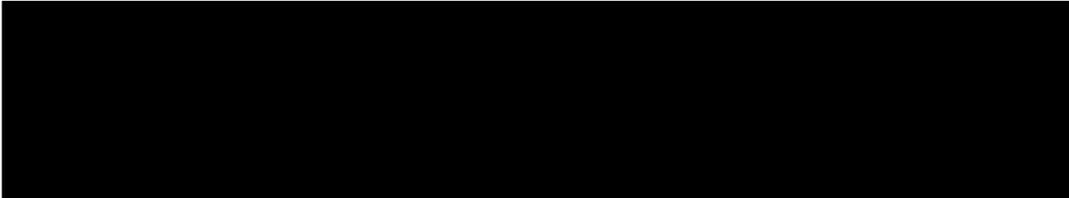


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FILE: SRC 05 199 51367 Office: TEXAS SERVICE CENTER

Date: MAR 06 2007

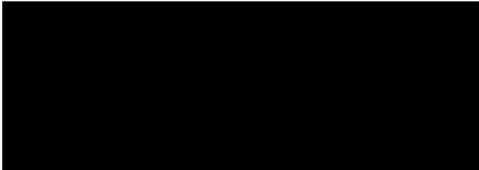
IN RE: Petitioner:



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.

A handwritten signature in cursive script, appearing to read "Robert P. Wiemann".

Robert P. Wiemann, Chief  
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 natural stones and tiles supplier. It seeks to employ the beneficiary as an operations manager and to classify him 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 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. The AAO reviewed the record in its entirety before issuing its decision.

The petitioner describes itself as an importer and distributor of travertine, marble, granite, and limestone from Europe, South America, and the Middle East. The petitioner states that it was established in 2000, has 25 employees and annual sales in excess of \$5 million, and proposes to employ the beneficiary for three years, at

an annual salary of \$50,000, as an operations manager. In a letter accompanying the Form I-129 the petitioner describes the proffered position as follows:

Opustone must be highly efficient operationally. This means the use of computerized systems covering purchasing, sales, warehousing, inventory controls, collections, etc. The development and implementation of these computerized systems and all other aspects of operations analysis and management, including the operation of machinery and equipment, management of supplier relationships, and dealing directly with customers' specific requirements on custom orders, will constitute the responsibilities of the operations manager

....  
[T]he operations manager will participate in the day-to-day operations of the business, including establishing measures for ascertaining operating efficiency and for achieving efficiency targets, determining staffing levels and the work content of specific jobs. The operations manager will also be responsible for cost control, problem-solving, decision making, and analytical analysis. He will continuously analyze and evaluate the incremental costs and benefits associated with alternative operations decisions, determine anticipated costs, measuring actual costs, noting variances between actuals and what is expected, and then developing programs to eliminate such variances in the future.

While the operations manager will not be directly responsible for sales and marketing, it is his responsibility to provide technical support to the sales department . . . . The operations manager must be knowledgeable about marketing. In addition, he will be responsible for commercial relations. This will involve customer contact, establishing and maintaining satisfactory supplier and customer relationships . . . .

Dealing with producers in Europe, South America, and the Middle East involves international and cross-cultural understanding . . . .

[T]he operations manager will handle supplier relations and the operational integration of suppliers' deliveries with our own operations and logistics . . . .

The operations manager will be responsible for selecting and managing new staff. This will involve recruitment, selecting personnel, establishing compensation and other terms and conditions of employment, training, performance monitoring and evaluation, discharging of employees, etc.

According to the petitioner, the proffered position requires at least a bachelor's degree in business administration or a related field.<sup>1</sup> The beneficiary is qualified for the position, the petitioner declares, by virtue of his graduation from Marmara University in Turkey with a degree in German on June 20, 1997, and more than seven years of work experience in business administration. The petitioner cites an evaluation from

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<sup>1</sup> A degree with a generalized title such as business administration, without further evidence of a specific course of study closely related to the proffered position, is not a degree in a specific specialty and would not be sufficient to classify the position as a specialty occupation. See *Matter of Michael Hertz Associates*, 19 I&N Dec. 558, 560 (Comm. 1988).

[REDACTED] (Morningside) which concludes that the beneficiary's education and experience in Turkey is equivalent to a bachelor's degree in business administration from an accredited college or university in the United States.

