

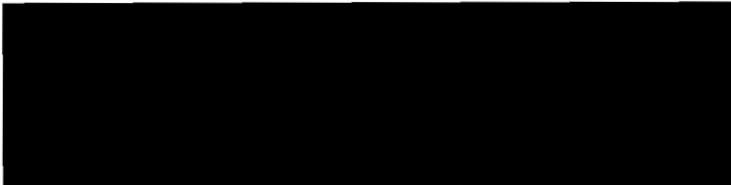


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FILE: SRC 04 236 50205 Office: TEXAS SERVICE CENTER Date: **SEP 13 2006**

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, Chief  
Administrative Appeals Office

**DISCUSSION:** The nonimmigrant visa petition was denied by the Director, Texas Service Center. In a subsequent motion to reopen, the director affirmed its previous decision. The matter is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed. The petition will be denied.

The petitioner owns and operates a convenience store and is seeking to expand to multiple locations over the next three years. It desires to employ the beneficiary temporarily in the United States as a financial manager, at an annual salary of \$37,250, for three years. The director determined that the petitioner did not establish that the proffered position qualifies as a specialty occupation as enumerated in the regulations at 8 C.F.R. § 214.2(h)(4)(iii)(A).

Counsel submits a brief in support of the appeal. In his brief, counsel states that the director failed to consider the responsibilities of the position in determining that the position was not a specialty occupation.

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), defines an H-1(b) temporary worker as:

an alien . . . who is coming temporarily to the United States to perform services in a specialty occupation described in section 214(i)(1) . . . and with respect to whom the Secretary of Labor determines and certifies to the Attorney General that the intending employer has filed with the Secretary an application under section 212(n)(1). . . .

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.

Similarly, the regulation at 8 C.F.R. § 214.2(h)(4)(ii) provides that:

*Specialty occupation* means 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.

The regulation at 8 C.F.R. § 214.2(h)(4)(iii)(A) establishes four standards, one of which an occupation must meet to qualify as a specialty occupation:

- (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-290B and supporting documentation; (2) the director’s denial letter; (3) the director’s request for additional evidence; (4) the petitioner’s response to the director’s request; and (5) Form I-129 and supporting documentation. The AAO reviewed the record in its entirety before issuing the decision.

The petitioner is seeking the beneficiary’s services as a financial manager. The duties of the proffered position are described as follows:

1. Responsible for the direct financial planning, procurement and investment of funds for the company.
2. Monitor and control the flow of cash receipts and disbursements to meet the business and investment needs of the firm.
3. Analyze financial records to forecast the company’s future financial position and budget requirements, evaluate the need for procurement of funds and the investment of the resulting surplus. This includes supervising cash management activities and executing capital-raising strategies to support the company’s expansion.
4. Responsible for hiring and supervising appropriate personnel to facilitate receipt and disbursement of funds, securities and other financial instruments to ensure proper financial applications within the company.
5. Advise management on investments and loans for short and long range financial planning, including the preparation of financial reports and developing policies and procedures for account collections and the extension of credit to customers.
6. Work with the marketing staff to design marketing strategies to best reach target customers in a fiscally prudent manner. This includes in-depth demographic research and market analysis to identify the demographic factors that determine the viability of a particular market.

On September 13, 2004, CIS requested the petitioner to submit evidence establishing that the position meets one of the criteria to qualify as a specialty occupation as set forth in the regulation at 8 C.F.R. § 214.2(h)(4)(iii)(A). CIS also requested the petitioner to submit information about the business, its tax returns, lease agreement and photos of the inside and outside of the physical premises.

In its response, dated October 13, 2004, the petitioner stated that it respectfully declined to provide the information about its business, tax returns, lease agreement and photos requested by the director, as such information was not required by the regulations.

In his decision, the director determined that the petitioner did not adequately establish that the duties of the position meet the criteria of a specialty occupation. The director concluded that the proffered position does not qualify as a specialty occupation under any of the criteria enumerated at 8 C.F.R. § 214.2(h)(4)(iii)(A).

