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Washington, DC 20529



U.S. Citizenship and Immigration Services

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FILE: WAC 02 276 54794 Office: CALIFORNIA SERVICE CENTER Date: **APR 03 2006**

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.

*for Michael T. Kelly*  
Robert P. Wiemann, Director  
Administrative Appeals Office

**DISCUSSION:** The director of the California 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 designer and manufacturer of lighting products, with 18 employees as of the date of filing. It seeks to hire the beneficiary as a human resources manager 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 he determined the record did not establish the proffered position as a specialty occupation.

The record of proceeding before the AAO contains: (1) Form I-129 and supporting documentation; (2) the director's request for evidence; (3) counsel's response to that request; (3) the director's denial letter of December 26, 2002; (4) Form I-290B, received on February 5, 2003 and treated by the director as a motion to reopen/reconsider; (5) the director's reopening of the petition; (6) the director's denial letter dated April 15, 2004; and (7) Form I-290B, with a letter from counsel, and new and previously submitted documentation. The AAO reviewed the record in its entirety before reaching its decision.

The issue before the AAO is whether the proffered position qualifies as a specialty occupation. To meet its burden of proof in this regard, the petitioner must establish that the job it is offering to the beneficiary meets the following statutory and regulatory requirements.

Section 214(i)(1) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1184(i)(1) defines the term "specialty occupation" as one 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.

The term "specialty occupation" is further defined at 8 C.F.R. § 214.2(h)(4)(ii) as:

An occupation which requires theoretical and practical application of a body of highly specialized knowledge in fields of human endeavor including, but not limited to, architecture, engineering, mathematics, physical sciences, social sciences, medicine and health, education, business specialties, accounting, law, theology, and the arts, and which requires the attainment of a bachelor's degree or higher in a 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 above criteria to mean not just any baccalaureate or higher degree, but one in a specific specialty that is directly related to the proffered position.

To determine whether a particular job qualifies as a specialty occupation, CIS does not simply rely on a position’s title. The specific duties of the proffered position, combined with the nature of the petitioning entity’s business operations, are factors to be considered. CIS must examine the ultimate employment of the alien, and determine whether the position qualifies as a specialty occupation. *Cf. Defensor v. Meissner*, 201 F. 3d 384 (5<sup>th</sup> Cir. 2000). The critical element is not the title of the position nor an employer’s self-imposed standards, but whether the position actually requires the theoretical and practical application of a body of highly specialized knowledge, and the attainment of a baccalaureate or higher degree in the specific specialty as the minimum for entry into the occupation, as required by the Act.

The petitioner states that it is seeking the beneficiary’s services as a human resources manager. Evidence of the beneficiary’s duties includes: the Form I-129; the petitioner’s September 4, 2002 letter in support of the petition; and its December 9, 2002 response to the director’s request for evidence.

As described by the petitioner, the proffered position would require the beneficiary to:

- Recruit, interview and select employees to fill vacant positions that may arise, requiring the management of outside recruitment agencies, headhunters, requisition processing and reporting, and the handling of screening procedures;
- Plan, draft, submit, and update a policy manual to be given to the petitioner’s staff concerning insurance coverage, medical plans, pension plans, personnel transactions, company policies, hirings, promotions, transfers, termination information, expected job behavior, unemployment and disability information;
- Develop and conduct individual and group training programs, including lectures, demonstrations, meetings, conferences and workshops;
- Formulate policies related to recruitment, testing, placement, classification, orientation, benefits and industrial relations matters;
- Plan, direct, supervise and coordinate the work activities of subordinate staff;
- Analyze compensation policies, government regulations and prevailing wage rates in order to develop competitive compensation plans for prospective staff;
- Prepare a budget for anticipated personnel operations and a personnel forecast to project future employment needs;

- Maintain all employee records and be responsible for compiling statistical reports on personnel-related data, including hirings, transfer performance appraisals and absenteeism rates; and
- Analyze statistical data to identify and determine the causes of personnel problems and develop recommendations to improve the petitioner's personnel policies and practices.