In her decision the director reviewed the evidence of record and concluded that it failed to establish that the proffered position qualifies as a specialty occupation. The director discussed two occupational resources submitted by the petitioner – the *Occupational Information Network, O\*Net OnLine (O\*NET OnLine)* and the Department of Labor (DOL)'s *Occupational Outlook Handbook (Handbook)* – and cited information therein which indicates that a bachelor's degree in a specific specialty is not a minimum educational requirement for entry into operations manager positions. The director determined that other documentation submitted by the petitioner – including a letter from another company in the petitioner's line of business discussing the educational requirements for operations managers, as well as eight internet job announcements for operations managers – also failed to establish that a baccalaureate degree in a specific specialty is the minimum educational requirement for the proffered position. Based on the evidence of record, the director concluded that the proffered position does not qualify as a specialty occupation under any of the criteria enumerated at 8 C.F.R. § 214.2(h)(4)(iii)(A).

On appeal counsel asserts that the petitioner's "complex international business requires an operations manager with at least a bachelor's degree or equivalent . . . with specialized knowledge and experience [in] international trade in quality building materials." Though counsel indicated on Form I-290B that a brief and/or evidence would be sent to the AAO in support of the appeal within 30 days, no such brief or evidence has been submitted.

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*, 764 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.

The AAO agrees with the director that the duties of the proffered position reflect the *Handbook's* description of a "general and operations manager," which is a sub-category of the broad occupational field called "top executives." The duties of the occupation are described as follows in the *Handbook*, 2006-07 edition, at 68:

*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 . . . operations managers may overlap the duties of chief executive officers.

The *Handbook* describes the educational background and experience of top executives, including operations managers, as follows:

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 . . . .

Some top executives in the public sector have a background in public administration or liberal arts. Others might have a background related to their jobs . . . .

Many top executive positions are filled from within the organization by promoting experienced, lower level managers when an opening occurs. 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. [Emphasis added.] However, many companies prefer that their top executives have specialized backgrounds and, therefore, hire individuals who have been managers in other organizations.

*Id.* at 68-69. The foregoing information indicates that degrees in a variety of different fields are suitable for many general and/or operations manager positions, and that some individuals attain such positions without a college degree. Thus, there is ample opportunity to enter into a general or operations manager position without a baccalaureate or higher degree in a specific specialty.

The other occupational resource cited by counsel, *O\*NET OnLine*, states that most operations manager positions require a four-year bachelor's degree, but some do not. This information does not indicate that a baccalaureate degree is the normal minimum requirement for operations managers. Nor does it indicate that the bachelor's degree must be in any specific specialty.

Based on the foregoing evidence the AAO concludes that the proffered position does not meet the first alternative criterion of a specialty occupation, at 8 C.F.R. § 214.2(h)(4)(iii)(A)(1), because a baccalaureate degree in a specific specialty is not the normal minimum requirement for entry into the position.

With regard to the second alternative criterion of a specialty occupation, at 8 C.F.R. § 214.2(h)(4)(iii)(A)(2), the petitioner has submitted multiple internet job advertisements from other companies for operations manager positions as evidence of an industry standard requiring a specialty degree. While all but one of the advertisements state that a bachelor's degree is required, most of them do not indicate that the degree must be in a specific specialty. None of the advertising companies are in the same line of business as the petitioner, and there is no evidence in the record that any of them are similar to the petitioner in their scale of operations. Thus, the internet job advertisements do not establish that a degree requirement in a specific specialty is common to the petitioner's industry in parallel positions among similar organizations, as required for the proffered position to qualify as a specialty occupation under the first prong of 8 C.F.R. § 214.2(h)(4)(iii)(A)(2).

The record includes a letter from the president and vice president of a company in the same line of business as the petitioner - [REDACTED] - who state that "[i]n our company and in the industry as a whole, the operations manager is a person who holds at least the minimum of a bachelor's degree or its educational equivalent in business administration, economics, or a related field." The authors do not identify

any individual(s) past and present who have worked as the company's operations manager, however, and they neither identify nor document the employee(s) degree(s). The authors do not identify any other companies in the industry as a basis for their statement about the educational requirements of operations managers, and they provide no evidence about specific employees in those positions and the degrees they possess. Going on record without supporting documentation does not satisfy the petitioner's burden of proof. *See Matter of Soffici*, 22 I&N Dec. 158, 165 (Comm. 1998) (citing *Matter of Treasure Craft of California*, 14 I&N Dec. 190 (Reg. Comm. 1972)).

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). The AAO determines that the letter from the president and vice president of Marble / Granite of Florida, Inc. is not persuasive evidence that a degree requirement in a specific specialty is common to the petitioner's industry in parallel positions among similar organizations, as required for the proffered position to qualify as a specialty occupation under the first prong of 8 C.F.R. § 214.2(h)(4)(iii)(A)(2).

