



U.S. Citizenship
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Services

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FILE: SRC 04 053 50155 Office: TEXAS SERVICE CENTER Date: APR 12 2006

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 invests and develops real estate. It seeks to employ the beneficiary as a vice president of operations. 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 additional 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 a vice-president of operations. 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: overseeing day-to-day operations of the company, including negotiating, coordinating, and approving suppliers and employees without supervision; selecting and evaluating suppliers and implementing procedures to develop sales targets; maintaining the U.S. company's norms and standards and monitoring processes and procedures for pending issues; conferring with company officials to plan business objectives, develop organizational policies, coordinate functions and operations, and establish responsibilities and procedures to attain objectives; evaluating the performance of the petitioner and its employees. The petitioner seeks to employ the beneficiary who has over 31 years of experience in management and executive positions.

In the denial letter, the director stated that the Department of Labor's *Occupational Outlook Handbook* (the *Handbook*) reports that a top executive such as a vice-president of operations is not required to possess a bachelor's degree in a specific specialty. The director stated that the petitioner's December 9, 2003 letter indicated that it requires a bachelor's degree in business administration, and that the evaluation of the beneficiary's foreign degree equates it to a bachelor's degree in business administration. According to the director, *Matter of Ling*, 13 I&N Dec. 35 (Reg. Comm. 1968) indicates that a bachelor's degree in business administration alone is insufficient to qualify the holder as a member of the professions. The director found the information from the *Occupational Information Network (O*Net)* and the *Dictionary of Occupation Titles (DOT)*, and the evaluation from Dr. [REDACTED] regarding the proposed position, unpersuasive in establishing the proposed position as a specialty occupation.

On appeal, counsel states that information in the *O*Net*, *DOT*, and *Handbook* indicate that the proposed position qualifies as a specialty occupation, and that the regulation at 8 C.F.R. § 214.2(h)(4)(iii)(D) allows for equivalencies. Counsel asserts that the *Handbook* reports that degree designations depend on the industry, and that the real estate investment and development industry would require at least a bachelor's degree (or its equivalent) for a vice-president of operations. Counsel contends that the petitioner never stated a requirement of only a baccalaureate degree in business administration for the proposed position. Counsel discusses Dr. [REDACTED] qualifications, stating that Dr. [REDACTED] established that a vice-president of operations requires a bachelor's degree in business administration or a related field. Counsel asserts that the *Interpreter Releases* (volume 73, number 12, dated March 25, 1996) indicated that the Immigration and Naturalization Service (now CIS) stated "the ability of the credentials evaluator to perform the evaluation should not be challenged if the evaluation was performed by a professional credentials evaluation service." Thus, counsel contends that CIS should accept Dr. [REDACTED] evaluation as it did not contain obvious errors.

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 2006-2007 edition of 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)).

Counsel's reference to and assertions about the relevance of information from the *O*Net* and *DOT* are not persuasive. Neither a specific vocational preparation (SVP) rating nor a Job Zone category indicates that a particular occupation requires the attainment of a baccalaureate or higher degree, or its equivalent, in a specific specialty as a minimum for entry into the occupation. An SVP rating and Job Zone category are meant to indicate only the total number of years of vocational preparation required for a particular position. Neither classification describes how those years are to be divided among training, formal education, and experience, nor specifies the particular type of degree, if any, that a position would require. It is the *Handbook* that the AAO routinely consults for information about the duties and educational requirements of particular occupations.

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.

In its response to the director's request for further evidence, the petitioner expanded the beneficiary's duties, adding items such as: "directing collection and auditing of funds from sale or lease of property"; negotiates mortgage loans; "negotiates with community, business, and public utility representatives to eliminate obstacles to land purchase, development, sale, or lease"; "prepares or directs preparation of statistical abstracts to reveal trends in tax rates in given communities, and proportion of total work force having specified skills"; "supervises staff engaged in such activities as preparing appraisal reports on available land, preparing feasibility studies, showing availability and quality of water resources, mineral deposits, electric power, and labor supply"; "coordinates activities of the company and negotiates with representatives of real estate, private enterprise and industrial organizations, and community leaders to acquire and develop land." In sum, the initial description appeared to have the beneficiary managing internal operations, while the second iteration of the job has the beneficiary managing or directly involved in matters outside of in-house operations. The AAO notes that in the initial job description the beneficiary is described as involved in "negotiations, coordination[,] and approval of suppliers" and that the petitioner does not define the term "suppliers."

