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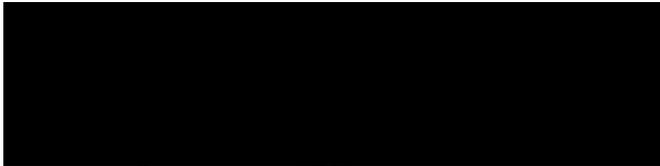
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FILE: LIN 04 035 51392 Office: NEBRASKA SERVICE CENTER Date: JUL 26 2005

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 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 rental car and leasing company that seeks to employ the beneficiary as an assistant rental manager. The petitioner 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.

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 an assistant rental manager. Evidence of the beneficiary's duties includes: the I-129 petition; the petitioner's November 7, 2003 letter in support of the petition; and the petitioner's response to the director's request for evidence. According to this evidence, the beneficiary would perform duties that entail: implementing all aspects of the Cycle of Service for the location, including customer service, sales and marketing, fleet control and maintenance, and personnel managerial responsibilities; calling on high-volume potential customers and training and supervising management trainees and management assistants on sales calls; overseeing the function of fleet control and maintenance, determining the size and type of fleet and the need for car repair; overseeing the approvals of cash deposit rentals and unusual credit and rental requests, as well as rate deviations presented by management trainees and management assistants; reviewing accounts and recommending them for collection; overseeing the rental process; supervising the rental counter; managing customer flow; approving all write-offs up to five days; analyzing all reports; managing the office in the absence of the branch manager; conducting effective and timely employee reviews; providing feedback on employee performance; recommending disciplinary action and promotions; keeping accurate records of employee performance; and being involved in selecting and training new employees. The petitioner stated that a qualified candidate for the position would possess a bachelor's degree in business administration or marketing.

The director found that the proffered position was not a specialty occupation and that the petitioner failed to establish any of the criteria found at 8 C.F.R. § 214.2(h)(4)(iii)(A).

On appeal, counsel states that its competitors in the industry all require a bachelor's degree in a business-related field for positions similar to the proffered position. Counsel also states that 100 percent of the assistant rental managers hired by the petitioner's group in the past year have bachelor's degrees in a business-related field, and 84 percent of all of its assistant rental managers have a bachelor's degree or its equivalent in a business-related field. Counsel asserts that the duties of the proffered position are so complex and specialized that the knowledge required to perform the duties would typically be associated with earning a bachelor's degree.

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 turns first to 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*, 712 F. Supp. 1095, 1102 (S.D.N.Y. 1989)).

The AAO routinely consults the *Handbook* for its information about the duties and educational requirements of particular occupations; in this instance, however, there is no entry that specifically matches the duties of the proffered position.

On appeal, counsel submits nine Internet job listings from the petitioner's competitors and others in closely related fields, several of which had previously been submitted in response to the director's request for evidence. Most of the advertisements require a bachelor's degree in business administration, as does the petitioner. 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).

The record does not contain any evidence from professional associations regarding an industry standard or any evidence to support the complexity or uniqueness of the proffered position. The petitioner has, thus, not established the criteria set forth at 8 C.F.R. § 214.2(h)(4)(iii)(A)(1) or (2).

The AAO now turns to the criterion at 8 C.F.R. § 214.2(h)(4)(iii)(A)(3) – the employer normally requires a degree or its equivalent for the position. In response to the director's request for evidence, the petitioner stated that it employed four assistant rental managers (including the beneficiary) at the site of the proffered position and that all four assistant managers possessed at least a bachelor's degree in a business-related field. On appeal, counsel submits an affidavit from the human resources supervisor for the territory that covers South Dakota, Nebraska, Illinois and Iowa (the proffered position is based in Nebraska). The affidavit states that 44 assistant rental managers are employed in the four states, and that 100 percent of the assistant rental managers hired in the previous 12-month period possess a business-related degree, and 84 percent of all of its assistant rental managers possess a bachelor's degree or its equivalent in a business-related field. Again, the AAO notes that a requirement of a degree with a generalized title such as business administration, without further specification, does not establish the position as a specialty occupation. *Matter of Michael Hertz Associates*.

Finally, the AAO turns to the criterion at 8 C.F.R. § 214.2(h)(iii)(A)(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.

To the extent that they are depicted in the record, the duties do not appear so specialized and complex as to require the highly specialized knowledge associated with a baccalaureate or higher degree, or its equivalent, in a specific specialty. Therefore, the evidence does not establish that the proffered position is a specialty occupation under 8 C.F.R. § 214.2(h)(4)(iii)(A)(4).

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.

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