When adjudicating the petition, the director shall consider all the evidence submitted and such other evidence as he or she may independently require to assist his or her adjudication. 8 C.F.R. § 214.2(h)(9)(i). Although specifically and clearly required by the director, the petitioner declined to provide documentary evidence about the business, including copies of quarterly tax reports, income tax records for 2002 and 2003, its lease agreement for the business location, employee records for its current employees, and photographs of the business. The quarterly tax records, tax returns and employee records would corroborate the information the petitioner submitted on the Form I-129. The lease agreement and photographs would establish that the petitioner is operating a business as stated in the Form I-129. The petitioner's failure to submit these documents cannot be excused. The failure to submit requested evidence that precludes a material line of inquiry shall be grounds for denying the petition. See 8 C.F.R. § 103.2(b)(14).

In determining whether a position meets the statutory and regulatory criteria of a specialty occupation, CIS routinely consults the Department of Labor (DOL)'s *Occupational Outlook Handbook (Handbook)*, as an authoritative source of information about the duties and educational requirements of particular occupations.

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.

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).

The AAO turns first 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; 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 typically considered are whether the *Handbook* indicates a degree is required by the industry; 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)). CIS also analyzes the specific duties and complexity of the position at issue, with the *Handbook's* occupational descriptions as a reference whether the degree requirement is common in the industry in parallel positions among similar organizations and the petitioner's past hiring practices for the position. See *Shanti, Inc. v. Reno*, at 1165-66.

As the petitioner has characterized its position as that of a financial manager, the AAO first turns to the *Handbook's* description of that occupation, which states:

Almost every firm, government agency, and other type of organization has one or more financial managers who oversee the preparation of financial reports, direct investment activities, and implement cash management strategies. Because computers are increasingly used to record and organize data, many financial managers are spending more time developing strategies and implementing the long-term goals of their organization.

The duties of financial managers vary with their specific titles, which include controller, treasurer or finance officer, credit manager, cash manager, and risk and insurance manager. *Controllers* direct the preparation of financial reports that summarize and forecast the organization's financial position, such as income statements, balance sheets, and analyses of future earnings or expenses. Controllers also are in charge of preparing special reports required by regulatory authorities. Often, controllers oversee the accounting, audit, and budget departments. *Treasurers* and *finance officers* direct the organization's financial goals, objectives, and budgets. They oversee the investment of funds, manage associated risks, supervise cash management activities, execute capital-raising strategies to support a firm's expansion, and deal with mergers and acquisitions.

In addition to carrying out the preceding general duties, all financial managers perform tasks unique to their organization or industry. For example, government financial managers must be experts on the government appropriations and budgeting processes, whereas health care financial managers must be knowledgeable about issues surrounding health care financing. Moreover, financial managers must be aware of special tax laws and regulations that affect their industry.

Financial managers play an increasingly important role in mergers and consolidations and in global expansion and related financing. These areas require extensive, specialized knowledge on the part of the financial manager to reduce risks and maximize profit. Financial managers increasingly are hired on a temporary basis to advise senior managers on these and other matters. In fact, some small firms contract out all their accounting and financial functions to companies that provide such services.

The AAO finds the above discussion to be generally reflected in the beneficiary's description of the duties of its proffered position, i.e., the petitioner has described duties normally performed by financial managers. However, the duties of the proffered position, as listed, are so generic that they provide no meaningful description of the tasks that the beneficiary would perform for the petitioner on a daily basis. This same lack of specificity is found in the petitioner's response to the director's request for evidence. In that response, counsel simply paraphrased the *Handbook's* discussion of the occupation of financial managers quoted above, to offer a further explanation of the proffered position's duties.

The AAO requires information regarding the specific duties of a proffered position, as well as the nature of the petitioning entity's business operations, to make its determination regarding the nature of that position and its degree requirements, if any. In the instant case, the record offers a description of the type of work performed within the occupation of financial manager, rather than a description of the proffered position's duties as they relate to the petitioner's business.