Nor does the record establish that the proffered position is so complex or unique that it can only be performed by an individual with a bachelor's degree in a specific specialty. The petitioner has submitted no evidence demonstrating the uniqueness of the position, and has not demonstrated that the duties of the job distinguish the position in any decisive way from other operations managers, such that a degree in a specific specialty would be required. Accordingly, the proffered position does not qualify as a specialty occupation under the second prong of 8 C.F.R. § 214.2(h)(4)(iii)(A)(2).

As for the third alternative criterion of a specialty occupation, the proffered position is newly created and the petitioner has no hiring history for it. Thus, the petitioner cannot show that it normally requires a baccalaureate or higher degree in a specific specialty, as required for the position to qualify as a specialty occupation under 8 C.F.R. § 214.2(h)(4)(iii)(A)(3).

Finally, the record does not establish that the duties of the proffered position are so specialized and complex that they require knowledge usually associated with a baccalaureate or higher degree in a specific specialty. The petitioner has not shown that the duties of the position exceed the scope of those typically performed by an operations manager, which the *Handbook* indicates is an occupation that does not normally require baccalaureate level knowledge in a specific specialty. Accordingly, the 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 does not establish 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. § 1101(a)(15)(H)(i)(b).

Beyond the decision of the director, the record does not establish that the beneficiary is qualified to perform services in a specialty occupation. Section 214(i)(2) of the Act, 8 U.S.C. § 1184(i)(2), provides that an alien must have the following credentials to be qualified to perform the services of a specialty occupation:

- (A) full state licensure to practice in the occupation, if such licensure is required to practice in the occupation,
- (B) completion of the degree described in paragraph (1)(B) for the occupation, or
- (C) (i) experience in the specialty equivalent to the completion of such degree, and (ii) recognition of expertise in the specialty through progressively responsible positions relating to the specialty.

As further explained in 8 C.F.R. § 214.2(h)(4)(iii)(C), an alien must meet one of the following criteria to qualify to perform the services of a specialty occupation:

- (1) Hold a United States baccalaureate or higher degree required by the specialty occupation from an accredited college or university;
- (2) Hold a foreign degree determined to be equivalent to a United States baccalaureate or higher degree required by the specialty occupation from an accredited college or university;
- (3) Hold an unrestricted State license, registration or certification which authorizes him or her to fully practice the specialty occupation and be immediately engaged in that specialty in the state of intended employment; or
- (4) Have education, specialized training, and/or progressively responsible experience that is equivalent to completion of a United States baccalaureate or higher degree in the specialty occupation, and have recognition of expertise in the specialty through progressively responsible positions directly related to the specialty.

For the purpose of deciding whether the beneficiary is qualified under 8 C.F.R. § 214.2(h)(4)(iii)(C)(4), 8 C.F.R. § 214.2(h)(4)(iii)(D) provides that the determination shall be based on one or more of the following:

- (1) An evaluation from an official who has authority to grant college-level credit for training and/or experience in the specialty at an accredited college or university which has a program for granting such credit based on an individual's training and/or work experience;
- (2) The results of recognized college-level equivalency examinations or special credit programs, such as the College Level Examination Program (CLEP), or Program on Noncollegiate Sponsored Instruction (PONSI);
- (3) An evaluation of education by a reliable credentials evaluation service which specializes in evaluating foreign educational credentials;
- (4) Evidence of certification or registration from a nationally-recognized professional association or society for the specialty that is known to grant certification or

registration to persons in the occupational specialty who have achieved a certain level of competence in the specialty;

- (5) A determination by the Service [CIS] that the equivalent of the degree required by the specialty occupation has been acquired through a combination of education, specialized training, and/or work experience in areas related to the specialty and that the alien has achieved recognition of expertise in the specialty occupation as a result of such training and experience. For purposes of determining equivalency to a baccalaureate degree in the specialty, three years of specialized training and/or work experience must be demonstrated for each year of college-level training the alien lacks. For equivalence to an advanced (or Masters) degree, the alien must have a baccalaureate degree followed by at least five years of experience in the specialty . . . It must be clearly demonstrated that the alien's training and/or work experience included the theoretical and practical application of specialized knowledge required by the specialty occupation; that the alien's experience was gained while working with peers, supervisors, or subordinates who have a degree or its equivalent in the specialty occupation; and that the alien has recognition of expertise in the specialty evidenced by at least one type of documentation such as: (i) Recognition of expertise in the specialty occupation by at least two recognized authorities <sup>2</sup> in the same specialty occupation; (ii) Membership in a recognized foreign or United States association or society in the specialty occupation; (iii) Published material by or about the alien in professional publications, trade journals, books, or major newspapers; (iv) Licensure or registration to practice the specialty occupation in a foreign country; or (v) Achievements which a recognized authority has determined to be significant contributions to the field of the specialty occupation.

