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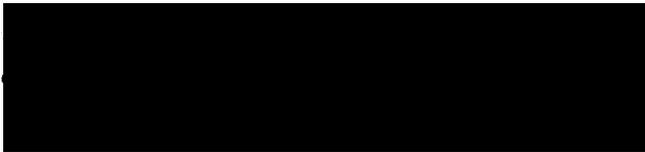
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FILE: SRC 03 259 52998 Office: TEXAS SERVICE CENTER Date: AUG 24 2005

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 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 sells retail items, food, and gasoline to its customers. It seeks to employ the beneficiary as a logistics 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 on the basis that the petitioner had failed to establish that the proposed position meets the definition of a specialty occupation as set forth at 8 C.F.R. § 214.2(h)(4)(iii)(A).

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 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:

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 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 proposed position.

In determining whether a proposed position qualifies as a specialty occupation, CIS does not rely simply upon the position’s title. The specific duties of the proposed 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 beneficiary and make a determination as to whether the proposed position in fact qualifies for classification 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 record of proceeding before the AAO contains (1) the Form I-129 and supporting documentation; (2) the director’s request for evidence (RFE); (3) the petitioner’s RFE response and supporting documentation; (4) the director’s denial letter; and (5) the Form I-290B and supporting documentation. The AAO reviewed the record in its entirety before issuing its decision.

In the letter of support submitted with the I-129 filing, the petitioner described the duties of the proposed position as follows:

- To closely monitor the day-to-day inventory management of the company and perform gas audit monthly;
- To perform merchandise and equipment audit in order to ensure no shortage;
- To manage and control the in-flow of merchandise and gas to guarantee no shortage for the customers’ needs;
- To analyze the clients[’] market’s needs and to design procedures of optimum operation;
- To develop the optimum merchandise in the stock room based on the inflow and outflow information;
- To establish shipping and packaging procedures and the flow chart to minimize the operation time;
- To manage the business information regarding shipping, ordering, and stocking in order to investigate the optimization; and
- To design packing and storage setting in the storage room to minimize the shipping time.

The director denied the petition, finding that the petitioner had satisfied none of the four criteria set forth at 8 C.F.R. § 214.2(h)(4)(iii)(A), and therefore had not established that the proposed position qualifies as a specialty occupation.

On appeal, counsel contends that the proposed position in fact qualifies as a specialty occupation, and that the director erred in denying the petition.

In determining whether a proposed 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. The AAO routinely consults the *Occupational Outlook Handbook* (the *Handbook*) for its information about the duties and educational requirements of particular occupations.

A review of the duties of the proposed position finds them closely aligned to the responsibilities of advertising, marketing, promotions, public relations, and sales managers, specifically sales managers. As discussed in the *Handbook*:

The objective of any firm is to market and sell its products or services profitably. In small firms, the owner or chief executive officer might assume all advertising, promotions, marketing, sales, and public relations responsibilities . . . Advertising, marketing, promotions, public relations, and sales managers coordinate the market research, marketing strategy, sales, advertising, promotion, pricing, product development, and public relations activities.

Sales managers direct the firm's sales program . . . Sales managers maintain contact with dealers and distributors. They analyze sales statistics gathered by their staffs to determine sales potential and inventory requirements and monitor the preferences of customers. Such information is vital to develop products and maximize profits.

Counsel contends that the director erred in comparing the duties of the proposed position to positions discussed in this portion of the *Handbook*, stating that “[a]s a matter of fact, the proffered position is a Logistical Manager, not a sale[s] manager, marketing manager, advertising and promotion manager, or public relation[s] managers [sic] mentioned in Services’ letter.” However, as noted above, the duties of a proposed position, not the title, are dispositive.

All of the listed duties of the proposed position fall within the *Handbook's* description of the duties of sales managers. Of the eight primary job functions listed by the petitioner, seven relate directly to issues regarding product inventory. The other function (the fourth bullet-point) relates to the overall efficiency of the operation. “Analyzing the clients’ and the market’s needs” accords with the duty of sales managers to “analyze sales statistics” and to “monitor the preferences of customers.”

