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U.S. Citizenship
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FILE: EAC 03 205 52817 Office: VERMONT SERVICE CENTER

Date: **AUG 01 2005**

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, Director
Administrative Appeals Office

DISCUSSION: The director of the 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 is a development and general contracting firm that seeks to employ the beneficiary as an administrative analyst. 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 because the proffered position is not a specialty occupation. Counsel submits a brief and additional evidence.

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) counsel's response to the director's request; (4) the director's denial letter; and (5) Form I-290B and supporting documents. The AAO reviewed the record in its entirety before issuing its decision.

The petitioner is seeking the beneficiary's services as an administrative analyst. Evidence of the beneficiary's duties includes: the Form I-129; the attachments accompanying the Form I-129; the company support letter; and counsel's response to the director's request for evidence. According to this evidence, the beneficiary would perform duties that entail being responsible for assisting the president of the petitioner in establishing goals and policies as well as in designing, developing, implementing, and maintaining administration procedures including personnel guidelines and policies; designing, developing, and implementing administrative procedures and guidelines for the petitioner and its affiliates; analyzing and implementing methods to improve workflow reporting procedures and cost reduction programs; analyzing existing procedures in order to design and implement new cost-effective administration programs at all levels; reviewing record-keeping systems and inventory of construction products; managing office, personnel and budgetary requirements and performance standards; working under direct supervision of president of the petitioner and in close liaison with contractors and sub-contractors; assisting in the development and implementation of strategies to expand and increase operations and revenues; analysis of the contractors' agreements, including employees' benefits, salaries, hourly rate, overtime rate, pay holidays, etc. within budgetary limitations; devising methods and procedures for obtaining key market information; evaluation of research and preparation of recommendations based on research performed; assisting in selecting viable projects and bids to develop/restore government subsidized housing; assisting president in coordinating and implementing marketing initiatives and strategies, implementing strategic business plans and managing information on company's programs, clients and competitors; assisting the petitioner in maintaining ongoing business relationships with state, federal and city agencies involved in subsidized housing projects; assisting president in developing business relationships with above agencies, banks and other financial institutions and organize record-keeping of projects' and other business operations; researching, analyzing, developing, and maintaining list of reliable contractors, employees, and suppliers of construction materials for construction sites; reviewing performance of sub-contractors in order to improve projects' completion; assisting in maintaining ongoing business relationship with the City of New York; assisting president in developing relations with employees, material suppliers and sub-contractors as well as organizing record-keeping of transactions and other business operations at construction sites; assisting in preparing operating reports, including employees' attendance reports, budget expenditures and statistical records of performance data; preparing reports to be reviewed by the president and recommending procedures to reduce costs at all levels; assisting in coordinating marketing initiatives and strategies; implementing strategic business plans and managing information on company's programs, clients and competitors.

The petitioner indicated that it requires a professional with at least a bachelor's degree in business administration, accounting, management or the equivalent.

The director was unable to complete the processing of the petition and requested additional information establishing the proffered position was a specialty occupation, specifically an approximate percentage of time for each duty to be performed. Additionally, the director asked whether the petitioner had previously employed personnel in the position and if so, to provide evidence of such employment. The director also requested evidence of the beneficiary's qualifications.

Counsel for the petitioner responded to the request and indicated that the petitioner had submitted letters from four building and contracting firms, which counsel contended established that the minimum requirement for entry into an administrative analyst position is a baccalaureate degree in business administration, accounting, management or in a related field. The petitioner provided a list of on-going projects and counsel contended that due to the increase in business experienced by the petitioner and its affiliates, the petitioner urgently

requires the services of a professional individual in the capacity of administrative analyst. Additionally, counsel referred to VGM's *Careers Encyclopedia* and indicated that the proffered position would fall under the heading office manager. Counsel also referred to the Department of Labor's *Occupational Outlook Handbook* (the *Handbook*) and stated that the petitioner "provides highly complex services, requiring the services of an individual possessing at least a bachelor's degree in business administration, Accounting, Management or equivalent."

The director determined that the proffered position was not a specialty occupation. The director noted that the *Handbook* does not indicate the position administrative manager requires a minimum baccalaureate degree in a specific field of study, as entry may be made into such position based on experience only, or based upon education which is less than a baccalaureate degree. The director noted that managers of highly complex services such as contract administration generally need at least a bachelor's degree. The director determined that the petitioner had not shown that the beneficiary would be overseeing such complex services. Additionally, the director determined that even if the proffered position were a specialty occupation, the beneficiary does not appear to be qualified for such a position.