In response to the director's request for evidence, the petitioner clarified the beneficiary's supervisory duties, indicating that it did not currently employ the subordinate staff who would be supervised by the beneficiary, but anticipated hiring an administrative support specialist once the beneficiary was on staff.

In his final denial of the instant petition, the director questioned whether the beneficiary would perform the duties outlined above, noting that the petitioner had failed to establish that it had the employment-related benefit plans that would be discussed in the policy manual to be developed by the beneficiary. The director further found that the petitioner, in response to his initial denial notice, had submitted what appeared to be a copy of the policy manual that it had previously indicated would be drafted by the beneficiary. The director also concluded that the record contained no evidence to support the petitioner's claim of a significant business expansion that would necessitate its hiring of additional staff. Moreover, he concluded that the Quarterly Wage Reports submitted by the petitioner established it as employing no more than three full-time employees, rather than the 18 individuals indicated at the time of filing.

On appeal, counsel submits evidence to rebut the director's finding that the petitioner has not established that the beneficiary would perform as a human resources manager or that it is experiencing significant growth in its business, including: a copy of the petitioner's health plan covering five of the individuals identified on the previously submitted Quarterly Wage Reports; copies of its 2001 and 2002 tax returns showing an increase in revenue; copies of real estate listings; a copy of the petitioner's profit-sharing plan; a copy of the petitioner's draft policy handbook; a copy of a resume on an employment agency letterhead; a copy of an undated newspaper job announcement published by the petitioner advertising for an executive secretary; a generic employment application and employment-related forms; and brochures advertising training opportunities.

However, while the material covering the petitioner's health plan establishes that it offers such a plan, only five individuals are listed as covered by the policy, not the 18-20 employees claimed by the petitioner. Accordingly, this evidence again raises questions about the number of individuals who are employed full-time by the petitioner and who among them would be eligible for the human resources programs to be administered by the beneficiary.

The submission of the petitioner's draft policy handbook undermines the petitioner's claim at the time of filing that one of the beneficiary's duties would be to plan and draft such a handbook. While counsel states that the handbook will need to be "supplemented and acted upon" by the beneficiary, that is not the duty described by the petitioner at the time of filing.

The tax returns, real estate materials, resume, and single newspaper advertisement for an executive secretary do not demonstrate that the petitioner, at the time of filing, was experiencing significant business growth.

While the tax returns indicate increased revenues from 2001 to 2002,<sup>1</sup> they are insufficient to establish that the petitioner, at the time of filing, was undergoing a business expansion that would require the hiring of “large numbers” of additional staff. Counsel’s contention that the petitioner provides such evidence is undermined by the Quarterly Wage Reports submitted by the petitioner in response to the director’s request for evidence. The Quarterly Wage Report for the quarter ending December 31, 2001 indicates that the petitioner then employed 16 individuals in some capacity; the Quarterly Wage Report for the quarter ending September 30, 2002 shows a total of 20 such employees. Accordingly, the petitioner’s 2001-2002 revenue increase was not accompanied by the hiring of large numbers of additional staff and, therefore, may not serve as proof of the petitioner’s significantly increased staffing needs. Moreover, the AAO notes that the record on appeal includes none of the documentation that would normally precede the expansion of business operations, e.g., business plans, loan agreements, lease agreements, etc. Instead, counsel has submitted a group of real estate listings and a resume printed on employment agency letterhead, neither of which is connected to the petitioner’s business expansion by the record. As a result, the real estate materials are not, as counsel contends, proof of the petitioner’s efforts to acquire larger premises, nor is the resume evidence that the petitioner has sought the services of an employment agency as part of its efforts to expand its business. The single, undated job announcement for an executive secretary, while advertised by the petitioner, is insufficient to establish the petitioner’s expanding operations. Going on record without supporting documentary evidence is not sufficient for the 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)). Neither do the assertions of counsel constitute evidence. *Matter of Obaighena*, 19 I&N Dec. 533, 534 (BIA 1988); *Matter of Laureano*, 19 I&N Dec. 1 (BIA 1983); *Matter of Ramirez-Sanchez*, 17 I&N Dec. 503, 506 (BIA 1980).

