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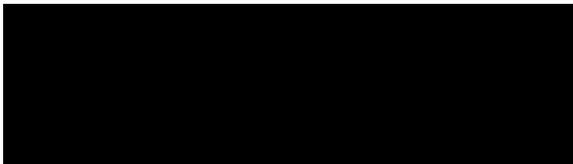
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FILE: EAC 03 210 51180 Office: VERMONT SERVICE CENTER Date: NOV 10 2005

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 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 operates as a gasoline retailer and convenience store operator with five employees and seeks to employ the beneficiary as a human resource 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, the petitioner 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 a human resources manager. 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 selecting employees to fill vacant positions; planning and conducting new employee orientation to foster positive attitudes toward company goals; contracting independent contractors-professional for particular periods of relationship within specific working conditions, such as IT specialists, electricians, plumbers, pump technicians and other personnel engaged in technical support of the gas station and convenience store; coordination of activities or personnel engaged in daily operations of the gas station and convenience store; keeping records of personnel transactions, such as hires, transfers, promotions and terminations; conducting screening interviews, checking references and background, evaluating applicants' qualifications; performing wage survey within labor market to determine competitive wage rate; preparing the budget of personnel operations, using computer terminal; preparing personnel distribution reports, organization and flow charts, job descriptions, table of job relationships and worker trait analysis, records of insurance coverage. The petitioner indicated that the position required an individual with a minimum of a bachelor's degree or the equivalent as well as the human resources experience and background.

The director issued a request for additional information and noted that the evidence provided in the initial petition was reviewed but it was not evident that the position requires a specialty degree. The director noted that the Department of Labor's *Occupational Outlook Handbook* (the *Handbook*) indicated that "because of the diversity of duties and level of responsibility, the educational backgrounds of human resources, training and labor relations specialists and manager vary considerably . . . many employers prefer applicants who have majored in human resources." The director requested evidence to demonstrate that the position meets one of the above listed criteria to qualify as a specialty occupation. The director had concerns whether or not the beneficiary was coming to the United States to perform services in a specialty occupation, and requested additional evidence to establish that the petitioner can sustain an employee performing duties at the level required for consideration as a specialty occupation. The director noted that such evidence could include a detailed position description; documentation of other individuals that are currently or were in the proffered position or similar position; job description of the majority of the positions in the company; or evidence showing that a baccalaureate degree in the beneficiary's specific field of study is a standard minimum requirement for the job offered.

The petitioner responded and submitted an opinion letter from a professor of business, management, marketing and related fields in the Lubin Graduate School of Business at Pace University, in New York. The petitioner submitted internet job postings for the position of human resources manager. Additionally the petitioner submitted a letter from its competitors. The petitioner submitted photographs of its business and an organizational chart indicating the following personnel: president, operations/human resources manager; station manager, shift manager, station attendant, and convenience store clerk.

The director did not classify the offered position as a specialty occupation. The director referred to the evidence submitted by the petitioner and determined that the proffered position was not a specialty occupation. The director determined that the submitted internet job postings and opinion letter did not establish that the degree requirement is common to the industry in parallel positions among similar organizations. The director did not find that the record contained sufficient documentation to conclude that the petitioner normally requires a degree for the position. The director noted that the position title when

examined in the context of the information provided concerning the capacity and nature of the petitioner did not serve to demonstrate that the preponderance of the beneficiary's job duties will be so complex that they could be considered professional in nature. The director found that the petitioner had not established that the day-to-day activities of a human resources manager in the company would require the individual to possess a theoretical and practical application of a body of highly specialized knowledge. The director determined that the duties of the position are not so specialized and complex that the knowledge required to perform the duties is usually associated with the attainment of a bachelor's degree.

On appeal, the petitioner asserts it has over ten locations and that it is adding two locations every year. The petitioner explains that the president of the company has been acting as operations and human resources manager. The petitioner contends that there are at least five employees at each of its locations. The petitioner asserts that the beneficiary conforms with the requirements of the petitioner.

