors. In addition, they identify potential markets—for example, business firms, wholesalers, retailers, government, or the general public. Marketing managers develop pricing strategy to help firms maximize profits and market share while ensuring that the firm's customers are satisfied. In collaboration with sales, product development, and other managers, they monitor trends that indicate the need for new products and services, and they oversee product development. Marketing managers work with advertising and promotion managers to promote the firm's products and services and to attract potential users.

Similar to a marketing manager who develops marketing strategy, estimates the demand for products and services, identifies potential markets, and monitors trends that indicate the need for new products and services, the beneficiary will plan, coordinate, and supervise promotion of the business, and evaluate and follow-up on customer service.

For a managerial position in marketing, the *Handbook* conveys that employers do not require a bachelor's degree in a specific academic discipline. The *Handbook* states:

A wide range of educational backgrounds is suitable for entry into advertising, marketing, promotions, public relations, and sales managerial jobs, but many employers prefer those with experience in related occupations plus a broad liberal arts background. A bachelor's degree in sociology, psychology, literature, journalism, or philosophy, among other subjects, is acceptable. However, requirements vary, depending upon the particular job.

For marketing, sales, and promotions management positions, some employers prefer a bachelor's or master's degree in business administration with an emphasis on marketing.

Based on the evidence in the record and the *Handbook's* information, the petitioner fails to establish the first criterion at 8 C.F.R. § 214.2(h)(4)(iii)(A): that a baccalaureate or higher degree or its equivalent in a specific specialty is the normal minimum requirement for entry into the particular position.

The petitioner submits job postings to establish the first alternative prong at 8 C.F.R. § 214.2(h)(4)(iii)(A)(2) - that a specific degree requirement is common to the industry in parallel positions among similar organizations. The postings are not persuasive as the proposed position is not parallel to the positions in the postings, or the employers in the postings are different from the petitioner or their nature is not disclosed. The duties in the Petro Stopping Center, for example, involve analysis and establishing and coordinating inventory levels for national locations; with the position offered here, the beneficiary handles the inventory of a small enterprise. Resource Automotive is a financial services company; Alaska Sales and Service is a dealership; the employer seeking a material planner is an automobile supplier; CyberCoders, Haldex Commercial Vehicle Systems, and Saturn of Devon are manufacturers; CITGO is a petroleum company; the County of Riverside is a public entity; First Entertainment Credit Union is a credit union; Pacific Capital Bancorp is a financial company; QSC Audio is an audio company; and Associated Students, Inc. is a nonprofit. As such, these companies differ from the petitioner, a small company providing automobile oil change and tune-up services. The AAO cannot conclude whether Sharf Woodward & Associates, Inc. is similar in size, scope, and nature to the petitioner as it is not described in the posting. In conclusion, the job postings fail to establish that a specific degree requirement is common to the industry in parallel positions among similar organizations.

The petitioner has not satisfied the second alternative prong at 8 C.F.R. § 214.2(h)(4)(iii)(A)(2) as no evidence in the record shows the proffered position is so complex or unique that it can be performed only by an individual with a degree. As discussed earlier in this decision, the proposed duties are a combination of those of a general and operations manager and a marketing manager, which are occupations that do not require a bachelor's degree in a specific academic specialty. Thus, the petitioner fails to establish the second alternative prong at 8 C.F.R. § 214.2(h)(4)(iii)(A)(2).

No evidence in the record establishes the regulation at 8 C.F.R. § 214.2(h)(4)(iii)(A)(3): that the petitioner normally requires a degree or its equivalent for the position.

To satisfy the regulation at 8 C.F.R. § 214.2(h)(4)(iii)(A)(4), the petitioner must establish that the nature of the specific duties is so specialized and complex that the knowledge required to perform them is usually associated with the attainment of a baccalaureate or higher degree. In this decision the AAO has already conveyed that the proposed duties resemble those of a general and operations manager and a marketing manager, which are occupations that do not require a bachelor's degree in a specific specialty. The petitioner has not distinguished the proffered position from the duties normally performed by general and operations managers and marketing managers. Accordingly, the petitioner fails to establish this last criterion at 8 C.F.R. § 214.2(h)(4)(iii)(A).

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 on this ground.

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.