While the record does not establish the significant business expansion claimed by the petitioner or the number of its full-time versus part-time employees, it does not support a finding that the petitioner would not employ the beneficiary to perform the duties of the proffered position, with two exceptions – the drafting of the petitioner’s employment handbook and the supervision of subordinate staff. As previously discussed, the petitioner has submitted a draft copy of its handbook. As the handbook already exists in draft form, this particular duty will not be considered by the AAO. Neither will it consider the duty that assigns the beneficiary supervisory responsibility for subordinate staff. In response to the director’s request for evidence, the petitioner indicated that it did not currently employ any subordinate staff, but would hire an administrative support specialist after the beneficiary was in place. However, a petitioner must establish eligibility at the time it files the nonimmigrant visa petition. Facts that come into being subsequent to the filing of a petition cannot be considered when determining whether the proffered position is a specialty occupation. *See Matter of Michelin Tire Corp.*, 17 I&N Dec. 248 (Reg. Comm. 1978). Therefore, the beneficiary’s prospective supervisory responsibilities will not be considered.

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<sup>1</sup> The AAO notes that in its letter of support and the Form I-129, the petitioner stated gross revenues of \$500,000, rather than the \$5.4 million indicated on its uncertified tax return. It assumes that the lower figure cited by the petitioner is the result of an inadvertent error and accepts its tax returns as the accurate representation of its annual income.

The AAO now turns to an examination of the duties of the proffered position, as amended. To make its determination whether that employment qualifies as a specialty occupation, the AAO turns 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; and 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 considered by the AAO when determining these criteria include: whether the Department of Labor's *Occupational Outlook Handbook (Handbook)*, on which the AAO routinely relies for the educational requirements of particular occupations, reports 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)).

Based on the petitioner's description of the proffered position, the AAO finds the proffered position to be that of a human resources manager. The position's duties fall directly within the occupational title of human resources, training and labor relations managers and specialists discussed in the 2006-2007 edition of the *DOL Handbook*:

Attracting the most qualified employees and matching them to the jobs for which they are best suited is important for the success of any organization . . . . In the past, [human resources, training, and labor relations managers and specialists] have been associated with performing the administrative functions of an organization, such as handling employee benefits questions or recruiting, interviewing, and hiring new personnel in accordance with policies and requirements that have been established in conjunction with top management. Today's human resources workers manage these tasks and, increasingly, consult top executive regarding strategic planning. They have moved from behind-the-scenes staff work to leading the company in suggesting and changing policies . . . .

In an effort to enhance morale and productivity, limit job turnover, and help organizations increase performance and improve business results, they also help their firms effectively use employee skills, provide training and development opportunities to improve those skills, and increase employees' satisfaction with their jobs and working conditions. Although some jobs in the human resources field require only limited contact with people outside the office, dealing with people is an essential part of the job.

In a small organization, a *human resources generalist* may handle all aspects of human resources work, and thus require an extensive range of knowledge. The responsibilities of human resources generalists can vary widely, depending on their employer's needs . . . .

The educational backgrounds that may qualify an individual for a career in human resources management are also diverse. As indicated by the *Handbook*:

The educational backgrounds of human resources, training, and labor relations managers and specialists vary considerably because of the diversity of duties and levels of responsibility. In filling entry-level jobs, many employers seek college graduates who have majored in human resources, human resources 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.

The duties given to entry-level workers will vary, depending on whether the new workers have a degree in human resource management, have completed an internship, or have some other type of human resources-related experience. Entry-level employees commonly learn the profession by performing administrative duties – helping to enter data into computer systems, compiling employee Handbooks, researching information for a supervisor, or answering the phone and handling routine questions. Entry-level workers often enter formal or on-the-job training programs in which they learn how to classify jobs, interview applicants, or administer employee benefits. They then are assigned to specific areas in the human resources department to gain experience. Later, they may advance to a managerial position, overseeing a major element of the personnel program – compensation or training, for example.