The beneficiary does not qualify to perform the services of the specialty occupation under 8 C.F.R. § 214.2(h)(4)(iii)(C)(1) because he does not have a U.S. baccalaureate or higher degree, or under 8 C.F.R. § 214.2(h)(4)(iii)(C)(2) because he does not hold a foreign degree determined to be equivalent to a U.S. baccalaureate or higher degree, or under 8 C.F.R. § 214.2(h)(4)(iii)(C)(3) because he does not have an unrestricted state license to practice the specialty occupation.

In order for the beneficiary to qualify under 8 C.F.R. § 214.2(h)(4)(iii)(C)(4) to perform services in a specialty occupation, the record must establish that he has a combination of education, specialized training and progressively responsible work experience equivalent to a U.S. baccalaureate or higher degree in the specialty occupation, as evidenced by one or more of the documentary forms set forth in 8 C.F.R. § 214.2(h)(4)(iii)(D). The record includes the aforementioned evaluation of the beneficiary's academics and work experience by Morningside Evaluations and Consulting, authored by Dr. ██████████, Assistant

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<sup>2</sup> *Recognized authority* means a person or organization with expertise in a particular field, special skills or knowledge in that field, and the expertise to render the type of opinion requested. A recognized authority's opinion must state: (1) the writer's qualifications as an expert; (2) the writer's experience giving such opinions, citing specific instances where past opinions have been accepted as authoritative and by whom; (3) how the conclusions were reached; and (4) the basis for the conclusions supported by copies or citations of any research material used. 8 C.F.R. § 214.2(h)(4)(ii).

Professor of Management Information Systems at Mercy College in New York, and an adjunct professor at the City College of New York and New York University. The evaluation concludes that the beneficiary's four-year degree from Marmara University in Turkey, which the transcript in the record shows was in the field of German, in combination with seven years of work experience in the field of business administration, is equivalent to a bachelor's degree in business administration from a U.S. college or university. As previously noted, however, a degree with a generalized title such as business administration, without further evidence of a specific course of study closely related to the proffered position, does not establish that the beneficiary is qualified to perform services in a specialty occupation. *See Matter of Michael Hertz Associates*, 19 I&N Dec. 558, 560 (Comm. 1988). Moreover, the record does not show that the evaluation was authored by an official with authority to grant college-level credit for training and/or experience in a specialty or that any of the institutions with which Professor ██████'s associated has a program for granting such credit based on training and/or work experience. Thus, the evaluation does not establish that the beneficiary is qualified under 8 C.F.R. § 214.2(h)(4)(iii)(D)(1) to perform services in a specialty occupation.

Furthermore, since the Morningside evaluation reviews the beneficiary's work experience as well as his education in Turkey, its conclusion as to the beneficiary's U.S. degree equivalency cannot be considered as evidence of the beneficiary's qualification under 8 C.F.R. § 214.2(h)(4)(iii)(D)(3). A credentials evaluation service, as specified in the regulation, may only evaluate foreign educational credentials.

Nor does the record establish that the beneficiary has the equivalent of a baccalaureate degree in a specific specialty through a combination of education, specialized training, and/or work experience in the specialty occupation or related areas, and recognition of expertise therein, as required to meet the alternative qualifying criteria at 8 C.F.R. § 214.2(h)(4)(iii)(D)(5). The regulation requires three years of specialized work experience for each year of college-level training the alien lacks for equivalence to a baccalaureate degree. The AAO will accept the beneficiary's first two years of credit at Marmara University as general coursework preceding the specialization of a degree. Therefore, the petitioner must show that the beneficiary has at least six years of progressively responsible work experience in a business-related specialty to account for a third and fourth year of academic study in a business specialty in the United States. There is no documentation in the record, such as letters from previous employers, to corroborate any of the work experience cited in the Morningside evaluation. Going on record without supporting documentation does not satisfy the petitioner's burden of proof. *See Matter of Soffici, id.* In addition, the petitioner has not demonstrated that the beneficiary has at least three years of experience in a business-related specialty while working with peers, supervisors, or subordinates who have a degree or its equivalent in a specialty occupation, and that the beneficiary has documented recognition of expertise in the specialty. As the record does not contain such documentation, the beneficiary's work experience cannot be counted for the purpose of determining degree equivalency under 8 C.F.R. § 214.2(h)(4)(iii)(D)(5).

For the reasons discussed above, the petitioner has failed to establish that the beneficiary is qualified to perform services in a specialty occupation. On this ground as well, the petition may not be approved.

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.