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U.S. Citizenship
and Immigration
Services

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FILE: EAC 05 001 53637 Office: VERMONT SERVICE CENTER Date: APR 26 2006

IN RE: Petitioner:
Beneficiary:



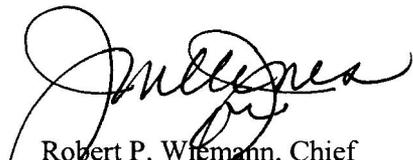
PETITION: Petition for a Nonimmigrant Worker Pursuant to Section 101(a)(15)(H)(i)(b) of the Immigration and Nationality Act, 8 U.S.C. § 1101(a)(15)(H)(i)(b)

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. Wifmann, Chief
Administrative Appeals Office

DISCUSSION: The director of the Vermont 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 operates as a chocolatier with 20 employees. It seeks to hire the beneficiary as a general manager. The director denied the petition based on her determination that the petitioner had failed to establish that the proffered position was a specialty occupation.

The record of proceeding before the AAO contains: (1) Form I-129 and supporting documentation; (2) the director's denial letter; and (3) Form I-290B, with counsel's brief. The AAO reviewed the record in its entirety before reaching its decision.

The issue before the AAO is whether the proffered position qualifies as a specialty occupation. To meet its burden of proof in this regard, a petitioner must establish that the job it is offering to the beneficiary meets the following statutory and regulatory requirements.

Section 214(i)(1) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1184(i)(1) defines the term "specialty occupation" as one 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.

The term "specialty occupation" is further defined at 8 C.F.R. § 214.2(h)(4)(ii) as:

An occupation which requires theoretical and practical application of a body of highly specialized knowledge in fields of human endeavor including, but not limited to, architecture, engineering, mathematics, physical sciences, social sciences, medicine and health, education, business specialties, accounting, law, theology, and the arts, and which requires the attainment of a bachelor's degree or higher in a 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 above criteria to mean not just any baccalaureate or higher degree, but one in a specific specialty that is directly related to the proffered position.

To determine whether a particular job qualifies as a specialty occupation, CIS does not simply rely on a position’s title. The specific duties of the proffered position, combined with the nature of the petitioning entity’s business operations, are factors to be considered. CIS must examine the ultimate employment of the alien, and determine whether the position qualifies as a specialty occupation. *Cf. Defensor v. Meissner*, 201 F. 3d 384 (5th Cir. 2000). The critical element is not the title of the position nor an employer’s self-imposed standards, but whether the position actually requires the theoretical and practical application of a body of highly specialized knowledge, and the attainment of a baccalaureate or higher degree in the specific specialty as the minimum for entry into the occupation, as required by the Act.

The petitioner states that it is seeking the beneficiary’s services as a general manager. Evidence of the beneficiary’s duties includes: the Form I-129; and the company’s support letter. The petitioner indicated that the specific duties of the position would entail: conducting the day-to-day operation of the plant and the review of plant requirements; managing and overseeing employees; coordinating purchases; coordinating and overseeing the business plan and carrying out the development review on an annual basis; promoting the product and developing new clientele; attending chocolate exhibits and trade fairs to promote the business and assess the competition; setting up the human resources department for the business; setting up and implementing employment policies and procedures; setting up a database for employees; establishing and reviewing contracts of employment; designing and implementing training programs for new staff; and resolving inter-disciplinary issues and disputes; and reviewing salaries and bonuses. The petitioner stated that the proffered position required a bachelor’s degree in management, human resources or a degree in a related field.

The director found that the proffered position was not a specialty occupation. The director noted that the Department of Labor’s *Occupational Outlook Handbook (Handbook)* did not indicate that a bachelor’s degree in a specific specialty was the education needed for a general manager.

On appeal, counsel asserts that the proffered position is a specialty occupation is most similar to that of an administrative services manager as described in the *Handbook*, or in the alternative, that the position is similar to that of an industrial production manager. Counsel asserts that the *Handbook* supports the assertion that a bachelor’s degree is required for the proffered position.

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 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 *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*, 812 F. Supp. 1059, 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.

A thorough review of the *Handbook* discloses that the duties of the proffered position are for an administrative services manager. The *Handbook* indicates that administrative services managers perform a broad range of duties in virtually every sector of the economy. They coordinate and direct support services for many diverse organizations. These workers manage the many services that allow organizations to operate efficiently, such as secretarial and reception, administration, payroll, conference planning and travel, information and data processing, mail, materials scheduling and distribution, printing and reproduction, records management and telecommunications management. Additionally, the *Handbook* states that specific duties for these managers vary by degree of responsibility and authority. For example, mid-level managers develop departmental plans, set goals and deadlines, implement procedures to improve productivity and customer services. The *Handbook* notes that in small organizations, a single administrative services manager may oversee all support services.

The *Handbook* states the following about the training and educational requirements for administrative services manager positions:

Educational requirements for these managers vary widely, depending on the size and complexity of the organization. In small organizations, experience may be the only requirement needed to enter a position as office manager. In large organizations, however, administrative service managers are normally hired from outside and each position has formal education and experience requirements.

The petitioner fails to establish the first criterion, as the *Handbook* indicates that educational requirements vary widely. Accordingly, the petitioner has not established that a baccalaureate or higher degree or its equivalent in a specific specialty is the normal minimum requirement for entry into the proffered position.

The petitioner has not provided evidence to satisfy the first alternative prong of the second criterion - that a specific degree requirement is common to the industry in parallel positions among similar organizations.

Nor is there evidence in the record that would show the proffered position as so complex or unique that it can be performed only by an individual with a degree. Again, the *Handbook* reveals that the duties of the proffered position are performed by administrative services managers, positions that do not require a bachelor's degree in a specific specialty.

The record also fails to establish the proffered position as a specialty occupation under the third criterion at 8 C.F.R. § 214.2(h)(4)(iii)(A): the petitioner normally requires a degree or its equivalent for the position. Neither counsel nor the petitioner addressed this criterion.

The fourth criterion at 8 C.F.R. § 214.2(h)(4)(iii)(A) requires that the petitioner establish 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. Counsel asserts that the proffered position must manage the many services that allow the company to operate efficiently such as secretarial, administrative, payroll, conference meeting and planning, data processing etc. The majority of the listed duties are routinely performed by administrative services managers. The petitioner has not sufficiently described the complexity of the listed job duties as related to the petitioner's business interests to establish that this position requires a degree in a specific specialty. It cannot be concluded 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. Once again, the *Handbook* reveals that the duties of the proffered position are performed by an administrative services manager, an occupation not requiring a bachelor's degree in a specific specialty.

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.

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.