While the *Handbook's* discussion notes that many employers require job candidates for human resources positions to hold degrees, it does not state that a degree requirement is normally required for entry into the profession. It further observes that those employers who do require job candidates to hold degrees do not require those degrees to be in a field of study directly related to their employment, as required for classification as a specialty occupation. The *Handbook's* discussion of entry-level human resources employment also appears to indicate that some employers are willing to fill entry-level positions based on candidates' experience. Therefore, the AAO concludes that the proffered position of human relations manager does not impose a degree requirement on the beneficiary. Accordingly, the proffered position may not be established as a specialty occupation under the first criterion at 8 C.F.R. § 214.2(h)(4)(iii)(A) – a baccalaureate or higher degree or its equivalent is normally the minimum requirement for entry into the particular position.

In reaching its decision, the AAO has considered the range of materials submitted by the petitioner to establish that individuals seeking employment as human resources managers are required to hold baccalaureate degrees. At the time of filing, counsel submitted more than 30 Internet employment advertisements from a range of businesses across the United States to establish that employers normally require human resources managers to hold baccalaureate degrees. While the AAO notes that virtually all of the announcements indicate a degree requirement for the employment advertised, they generally do not appear to describe entry-level employment, as specified by the first criterion. Nor do most of the announcements indicate that the employer requires a degree in a directly related field, as required for classification as a specialty occupation. Of the 29 advertisements requiring a baccalaureate degree, 19 do not specify the field in which the degree must be held. Further, these announcements do not carry the authority of the *Handbook's* finding that the occupation of human resources managers does not impose a degree

requirement on individuals seeking entry-level employment. The *Handbook*, which offers an overview of national hiring practices, draws on personal interviews with individuals employed in the occupation or from websites, published training materials and interviews with the organizations granting degrees, certification or licenses in the field, to reach its conclusions regarding the nation's employment practices. Accordingly, the Internet job advertisements submitted by counsel do not establish the proffered position as a specialty occupation under the first criterion.

In response to the director's request for evidence, counsel, in addition to submitting the *Handbook's* discussion of human resources managers noted above, provided evidence indicating that the DOL's *Occupational Information Network (O\*Net)* assigns a JobZone rating of 4 to the occupation of human resources managers, i.e., requiring work experience plus a bachelor's or higher degree. He also submitted material from the California Occupational Guide, which states that an entry-level human resources position normally requires a four-year college degree in fields ranging from business administration to industrial relations or sociology. Counsel also provided statements from a professor of labor economics at the University of California, Los Angeles and the president of a job placement agency in Los Angeles, both of whom indicate that human resources employment of the type described by the petitioner would impose a degree requirement on the beneficiary. The professor indicates that degrees in business administration, communications, business management or within a social science field would be appropriate for human resources employment. The employment agency head states that the vast majority of the individuals he has placed as human resources managers have held degrees in areas such as business administration, human resources, liberal arts, social sciences and the scientific fields of the industry in which they would be employed. These materials do not, however, establish the proffered position as a specialty occupation under the first criterion.

The *O\*Net* is not a persuasive source of information as to whether a job requires the attainment of a baccalaureate or higher degree (or its equivalent) in a specific specialty. It provides only general information regarding the tasks and work activities associated with a particular occupation, as well as the education, training, and experience required to perform the duties of that occupation. The California Occupational Guide provides only statewide information about job duties, working conditions, employment outlook, wages, benefits and entrance requirements and training. Accordingly, it, like the Internet job advertisements submitted at time of filing, does not contradict the authority of the *Handbook's* finding that there is no specific degree requirement for human resources managers nationally. The expert opinions provided by counsel, while relevant to these proceedings, are also insufficient to overcome the *Handbook's* information on the educational requirements imposed by employers on human resources managers. Neither is supported by the type of documentation necessary to establish the writer's authority to speak to nationwide hiring practices in this area. Going on record without supporting documentary evidence is insufficient to meet the burden of proof in these proceedings. See *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)).

