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U.S. Citizenship
and Immigration
Services

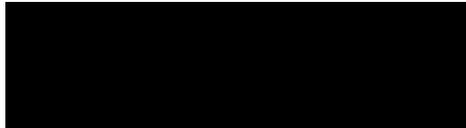


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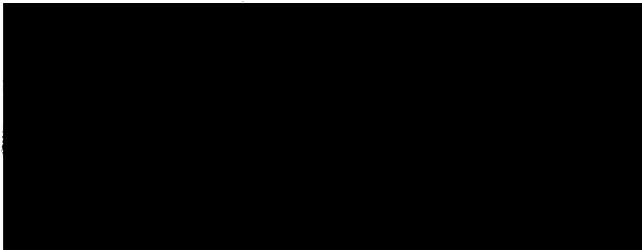
FILE: WAC 02 162 52367 Office: CALIFORNIA SERVICE CENTER Date:

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 wholesaler and importer of fabrics that seeks to employ the beneficiary as a human resources specialist. 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. On appeal, counsel states that the proffered position qualifies as a specialty occupation and submits 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) 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 a human resources specialist. Evidence of the beneficiary's duties includes: the Form I-129; the attachments accompanying the Form I-129; the company support letter; and the petitioner's response to the director's request for evidence. According to this evidence, the beneficiary would perform duties that entail recruiting and interviewing possible contracted workers and employees; designing and preparing testing for job applicants; serving as a liaison between management and the labor force; studying employee performance and making recommendations to management; devising a plan to use the skills of employees effectively; interviewing and meeting with employees and management to gather data about the company's policies and procedures about working conditions. The petitioner stated that for entry-level positions, employers generally seek college graduates, and because of the diverse duties and level of responsibility, the educational majors vary from human resources, personnel administration, and industrial labor relations to technical or business and even well-rounded liberal arts. According to the petitioner, the beneficiary's extensive background in behavioral science more than satisfies the position's requirements.

The director determined that the proffered position was not a specialty occupation. The director stated that the submitted job postings were from companies that differed in nature from the petitioning entity; thus, the postings could not establish that the petitioner's degree requirement is common to the industry in parallel positions among similar organizations. The director found no evidence was submitted about the petitioner's alleged business expansion. The director stated that it is not sufficient for a petitioner to merely state that it will employ a person to perform duties that are characteristic of those found in a specialty occupation; there must be a reasonable and credible offer of employment that is consistent with the needs of the petitioning entity. The director concluded by stating that the evidence in the record did not demonstrate that there is a bona fide position that is a specialty occupation.

On appeal, counsel states that the regulations set forth in 8 C.F.R. § 214.2(h)(4) do not require a reasonable and credible offer of employment, the need for a particular position, or evidence that hiring a certain position is a routine practice. Counsel claims that the submitted job postings are relevant in establishing that companies require a bachelor's degree for a human resource specialty because the court decision in *Young China Daily vs. Chappell*, 742 F. Supp. 552 (N.D. Cal., 1989) states that the size of a petitioning entity is not relevant in determining whether a position qualifies as a specialty occupation. Counsel claims that the relevancy of a petitioner's size may matter in determining whether a full-time employee is needed; counsel states that the proffered position is part-time. Counsel contends that the proffered position's duties and requirements are normal and customary for any organization inasmuch as a human resource specialist employed by General Electric would require the same techniques and knowledge as a human resource specialist with an apparel wholesaler with three employees. Counsel submits evidence about the petitioner's expansion plans and additional job postings.

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 first 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.Min. 1999)(quoting *Hird/Blaker Corp. v. Slattery*, 764 F. Supp. 872, 1102 (S.D.N.Y. 1991)).

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. The AAO routinely consults the *Handbook* for its information about the duties and educational requirements of particular occupations.

As previously mentioned, 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 *Handbook* discloses that a baccalaureate degree in a specific specialty is not required for a human resources, training, and labor relations specialist or manager. The *Handbook* reports:

Because of the diversity of duties and levels of responsibility, the educational backgrounds of human resources, training, and labor relations managers and specialists vary considerably. In filling entry-level jobs, many employers seek college graduates who have majored in human resources, personnel administration, or industrial and labor relations. Other employers look for college graduates with a technical or business background or a well-rounded liberal arts education.

Based on the *Handbook's* information, employers do not require a bachelor's degree in a specific specialty for a human resources, training, or labor relations specialist or manager. 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 particular position, human resources specialist.

Counsel's contention that the proffered position's duties and requirements are normal and customary for any organization because a human resource specialist employed by General Electric would require the same techniques and knowledge as a human resource specialist with a small apparel wholesaler is not persuasive. As already discussed, the *Handbook* reveals that the beneficiary's duties are performed by a human resources, training, or labor relations specialist or manager, occupations that do not require a bachelor's degree in a specific specialty.

The AAO notes that the submitted letter on appeal from the president of Design Textiles 26, Inc. states that the petitioner is engaging in the importation of finished garments, and this is why “Blue Ocean Imports, Inc. is set up and being introduced in order to handle import transactions of this said finished garments in China.” The form “Statement by Domestic Stock Corporation” reveals that the petitioner’s president is also the chief executive officer of Blue Ocean Imports, Inc. The AAO cannot determine how this evidence on Blue Ocean Imports, Inc. relates to the petitioner’s expansion plans; the petitioner needed to clearly outline the relationship of the two companies.

To establish the second criterion - that a specific degree requirement is common to the industry in parallel positions among similar organizations – the record of proceeding contains postings. None of the postings represent companies that are similar in nature to the petitioner, a small wholesaler and importer of fabrics. Jack in the Box is a restaurant; Siemens Energy and Automation, Inc. is a large manufacturer; City of Springfield is a government entity; Lutheran Family and Children’s Services provides services to families; and Uline markets shipping, packaging, and warehouse materials. The postings, therefore, fail to establish that a specific degree requirement is common to the industry in parallel positions among similar organizations.

Counsel refers to the court decision in *Young China Daily* to claim that the submitted job postings are relevant in establishing that organizations require a bachelor’s degree for a human resource specialty. The regulation at 8 C.F.R. § 214.2(h)(4)(iii)(A)(2) plainly indicates that a specific degree requirement must be common to the industry in parallel positions among *similar organizations*. Thus, counsel’s reference to the court’s decision in *Young China Daily* is not persuasive in establishing the relevancy of the job postings.

No evidence in the record shows that 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 beneficiary’s duties are performed by a human resources, training, or labor relations specialist or manager, occupations 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.

There is no evidence in the record to establish the fourth criterion at 8 C.F.R. § 214.2(h)(4)(iii)(A): 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 in a specific specialty. As previously discussed, the *Handbook* indicates that employers do not require a baccalaureate degree in a specific specialty for a human resources, training, and labor relations specialist or manager.

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.