The purpose of the request for evidence is to elicit further information that clarifies whether eligibility for the benefit sought has been established. 8 C.F.R. § 103.2(b)(8). When responding to a request for evidence, a petitioner cannot offer a new position to the beneficiary, or materially change a position's title, its level of authority within the organizational hierarchy, or its associated job responsibilities. The petitioner must establish that the position offered to the beneficiary when the petition was filed merits classification as a managerial or executive position. *Matter of Michelin Tire Corp.*, 17 I&N Dec. 248, 249 (Reg. Comm. 1978). If significant changes are made to the initial request for approval, the petitioner must file a new petition rather than seek approval of a petition that is not supported by the facts in the record. The information provided by the petitioner in its response to the director's request for further evidence did not clarify or provide more specificity to the original duties of the position, but rather added new generic duties to the job description. Therefore, the analysis of the proposed position will be based on the job description submitted with the initial petition.

The *Handbook* reveals that the offered position resembles a general and operations manager. It conveys:

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.

A general and operations manager plans, directs, or coordinates operations; plans the use of materials and human resources; formulates policies; handles purchasing, and manages daily operations. The beneficiary's duties are encompassed within these areas. The beneficiary will plan direct, or coordinate company operations by: overseeing day-to-day operations; selecting and evaluating suppliers and implementing procedures to develop sales targets; maintaining norms and standards; monitoring processes and procedures for pending issues; conferring with the petitioner's officials to plan business objectives, develop organizational policies, coordinate functions and operations, and establish responsibilities and procedures to attain objectives; evaluating the performance of the petitioner and its employees.

Counsel asserts that the *Handbook* reports that degree designations depend on the industry, and that the real estate investment and development industry would require at least a bachelor's degree (or its equivalent) for a vice-president of operations. The AAO finds that the *Handbook* describes a top executive, such as a general and operations manager, as not requiring a baccalaureate degree in a specific academic field and that the *Handbook* does not indicate that some industries require a baccalaureate degree in a specific specialty. For top executives, the *Handbook* states:

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.

The *Handbook* continues:

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 *Handbook* explains that general and operations managers are not required to hold a bachelor's degree in a specific specialty and that employers accept degrees in business administration or the liberal arts or promote lower level managers who may not hold degrees. The AAO points out that the case of *Matter of Michael Hertz Assocs., 19 I&N Dec. 558, 560 (Comm. 1988)* conveys that "the requirement of a degree of generalized title, such as business administration or liberal arts, without further specification, does not establish eligibility." Thus, based on the *Handbook's* information and *Matter of Michael Hertz Assocs.*, the offered position, which is similar to that of an operations and general manager, would not require a bachelor's degree in a specific specialty.

Further, with the position offered here, the petitioner provides a generalized outline of the proposed duties. CIS must examine the specific tasks to be performed by the beneficiary to determine whether a position qualifies as a specialty occupation. The petitioner's description of the duties of its position is so generic that it is not possible to identify the tasks and, therefore, whether the position would require a baccalaureate degree in a specific specialty. Without a reliable description of the position's duties, the AAO is unable to determine whether the performance of those duties meets the statutory definition of a specialty occupation - - employment requiring the theoretical and practical application of a body of highly specialized knowledge and the attainment of a bachelor's or higher degree in the specific specialty (or its equivalent) as a minimum for entry into the occupation. As a consequence of this, the AAO finds the petitioner has failed to establish that it has a specialty occupation for which it is seeking the beneficiary's services.

Counsel contends that the regulation at 8 C.F.R. § 214.2(h)(4)(iii)(D) allows for equivalencies. The cited regulation relates to whether the beneficiary is qualified for a specialty occupation. It does not establish whether a position qualifies as a specialty occupation, however.

Based on the evidence in the record and the *Handbook's* information, the petitioner fails to establish the first criterion at 8 C.F.R. § 214.2(h)(4)(iii)(A): that a baccalaureate or higher degree or its equivalent in a specific specialty is the normal minimum requirement for entry into the particular position.

To establish 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, counsel refers to Dr. [REDACTED] evaluation. The AAO finds that the evaluation is not persuasive in establishing the first alternative prong of this criterion. Dr. [REDACTED] asserts that the proposed position requires a baccalaureate degree in "business administration or a related degree." This assertion confirms the *Handbook's* information that top executives

do not hold a baccalaureate degree in a specific specialty as *Matter of Michael Hertz Assocs.* indicates that business administration is considered a generalized field of study. Thus, Dr [REDACTED] evaluation fails to establish 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 is so complex or unique that it can be performed only by an individual with a degree. For the reasons discussed at 8 C.F.R. § 214.2(h)(4)(iii)(A)(1), the petitioner fails to establish that the offered position requires a baccalaureate degree in a specific academic specialty. Thus, the petitioner fails to establish the second alternative prong at 8 C.F.R. § 214.2(h)(4)(iii)(A)(2).

No evidence in the record establishes the regulation 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. As discussed at 8 C.F.R. § 214.2(h)(4)(iii)(A)(1), the petitioner failed to establish the offered position as requiring a baccalaureate degree in a specific specialty. Accordingly, the petitioner fails to establish this last criterion at 8 C.F.R. § 214.2(h)(4)(iii)(A)(4).

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.