Moreover, none of the materials indicate a degree requirement in a field directly related to human resources employment, as required for classification as a specialty occupation. The *O\*Net's* JobZone 4 rating does not establish a degree in a specific specialty is required for employment. Neither does the California

Occupational Guide, which indicates that individuals with degrees in business administration, industrial relations, sociology, and liberal arts may qualify for human resources employment. As previously noted, the letters from both the UCLA professor and the placement agency president also state that a broad range of academic backgrounds qualify job candidates for employment as a human resources manager. When a job, like that of human resources manager, can be performed by a range of degrees or a degree of generalized title, without further specification, the position does not qualify as a specialty occupation. *See Matter of Michael Hertz Associates*, 19 I&N Dec. 558 (Comm. 1988). To prove that a job requires the theoretical and practical application of a body of specialized knowledge as required by section 214(i)(1) of the Act, a petitioner must establish that the position requires the attainment of a bachelor's or higher degree in a specialized field of study. CIS interprets the degree requirement at 8 C.F.R. § 214.2(h)(4)(A)(1) to require a degree in a specific specialty that is directly related to the proffered position.

To establish a proffered position as a specialty occupation under the second criterion at 8 C.F.R. § 214.2(h)(4)(iii)(A), a petitioner must prove either 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 it can be performed only by an individual with a degree in the specific specialty. Although the petitioner has not contended that its degree requirement is the norm within its industry, the AAO has, nevertheless, considered whether the Internet job advertisements submitted at the time of filing might satisfy the requirements of the criterion's first prong. It finds, however, that only one of the announcements describes duties that appear parallel to those of the proffered position and that none of them have been published by organizations that can be identified as similar to the petitioner. Accordingly, the record does not establish the proffered position as a specialty occupation on the basis of an industry-wide degree requirement.

Further, the record also fails to demonstrate that petitioner's position qualifies as a specialty occupation under the second prong at 8 C.F.R. § 214.2(h)(4)(iii)(A)(2) – the position is so complex or unique that it can be performed only by an individual with a degree. The petitioner has offered no evidence in this regard. Accordingly, it has not established its position as a specialty occupation under either prong of the second criterion.

The AAO next considers the criteria at 8 C.F.R. §§ 214.2(h)(4)(iii)(A)(3) and (4): the employer normally requires a degree or its equivalent for the position; and 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.

To determine a petitioner's ability to meet the third criterion, the AAO normally reviews the petitioner's past employment practices, as well as the histories, including names and dates of employment, of those employees with degrees who previously held the position, and copies of those employees' diplomas. In the instant case, the petitioner has submitted no evidence to establish its hiring practices with regard to the proffered position. Therefore, the record does not establish the proffered position as a specialty occupation under the requirements at 8 C.F.R. § 214.2(h)(4)(iii)(A)(3).

To qualify a proffered position as a specialty occupation under the fourth criterion at 8 C.F.R. § 214.2(h)(4)(iii)(A), a petitioner must establish that the nature of the position's 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. Therefore to establish the proffered position as a specialty occupation under the fourth criterion, the petitioner must distinguish its duties from those normally performed by human resources managers, employment the *Handbook* has indicated does not require a degree. However, the petitioner's discussion of the proffered position's responsibilities does not indicate that the duties to be performed by the beneficiary would require a greater level of knowledge or skill than that normally possessed by human relations managers. Accordingly, the duties of the proffered position do not set it apart from the work routinely performed by human resources managers and, therefore, do not establish it as a specialty occupation under the requirements of the fourth criterion.

Moreover, the AAO notes that the job postings for the proffered position, submitted in response to the director's request for evidence, state the petitioner's willingness to accept job candidates with a broad range of baccalaureate degrees, including business administration, communications, human resources, liberal studies and the social sciences. As the petitioner has indicated that the duties of the proffered position may be performed by an individual who does not hold a degree in a specialty directly related to human resources, these duties may not be established as so specialized and complex that the knowledge required to perform them is usually associated with the attainment of a baccalaureate degree. As previously noted, when a job can be performed by a range of degrees or a degree of generalized title, without further specification, the position does not qualify as a specialty occupation. *Matter of Michael Hertz Associates*, 19 I&N Dec. 558 (Comm. 1988). To prove that a job requires the theoretical and practical application of a body of specialized knowledge as required by Section 214(i)(1) of the Act, a petitioner must establish that the position requires the attainment of a bachelor's or higher degree in a specialized field of study. For this reason as well, the record does not demonstrate that the petitioner has met the complex and specialized threshold of the fourth criterion.

For the reasons related in the preceding discussion, the record does not establish the proffered position as 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.