On appeal, counsel asserts that a baccalaureate or higher degree or its equivalent is normally the minimum requirement for entry into the position of administrative analyst. Counsel contends that the degree requirement is common to the industry in parallel positions. Furthermore, counsel explains that the nature of the duties are so specialized and complex that knowledge required to perform the duties is usually associated with the attainment of a bachelor's degree. Finally, counsel asserts that the beneficiary possesses the equivalent of a bachelor's degree which is relevant to the position offered.

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*, 712 F. Supp. 1095, 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 a top executive or general manager. The *Handbook* indicates that all organizations have specific goals and objectives that they strive to meet. Top executives devise strategies and formulate policies to ensure that these objectives are met. The *Handbook* notes that although they have a wide range of titles—such as chief executive officer,

chief operating officer, board chair, president, vice president, school superintendent, county administrator, or tax commissioner—all formulate policies and direct the operations of businesses and corporations, nonprofit institutions, governments, and other organizations.

The *Handbook* explains that the nature of other high-level executives' responsibilities depends upon the size of the organization. For example, in large organizations, the duties of such executives are highly specialized. Some managers, for instance, are responsible for the overall performance of one aspect of the organization, such as manufacturing, marketing, sales, purchasing, finance, personnel, training, administrative services, computer and information systems, property management, transportation, or the legal services department. Specifically, the *Handbook* states that:

In smaller organizations, such as independent retail stores or small manufacturers, a partner, owner, or general manager often is responsible for purchasing, hiring, training, quality control, and day-to-day supervisory duties.

The *Handbook* notes that *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 general and operations managers may overlap the duties of chief executive officers. These listed duties are very similar to the duties of the proffered position:

organizing record-keeping of transactions and other business operations at construction sites; assisting in preparing operating reports, including employees' attendance reports, budget expenditures and statistical records of performance data; preparing reports to be reviewed by the president and recommending procedures to reduce costs at all levels. . .

The *Handbook* states the following about the training and educational requirements for top executives and general manager positions:

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. College presidents typically have a doctorate in the field in which they originally taught, and school superintendents often have a master's degree in education administration. A brokerage office manager needs a strong background in securities and finance, and department store executives generally have extensive experience in retail trade.

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

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

To establish the second criterion - that a specific degree requirement is common to the industry in parallel positions among similar organizations - counsel submits four letters from persons employed by construction and contracting companies.

This evidence fails to establish that a specific baccalaureate degree is common to the industry in parallel positions among similar organizations. The authors of the letter state:

In my professional opinion, for the position of Administrative Analyst and positions with the same or similar level of responsibility and duties, in the construction and building restoration fields, it is required to possess a minimum of a Bachelor's degree in Business Administration, Accounting Management or equivalent. . . . At least over 90% of individuals working in such capacity possess a bachelor's degree in one of the above fields or in a closely related field.

These letters do not establish that these organizations are similar to the petitioner nor that they these organizations have parallel positions. Further, 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).

No evidence is in the record that would show the proffered position is 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 top executives or general managers, positions that do not require a bachelor's degree in a specific specialty.

Nor is there evidence in the record to establish the third criterion at 8 C.F.R. § 214.2(h)(4)(iii)(A): that the petitioner normally requires a degree or its equivalent for the position. The petitioner provided resumes and diplomas from six employees who possess bachelor's degrees; however, the petitioner does not indicate that these employees have been employed in the proffered position. The submitted organizational chart indicates that these employees hold different positions than the proffered position.

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 "the duties described above are quite complex, as the candidate must perform several tasks, always under the supervision of the [p]resident of [the petitioner]. . . . The position is not clerical in nature and involves tasks not limited to one area, but to several areas, all related and all necessary for the day-to-day operations of the [p]etitioner. Therefore, such level of responsibility can only be performed by an individual with advanced knowledge acquired through university level studies." Although the petitioner stated that the beneficiary analyzes existing procedures in order to design and implement new cost effective administration programs at all levels, the record does not contain evidence establishing what the procedures are or how this duty requires a degree

in a specific specialty as required by the statute. It cannot be concluded 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. Once again, the *Handbook* reveals that the duties of the proffered position are performed by top executives or general managers, occupations 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.

Additionally, the director noted that even had the duties of the position been found to qualify it as a specialty occupation, the beneficiary does not appear to be qualified for the position. Because the position is not a specialty occupation, the beneficiary's qualifications are not relevant.

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.