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 in a specific specialty is the normal minimum requirement for entry into the particular position; a specific 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. 872, 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.

The AAO routinely consults the *Handbook* for its information about the duties and educational requirements of particular occupations. The *Handbook* reveals that the beneficiary's duties are most similar to those of a human resources manager, an occupation that is not a specialty occupation. As discussed by the director, the *Handbook* does not indicate that a baccalaureate degree is the normal minimum requirement for entry into the occupation.

Based on the evidence in the record, the AAO cannot conclude that a baccalaureate or higher degree or its equivalent in a specific specialty is the normal minimum requirement for entry into the particular position, a human resource manager of a gas station and convenience store.

There is no evidence in the record to establish the second criterion - that a specific degree requirement is common to the industry in parallel positions among similar organizations or that the proffered position is so complex or unique that only an individual with a degree can perform it. The petitioner submitted internet job

postings for positions at various companies. The petitioner has not submitted evidence to establish that the petitioner is similar in scope and size to the companies in the postings. The postings do not indicate that a bachelor's degree in a specific specialty is required for the positions. Six of the postings indicated that a bachelor's degree is required without indicating a specific specialty, which supports the *Handbook's* conclusion that a degree in a specific specialty is not required for the occupation. Additionally, the petitioner submitted a professional position evaluation. The author of this letter indicated that it is a general industry standard practice for a firm engaged in significant expansion to hire a professional level human resource manager (i.e. a manager who possesses a bachelor's-level education and/or professional background in business administration, human resources management, or a related field.) The AAO notes that the author of the letter does not provide any independent and verifiable evidence to support his conclusions. The author does not indicate that he reviewed the position description and related the position to the specific business operations of the petitioner. The author indicated that he was advised that the petitioner was undergoing rapid expansion. Additionally, the author has not documented his expertise in the field of the proffered position, human resources management. The AAO may, in its discretion, use as advisory opinion statements submitted as expert testimony. However, where an opinion is not in accord with other information or is in any way questionable, the AAO is not required to accept or may give less weight to that evidence. *Matter of Caron International*, 19 I&N Dec. 791 (Comm. 1988). Therefore, the internet job posting and opinion letter do not establish that a specific degree requirement is common to the industry in parallel positions among similar organizations or that the proffered position is so complex or unique that only an individual with a degree can perform it.

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. It is a new 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. The petitioner asserts that it operates ten locations with five employees at each location, yet submitted no evidence of any employees or the various locations. Going on record without supporting documentary evidence is not sufficient for purposes of meeting the burden of proof in these proceedings. *Matter of Soffici*, 22 I&N Dec. 158, 165 (Comm. 1998) (citing *Matter of Treasure Craft of California*, 14 I&N Dec. 190 (Reg. Comm. 1972)). Additionally, the petitioner indicated one location and five employees on the Form I-129. It is incumbent upon the petitioner to resolve any inconsistencies in the record by independent objective evidence. Any attempt to explain or reconcile such inconsistencies will not suffice unless the petitioner submits competent objective evidence pointing to where the truth lies. *Matter of Ho*, 19 I&N Dec. 582, 591-92 (BIA 1988). Doubt cast on any aspect of the petitioner's proof may, of course, lead to a reevaluation of the reliability and sufficiency of the remaining evidence offered in support of the visa petition. *Matter of Ho*. The petitioner has not related the listed duties to its business beyond what is normally encountered in the occupational field of a human resources manager. The petitioner has not shown, in relation to its business, that the duties of the proffered position are so complex or unique that they can be performed only by an individual with a degree in a specific specialty. The proposed duties and stated level of responsibility failed to establish that the position offered met any of the required criteria for classification as a specialty occupation. Again, the evidentiary record depicts the duties of the proffered position as a human resources manager, an occupation that does not require a 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.

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.