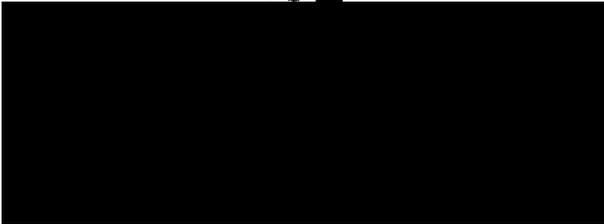




U.S. Citizenship
and Immigration
Services

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Dr

FILE: WAC 04 019 51187 Office: CALIFORNIA SERVICE CENTER Date: NOV 02 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

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 clothing manufacturer that seeks to employ the beneficiary as an industrial production 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 because the proffered position is not a specialty occupation. On appeal, counsel submits a brief and previously submitted 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 an industrial production manager. Evidence of the beneficiary's duties includes: the Form I-129; the attachments accompanying the Form I-129; the petitioner's 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 training and supervising six production employees, a machine technician, and two designers; scheduling production and staffing; handling quality and inventory control; and coordinating production activities of other departments. For the proposed position the petitioner requires a bachelor's degree, or its equivalent, in management, and experience using the petitioner's machines.

The director stated that the proposed position appears to be a general managerial position that does not require professional skills. The director discussed the holding of *Matter of Caron International, Inc.*, 19 I&N Dec. 791 (Comm. 1988), which indicates that general managerial positions are normally not considered professional endeavors requiring specific academic degrees. The director stated that a person employed in a managerial or executive capacity, that supervises employees that are members of specialty occupations, would generally be considered a member of a specialty occupation; and that a managerial or executive position is not a specialty occupation if the position's duties are not of a scope and complexity requiring professional skills; or does not involve supervising employees that are members of specialty occupations. The director stated that the submitted evidence did not indicate that the petitioner normally requires a baccalaureate degree in a specific specialty or that the proposed duties and stated level of responsibility have complexity or authority that is beyond what is normally encountered in the occupational field.

On appeal, counsel states that the Department of Labor's *Occupational Outlook Handbook* (the *Handbook*) reveals that the proposed position is similar to an industrial production manager, which is an occupation requiring a baccalaureate degree. Counsel asserts that the submitted letter from the petitioner, employers in the industry, and Dr. Jonatan Jelen of Mercy College attest that the proposed position requires a baccalaureate degree, or its equivalent; and that the beneficiary is qualified to perform the proposed position. According to counsel, a non-specialist cannot perform the proposed duties of fixing SANTONI machines, designing patterns and software programs for designers, and implementing newer and better technology for use in the industry. Counsel states that the petitioner had previously employed someone as an industrial production manager; but could not locate the person to establish his credentials. Counsel asserts that the industry's norm is to require a baccalaureate degree for the proposed position. According to counsel, the beneficiary's prior employer is now defunct; thus, the beneficiary cannot obtain a letter confirming his employment there.

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.Minn. 1999)(quoting *Hird/Blaker Corp. v. Sava*, 712 F. Supp. 1095, 1102 (S.D.N.Y. 1989)).

The AAO finds that the proposed position resembles an industrial production manager; and that the *Handbook* indicates that this occupation does not require a baccalaureate degree in a specific specialty. The AAO sets forth here the *Handbook's* text:

Because of the diversity of manufacturing operations and job requirements, there is no standard preparation for this occupation. However, a college degree is required, even for those who have worked their way up through the ranks. Many industrial production managers have a college degree in business administration, management, industrial technology, or industrial engineering. Others have a master's degree in industrial management or business administration (MBA). Some are former production-line supervisors who have been promoted. Although many employers prefer candidates with a business or engineering background, some companies hire well-rounded liberal arts graduates.

