

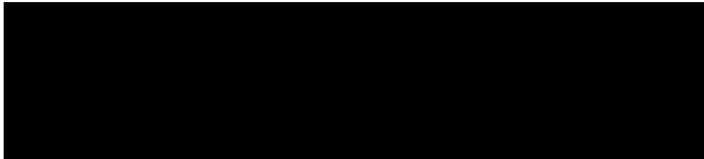
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U.S. Citizenship
and Immigration
Services

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FILE: SRC 04 218 50408 Office: TEXAS SERVICE CENTER Date: APR 26 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 documents have been returned to the office that originally decided your case. Any further inquiry must be made to that office.

Robert P. Wiemann, Chief
Administrative Appeals Office

DISCUSSION: The service center director 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 pool service and maintenance company that seeks to employ the beneficiary as a Manager II. It endeavors 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 because the proffered position does not qualify as a specialty occupation. On appeal, counsel submits a brief asserting that the offered position qualifies as a specialty occupation.

The issue to be discussed in this proceeding is whether the proffered position qualifies as a specialty occupation.

Section 101(a)(15)(H)(i)(b) of the Act, 8 U.S.C. § 1101(a)(15)(H)(i)(b), provides, in part, for the classification of qualified nonimmigrant aliens who are coming temporarily to the United States to perform services in 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.

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

[A]n 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 are 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) the 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) the Form I-290B with 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 II. Evidence of the beneficiary's duties includes the Form I-129 petition with attachment and the petitioner's response to the director's request for evidence. According to this evidence the beneficiary would:

- Instruct and schedule staff;
- Keep accurate financial and activity records;
- Assign and monitor pool routes in the South Florida region;
- Develop and give in-service training programs to staff;
- Enforce pool rules and regulations for the safety and convenience of the public;
- Check proper maintenance of equipment and sanitation of pools and bathhouse facilities for residential and commercial properties;
- Requisition supplies and supervise all service activities in the region; and
- Maintain and monitor quality control of electronic/computerized chemical control devices which service pools.

The petitioner requires a minimum of a bachelor's degree for entry into the proffered position, but does not state that a degree in a specific specialty is required for entry into the position. The petitioner finds the beneficiary qualified for the position by virtue of his foreign education which has been determined by a credentials evaluation service to be equivalent to a bachelor's degree in business administration with a degree specialization in marketing at the master's level from an accredited college or university in the United States.

The AAO routinely consults the U.S. Department of Labor's *Occupational Outlook Handbook (Handbook)* for information about the duties and educational requirements of particular occupations. The duties of the proffered position are essentially those noted for general/operations managers. The *Handbook* notes that the formal education and experience of these managers varies as widely as the nature of their responsibilities. Many have a bachelor's or higher degree in business administration or liberal arts, while others obtain their positions by promotion from lower level management positions. Thus, it is possible to obtain a position as a general or operations manager without a college degree by promotion from within the organization based upon performance alone. It is apparent from the *Handbook* that a baccalaureate or higher degree, in a specific specialty, is not the minimum requirement for entry into the offered position. Positions requiring a college degree are filled from a wide range of educational disciplines. A degree in a specific specialty, however, is not required. The petitioner has failed to establish the first criterion of 8 C.F.R. § 214.2(h)(4)(iii)(A).

The petitioner does not assert that a degree requirement is common to the industry in parallel positions among similar organizations, and offers no evidence in this regard. As such, the petitioner has failed to establish the first prong of the referenced criterion at 8 C.F.R. § 214.2(h)(4)(iii)(A)(2).