In that the duties of the proposed position are closely aligned to those of sales managers, the AAO turns to the *Handbook's* discussion of whether a baccalaureate or higher degree, or its equivalent, is normally required for entry into the occupation. The *Handbook* reports the following educational requirement for individuals seeking employment in the field:

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.

These findings do not support counsel's contention that a bachelor's degree is required for entry into the occupation. The fact that many employers "prefer" a broad liberal arts background or that some employers "prefer" a bachelor's or master's degree in business administration is not synonymous with the "normally required" standard imposed by the regulation.

Therefore, the proposed position does not qualify as a specialty occupation under 8 C.F.R. § 214.2(h)(4)(iii)(A)(1).

Nor does the proposed position qualify as a specialty occupation under either prong of 8 C.F.R. § 214.2(h)(4)(iii)(A)(2). The first prong of this regulation requires a showing that a specific degree requirement is common to the industry in parallel positions among similar organizations. The AAO has reviewed the job postings submitted by counsel. Counsel, however, has failed to consider the specific requirements set forth at 8 C.F.R. § 214.2(h)(4)(iii)(A)(2) for establishing a baccalaureate or higher degree as an industry norm. To meet the burden of proof imposed by the regulatory language, a petitioner must establish that its degree requirement exists in parallel positions among similar organizations.

Counsel has not established that any of the submitted job postings pertain to parallel positions in similar organizations. For example, Black Leopard, Home Depot, Target, and the Wisconsin Cheese Group are not similar in size or scope of operations to the petitioner, a convenience store with three employees. Moreover, the information regarding the duties and responsibilities of the advertised positions is general and does not support a meaningful comparison of their actual performance and specialty knowledge requirements to the proposed position. The AAO is presented with no basis to conclude that the advertised positions and the one proposed here are parallel, as required by the regulation.

Thus, the position does not qualify under the first prong of the second criterion.

The record does not establish that the proposed position is a specialty occupation under the second prong of 8 C.F.R. § 214.2(h)(4)(iii)(A)(2), which requires a showing that the position is so complex or unique that it can only be performed by an individual with a degree. No evidence supports such a finding. The duties of the proposed position are less complex than those outlined in the *Handbook*, as those duties required not only the management of logistical issues, but also the management of personnel. The petitioner here has not indicated that the beneficiary would be supervising any employees in addition to his duties managing logistical issues.

Accordingly, the petitioner cannot establish its proposed position as a specialty occupation under either prong of 8 C.F.R. § 214.2(h)(4)(iii)(A)(2).

The AAO next turns to the criterion at 8 C.F.R. § 214.2(h)(4)(iii)(A)(3), which requires that the petitioner demonstrate that it normally requires a degree or its equivalent for the position. To determine a petitioner's ability to meet the third criterion, the AAO normally reviews the petitioner's past employment practices, as well as the histories, including the names and dates of employment, of those employees with degrees who previously held the position, and copies of those employees' diplomas.

No evidence has been submitted to prove, nor has counsel or the petitioner asserted, that the proposed position qualifies as a specialty occupation under this criterion. Therefore, the third criterion of 8 C.F.R. § 214.2(h)(4)(iii)(A) cannot be satisfied.

The fourth criterion requires the petitioner to establish that the nature of the proposed position's duties is so specialized or complex that the knowledge required to perform them is usually associated with the attainment of a baccalaureate or higher degree in a specific specialty. A review of the duties of the proposed position does not lead to a conclusion that they would require the beneficiary to possess a higher degree of knowledge and skill than that normally expected of logistical managers in other, similar organizations. Nor are the duties so complex or unique that they can be performed only by an individual with a degree in a specific specialty.

Therefore, the AAO finds that the proposed position does not qualify as a specialty occupation under the requirements set forth at 8 C.F.R. § 214.2(h)(4)(iii)(A)(4).

The proposed position does not qualify for classification as a specialty occupation under any of the four criteria set forth at 8 C.F.R. §§ 214.2(h)(4)(iii)(A)(1), (2), (3), and (4), and the petition was properly denied. Accordingly, the AAO will 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.