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**U.S. Citizenship
and Immigration
Services**

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JUL 14 2006

FILE: SRC 04 155 50938 Office: TEXAS SERVICE CENTER Date:

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.

for Michael T. Jolley
Robert P. Wiemann, Chief
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 gas station/convenience store that seeks to employ the beneficiary as a general 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. Counsel submits a timely appeal.

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) the 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 general 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 managing the daily operations of the petitioner's business, including ordering food and gas supplies; scheduling and assigning work duties; training and overseeing employees; monitoring and managing stock inventory; and performing banking, accounting, payroll, and tax duties. The petitioner's response to the request for evidence elaborated on the proposed duties. The petitioner's March 26, 2004 letter indicates that it requires a baccalaureate degree in business administration for the proposed position. In the December 13, 2004 letter, counsel states that the petitioner requires a bachelor's degree in business administration/accounting and two years of business management experience.

The director found the submitted job postings unpersuasive in establishing the offered position as a specialty occupation. The director concluded that the petitioner satisfied none of the four criteria outlined in 8 C.F.R. § 214.2(h)(4)(iii)(A).

On appeal, counsel submits additional and previously submitted evidence to establish that the offered position is a specialty occupation.

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 Department of Labor's *Occupational Outlook Handbook* (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 asserts that the offered position is similar to a general and operations manager as that occupation is depicted in the *Handbook*. In the context of the petitioner's business enterprise, which is a gas station/convenience store, the AAO finds that the proposed duties reflect those of a sales worker supervisor as that occupation is delineated in the *Handbook*, which states:

Sales worker supervisors oversee the work of sales and related workers, such as retail salespersons; cashiers; customer service representatives; stock clerks and order fillers; sales engineers; and sales representatives, wholesale and manufacturing. Sales worker supervisors are responsible for interviewing, hiring, and training employees, as well as for preparing work schedules and assigning workers to specific duties. Many of these workers hold job titles such as *sales manager* or *department manager*. Under the occupational classification system used in the *Handbook*, however, workers with the title *manager* who mainly supervise nonsupervisory workers are called *supervisors* rather than *managers*, even though many of these workers often perform numerous managerial functions. . . .

In retail establishments, sales worker supervisors ensure that customers receive satisfactory service and quality goods. They also answer customers' inquiries, deal with complaints, and sometimes handle purchasing, budgeting, and accounting. Their responsibilities vary with the size and type of establishment. As the size of retail stores and the types of goods and services increase, supervisors tend to specialize in one department or one aspect of merchandising. . . .

Sales worker supervisors in large retail establishments, often referred to as department managers, provide day-to-day oversight of individual departments, such as shoes, cosmetics, or housewares in large department stores; produce and meat in grocery stores; and sales in automotive dealerships. These workers establish and implement policies, goals, objectives, and procedures for their specific departments; coordinate activities with other department heads; and strive for smooth operations within their departments. They supervise employees who price and ticket goods and place them on display; clean and organize shelves, displays, and inventories in stockrooms; and inspect merchandise to ensure that nothing is outdated. Sales worker supervisors also review inventory and sales records, develop merchandising techniques, and coordinate sales promotions. In addition, they may greet and assist customers and promote sales and good public relations.

Sales worker supervisors in nonretail establishments supervise and coordinate the activities of sales workers who sell industrial products, automobiles, or services such as advertising or Internet services. They may prepare budgets, make personnel decisions, devise sales-incentive programs, assign sales territories, and approve sales contracts.

In small or independent companies and retail stores, sales worker supervisors not only directly supervise sales associates, but also are responsible for the operation of the entire company or store. Some are self-employed business or store owners.

The beneficiary's duties to order food and gas supplies, schedule and assign work duties, train and oversee employees, monitor and manage stock inventory, and perform banking, accounting, payroll, and tax duties are encompassed within those of a sales worker supervisor. In addition the duties described in the response to the request for evidence are also encompassed within the job duties of a sales worker supervisor. For example, the proposed duties to resolve customer complaints, monitor customer preferences to determine sales, determine price schedules and discount rates, and prepare budgets are similar to the sales worker supervisor's duties to "ensure that customers receive satisfactory service and quality goods"; "deal with complaints, and sometimes handle purchasing, budgeting, and accounting"; "review inventory and sales records, develop merchandising techniques, and coordinate sales promotions"; and "prepare budgets, make personnel decisions, devise sales-incentive programs, assign sales territories, and approve sales contracts."

The *Handbook* reports that employers do not require a sales worker supervisor to possess a bachelor's degree in a specific academic field. It states:

Sales worker supervisors usually acquire knowledge of management principles and practices—an essential requirement for a supervisory or managerial position in retail trade—through work experience. Many supervisors begin their careers on the sales floor as salespersons, cashiers, or customer service representatives. In these positions, they learn merchandising, customer service, and the basic policies and procedures of the company.

The educational backgrounds of sales worker supervisors vary widely. Regardless of the education they receive, recommended courses include accounting, marketing, management, and sales, as well as psychology, sociology, and communication. Supervisors also must be computer literate because almost all cash registers, inventory control systems, and sales quotes and contracts are computerized.

Supervisors who have postsecondary education often hold associate or bachelor's degrees in liberal arts, social sciences, business, or management. To gain experience, many college students participate in internship programs that usually are developed jointly by individual schools and firms.

The type and amount of training available to supervisors vary from company to company. Many national retail chains and companies have formal training programs for management trainees that include both classroom and on-site training. Training time may be as brief as 1 week but may also last more than 1 year in organizations that require trainees to gain experience during all sales seasons.

Counsel's December 13, 2004 letter referenced the specific vocational preparation (SVP) rating of 7 to establish the offered position as a specialty occupation. This is not persuasive as an SVP rating is meant to indicate only the total number of years of vocational preparation required for a particular position. It does not describe how those years are to be divided among training, formal education, and experience, and it does not specify the particular type of degree, if any, that a position would require.

The AAO's conclusion, from the evidence to which it has referred above, is that the petitioner fails to satisfy the first criterion at 8 C.F.R. § 214.2(h)(4)(iii)(A), which is 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 - the petitioner submits job postings. The postings are not persuasive in that they are from companies that differ in size and scope to the petitioner or the nature of the company is not disclosed in the posting. Furthermore, none of the companies in the postings indicate a requirement of a baccalaureate degree in a specific discipline. Sprint is a telecommunications company and Avis is a car rental agency; thus, they differ in nature from the petitioner, a convenience store/gas station. Lowden & Associates, Inc.; Solutia, Inc.; and CambridgeStaff's client are not described in the job postings. Consequently, the AAO cannot determine the nature of these companies and whether they are similar to the petitioner. For these reasons the evidence 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. Furthermore, the submitted evidence indicates that the duties of the proposed position resemble those of a sales worker supervisor, which is an occupation that the *Handbook* reveals does not require a baccalaureate degree in a specific field.

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. No evidence in the record demonstrates that the nature of the beneficiary's duties is so specialized and complex as to require knowledge that is associated with a baccalaureate in a specific academic discipline. The *Handbook* indicates, furthermore, that the proposed duties parallel those of a sales worker supervisor, and that employers do not require a baccalaureate degree in a specific specialty for a sales worker supervisor position. The *Handbook* indicates no usual association between the type of work that the beneficiary would perform and at least a baccalaureate degree in a specific specialty. Accordingly, the petitioner fails to establish the 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.