As production operations become more sophisticated, increasing numbers of employers are looking for candidates with graduate degrees in industrial management or business administration. Combined with an undergraduate degree in engineering, either of these graduate degrees is considered particularly good preparation. Managers who do not have graduate degrees often take courses in decision sciences, which provide them with techniques and mathematical formulas that can be used to maximize efficiency and improve quality. Companies also are placing greater importance on a candidate's interpersonal skills. Because the job requires the ability to compromise, persuade, and negotiate, successful production managers must be well-rounded and have excellent communication skills.

The *Handbook* reports that employers accept baccalaureate degrees in the liberal arts and business administration for an industrial engineer position. The AAO notes that *Matter of Michael Hertz Assocs.*, 19 I&N Dec. 558, 560 (Comm. 1988)¹ indicates that a baccalaureate degree in the liberal arts or business

¹ *Matter of Michael Hertz Assocs.* conveys that for a position to qualify as a specialty occupation:

A petitioner must establish that the position realistically requires knowledge, both theoretical and applied, which is almost exclusively obtained through studies at an institution of higher learning. The depth of knowledge and length of studies required are best typified by a degree granted by such institution at the baccalaureate level. It must be demonstrated that the position requires a precise and specific course of study which 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 of generalized title, such as

administration, without further specification, are not disciplines that would qualify a position as a specialty occupation. Thus, the proposed position, which is similar to an industrial production manager, would not qualify as a specialty occupation.

The AAO finds unpersuasive counsel's assertion that the submitted letters from employers in the industry and Dr. [REDACTED] of Mercy College attest that the proposed position requires a baccalaureate degree, or its equivalent, in a specific specialty such as management. The letters from Dr. [REDACTED] and employers in the industry discuss the beneficiary's qualifications for the proposed position; they do not state that a baccalaureate degree in a specific specialty, such as management, is required for the proposed position.

No evidence establishes the first alternative prong at 8 C.F.R. § 214.2(h)(4)(iii)(A)(2) - that a specific degree requirement is common to the industry in parallel positions among similar organizations.

The petitioner has not satisfied the second alternative prong at 8 C.F.R. § 214.2(h)(4)(iii)(A)(2) as no evidence in the record shows the proffered position as so complex or unique that it can be performed only by an individual with a degree. The petitioner portrays the beneficiary as training and supervising six production employees, a machine technician, and two designers; scheduling production and staffing; and coordinating production activities of other departments. These duties, however, do not convey a complexity or uniqueness that demonstrates that the proposed position requires the knowledge that is gained from attaining a baccalaureate degree in a specific specialty such as management. In addition, the *Handbook* explains that employers do not require a baccalaureate degree in a specific specialty for an industrial production manager.

No evidence in the record establishes the criterion at 8 C.F.R. § 214.2(h)(4)(iii)(A)(3): that the petitioner normally requires a degree or its equivalent for the position.

To satisfy the regulation at 8 C.F.R. § 214.2(h)(4)(iii)(A)(4), the petitioner must establish that the nature of the specific duties is so specialized and complex that the knowledge required to perform them is usually associated with the attainment of a baccalaureate or higher degree in a specific specialty. The AAO notes that on appeal counsel describes the beneficiary as fixing the complex SANTONI machines, designing patterns and software programs for designers, and implementing newer and better technology for use in the industry. However, the unsupported statements of counsel on appeal or in a motion are not evidence and thus are not entitled to any evidentiary weight. See *INS v. Phinpathya*, 464 U.S. 183, 188-89 n.6 (1984); *Matter of Ramirez-Sanchez*, 17 I&N Dec. 503 (BIA 1980). No evidence in the record, including the submitted documentation about the Santoni machines, shows that the nature of the proposed duties is so specialized and complex, requiring knowledge that is usually associated with the attainment of a baccalaureate degree in management. Furthermore, the AAO has relayed that the *Handbook* reports that an industrial production manager does not require a baccalaureate degree in a specific specialty such as management. Accordingly, the petitioner fails to establish this last criterion at 8 C.F.R. § 214.2(h)(4)(iii)(A).

business administration or liberal arts, without further specification, does not establish eligibility.

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 on this ground.

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.