

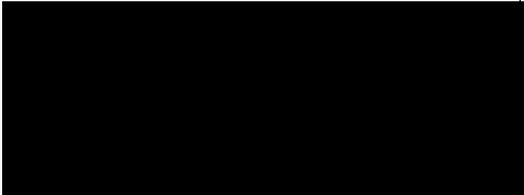
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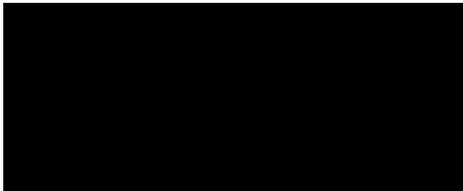


FILE: WAC 03 125 50552 Office: CALIFORNIA SERVICE CENTER Date: JAN 27 2006

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.

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 mortgage brokerage firm that seeks to employ the beneficiary as a human resources 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 finding that 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) the 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 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 recruiting and retaining staff, interviewing, and selecting employees and sub-contracting agents to fill vacancies; organizing, implementing, and maintaining employee and sub-contracting agent benefit programs; preparing and maintaining petitioner and sub-contracting agent contracts; implementing employee and agent training programs; providing dispute resolution; delineating positions, monitoring employee performance, and making recommendations to management; advising on policies, working conditions, and personnel management in order to maintain an effective and efficient workplace and ensure employee satisfaction; maintaining personnel records such as hiring, promotions, transfers, terminations, salaries, and yearly reviews; conducting exit interviews; representing the petitioner at personnel-related hearings and investigations; coordinating office and payroll taxes; and directing clerical support. For the proposed position the petitioner requires a baccalaureate degree in human resources or a related field.

The director stated that a human resources manager often qualifies as a specialty occupation if a company is large, has a human resource department, and the nature of the duties require a degree in human resources or a related field. The director stated that the Department of Labor's *Occupational Outlook Handbook* (the *Handbook*) indicates that an organization's size and complexity is directly related to the work of human resource personnel. The director stated that with a small company, such as the petitioner, the human resource duties are normally performed by management staff or a personnel clerk. According to the director, the *Handbook* reveals there is no clear standard for preparing for a career as a human resources specialist and there is no requirement for a baccalaureate degree in a specific specialty. As a result, the director stated that the proposed position fails to qualify as a specialty occupation under the first criterion at 8 C.F.R. § 214.2(h)(4)(iii)(A). The director determined that the *Handbook* shows that proposed position resembles an office and administrative support worker supervisor and manager, and that the *Handbook* indicates that this kind of occupation does not require a baccalaureate degree in a specific specialty. The petitioner provided no evidence to establish that a baccalaureate degree in a specific field is common in the mortgage brokerage industry in parallel positions among similar organizations, the director stated, or to show that the proposed duties are complex and unique or more specialized or complex than any other office supervisor or manager. The director stated that the petitioner did not establish the third criterion as the proposed position is newly created.

On appeal, counsel states that the 43 sub-contracted real estate agents require personnel services and that the petitioner ensures that they have proper licensing; provides remedial training; and recruits, interviews, hires and terminates; and partially pays for their medical benefits, advertisements, and phone expenses. Counsel states that the beneficiary will perform these duties, which correspond to those of a human resources manager or specialist as described in the *Handbook* and the *Dictionary of Occupational Titles (DOT)*. According to counsel, the *Handbook* and *DOT* reveal that "entry-level positions are filled by college graduates who have

majored in a wide range of fields.” Counsel asserts that the petitioner’s expansion necessitates employing a human resources manager, and states that *Young China Daily vs. Chappell*, 742 F. Supp. 552 (N.D. Cal. 1989) indicates that an employer’s size has no rational relationship to the need for a professional. Counsel states that the submitted organizational chart reveals that the petitioner currently employs an office manager. Counsel points out that the director conceded that a human resources manager or specialist could qualify as a specialty occupation. According to counsel, the proposed position qualifies as a specialty occupation because of the petitioner’s requirement of a college degree.

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 in a specific specialty 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)).

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.

Counsel’s reference to and assertions about the relevance of information from the *DOT* are not persuasive. Neither the *DOT*’s 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.

The AAO routinely consults the *Handbook* for its information about the duties and educational requirements of particular occupations. The AAO does not concur with the director’s conclusion that the proposed position resembles the *Handbook*’s depiction of an office and administrative support worker supervisor and manager; but finds the proposed duties parallel the *Handbook*’s description of human resources, training, and labor relations managers and specialists. The *Handbook* discloses that a baccalaureate degree in a specific specialty is not required for human resources, training, and labor relations managers and specialists as it 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.

The above passage indicates that a baccalaureate degree in a specific specialty is not required for a human resources, training, and labor relations specialist or manager as employers accept baccalaureate degrees in diverse fields: technical, business, and the liberal arts. The AAO notes that counsel concedes that "entry-level positions are filled by college graduates who have majored in a wide range of fields."

Because 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 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.

The petitioner submitted no evidence 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.

To establish the second alternative prong at 8 C.F.R. § 214.2(h)(4)(iii)(A)(2) the petitioner must show that the proffered position is so complex or unique that it can be performed only by an individual with a degree. As the *Handbook* reveals that the proposed duties parallel those of human resources, training, or labor relations specialists or managers, which are occupations that do not require a baccalaureate degree in a specific specialty, the petitioner fails to establish the second alternative prong at 8 C.F.R. § 214.2(h)(4)(iii)(A).

The third criterion at 8 C.F.R. § 214.2(h)(4)(iii)(A) requires that the petitioner show that it normally requires a degree or its equivalent for the position. As the proposed position is newly created, the petitioner fails to establish this criterion.

The fourth criterion at 8 C.F.R. § 214.2(h)(4)(iii)(A) requires that the petitioner demonstrate 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. Again, 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; therefore, the petitioner fails to establish this last criterion.

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.

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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.