The petitioner has not established that it normally requires a degree in a specific specialty for the proffered position, and offers no evidence in this regard. The petitioner does state that all future candidates in similar positions will be required to have a bachelor's degree, and references four other members of management working in different positions that possess a minimum of a bachelor's degree. The petitioner did not, however, provide copies of their degrees or other documentation from the educational institutions where the degrees were obtained establishing the degrees. Simply going on the record without supporting documentary evidence is not sufficient for purposes of meeting the burden of proof in these proceedings. *Matter of Soffici*, 22 I&N Dec. 158, 165 (Comm. 1998) (citing *Matter of Treasure Craft of California*, 14 I&N 190 (Reg. Comm. 1972)). The evidence of record does not establish the criterion at 8 C.F.R. § 214.2(h)(4)(iii)(A)(3).

The petitioner asserts that the duties of the offered position are so complex or unique that they can only be performed by an individual with a degree in a specific specialty, and that the duties are so specialized or complex that knowledge required to perform them is usually associated with the attainment of a baccalaureate or higher degree in a specific specialty. In support of these assertions the petitioner submitted an opinion letter from [REDACTED], a professor of management at the University of Georgia. [REDACTED] states that the duties of the position are unique and complex and that the performance of the duties requires a minimum of a bachelor's degree. [REDACTED] failed to discuss in specific detail, however, the uniqueness or complexity of the individual duties listed by the petitioner and how the performance of those listed duties requires a specialized course of study in a college or university.

The duties to be performed by the beneficiary, as detailed by the petitioner, are set forth in generic and general terms, and as described do not appear to be unique or complex. For example, the petitioner states that the beneficiary will: instruct and schedule staff; keep financial and activity records; assign pool service routes; develop and give in-service training programs to staff; maintain equipment and enforce sanitation rules for customers; purchase supplies and supervise service activities; and maintain and monitor quality control of electronic/computerized chemical control devices which service pools. The record does not contain evidence of the specific tasks to be performed in maintaining financial records. The maintenance of financial records could involve simple bookkeeping functions, or complex financial analysis. It is not possible to make

that determination from the record. There is no indication of the type of training to be given employees or the knowledge that would be required to develop training programs for employees in a pool maintenance business. The petitioner states that its company is unique in the pool service business in that it is using up-to-date technology creating a new level of customer service which sets it apart from the service offered by similar businesses. The petitioner has not, however, provided evidence to establish that its automated pool service methods and equipment are, in fact, unique or more complex in the industry than the methods and equipment used by competitors. Thus, it cannot be determined that the maintenance and monitoring of quality control of electronic/computerized chemical control devices which service pools requires knowledge/skills that are normally taught in baccalaureate degree programs. Further, the complexity of other tasks to be performed by the beneficiary, as described by the petitioner (equipment maintenance, supply purchase, and supervision of service activities), does not require a baccalaureate level education in a specific specialty.

Finally, [REDACTED] does not state that the performance of the duties of the proffered position requires a degree in a specific specialty. He states only that the performance of the duties of the position require a bachelor's degree. He makes no reference to any labor market survey or other labor market information corroborating his opinion. The AAO may, in its discretion, use as advisory opinion statements submitted as expert testimony. However, where an opinion is not in accord with other information or is in any way questionable, the AAO is not required to accept or may give less weight to that evidence. *Matter of Caron International*, 19 I&N Dec. 791 (Comm. 1988). [REDACTED]'s opinion is of little evidentiary value. As previously noted, the *Handbook* states that management positions requiring a baccalaureate level education are routinely filled by individuals with a wide range of educational backgrounds. A petitioner must demonstrate that the proffered position requires a precise and specific course of study that 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 with a generalized title, such as business administration or liberal arts, without further specification, does not establish the position as a specialty occupation. *Matter of Michael Hertz Associates*, 19 I&N Dec. 558 (Comm. 1988). Degrees in business are suitable for many positions, as well as generalized degrees in the liberal sciences. The petitioner has failed to establish the referenced criteria at 8 C.F.R. § 214.2(h)(4)(iii)(A)(2) or (4).

The petitioner has failed to establish that the offered position meets any of the criteria listed at 8 C.F.R. § 214.2(h)(4)(iii)(A). 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 and the appeal shall accordingly be dismissed.

ORDER: The appeal is dismissed. The petition is denied.