The petitioner presently owns and operates one convenience store. The petitioner states that over the next three years it expects to add multiple locations and a significant number of employees, and therefore, requires a financial manager with the beneficiary's theoretical and practical knowledge to direct the company's future growth and continued viability. However, the petitioner has not submitted any financial evidence to substantiate its business plans to hire new employees and acquire and/or open new stores. Simply 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)). Accordingly, the AAO finds that the petitioner has failed to establish the proffered position as a specialty occupation under the first criterion at 8 C.F.R. § 214.2(h)(4)(iii)(A)(1) – a baccalaureate or higher degree or its equivalent is normally the minimum requirement for entry into the particular position. See *Defensor v. Meissner*, 201 F.3d 384 (5<sup>th</sup> Cir. 2000)

The record does not include any evidence that a degree requirement is common to the industry in parallel positions among similar organizations. The record does not include any evidence from convenience stores, individuals, or professional associations regarding an industry standard, or documentation establishing that a baccalaureate degree in a specific specialty is common in the proffered position among similar convenience stores. Therefore, the petitioner has not demonstrated that a degree requirement is common to the industry in parallel positions among similar organizations under the first alternative prong of 8 C.F.R. § 214.2(h)(4)(iii)(A)(2).

The petitioner has not satisfied the second alternative prong of 8 C.F.R. § 214.2(h)(4)(iii)(A)(2), which provides a petitioner the opportunity to show that its particular position is so complex or unique that it can be performed only by an individual with at least a bachelor's degree in a specific specialty. The petitioner has not established that the complexity of the petitioner's business transactions would require a degree in a specific specialty. The record does not include any evidence or documentation establishing the complexity or uniqueness of the proffered position.

The AAO turns next to consideration of the third criterion at 8 C.F.R. § 214.2(h)(4)(iii)(A)(3). The record does not contain evidence of the petitioning entity's past employment history of hiring persons with a degree or its equivalent for the position. Consequently, the petitioner has not established that the employer normally requires a degree or its equivalent for the position. The petitioner has not established the third criterion at 8 C.F.R. § 214.2(h)(4)(iii)(A)(3).

The AAO now considers the merits of the fourth criterion at 8 C.F.R. § 214.2(h)(4)(iii)(A)(4). The Petition for a Nonimmigrant Worker (Form I-129) reflects that the petitioner employs three persons. The Form I-129 also reflects the petitioner's gross annual income as of the petition's filing date at \$210,000. The petitioner did not submit evidence of its income or employee records as requested by the director. It has not submitted any evidence that its expansion plans are underway. Simply going on record without supporting documentary evidence is not sufficient for purposes of meeting the burden of proof in these proceedings. *Matter of Soffici*. The petitioner has not presented any evidence to show that the skills utilized in its daily operations are so

specialized and complex that the knowledge required to perform the duties of the proffered position is usually associated with the attainment of a baccalaureate or higher degree, or its equivalent, in a specific specialty. Therefore, the petitioner has not established the fourth criterion at 8 C.F.R. § 214.2(h)(4)(iii)(A)(4).

The petitioner has also submitted several decisions rendered by the AAO regarding specialty occupations. It must be noted that each nonimmigrant petition is a separate proceeding with a separate record. See 8 C.F.R. § 103.8(d). Without the information of record in the cited cases, the AAO is unable to determine whether the facts of this case are similar to those in the cited cases. Further, while 8 C.F.R. § 103.3(c) provides that CIS precedent decisions are binding on all CIS employees in the administration of the Act, unpublished nonprecedential decisions are not similarly binding.

As related in the discussion above, the petitioner has not established the proffered position is a specialty occupation. Accordingly, the decision of the director shall not be disturbed.

Beyond the decision of the director, the petitioner has not established that the beneficiary is qualified to perform services in a specialty occupation. The petitioner states that the beneficiary holds the equivalent of a United States bachelor's degree in Business Administration with a major in management. This is based on an evaluation of the beneficiary's work history by the associate dean of the School of Business Administration, University of Miami. However, the record does not contain independent evidence of the evaluator's authority to grant college-level credits for training or work experience, or that the University of Miami has a program for granting such credit. The record does not contain a letter from a dean or provost establishing that the university has a program for granting credit based on work experience or training, or that the evaluator has the authority to grant college-level credit in the specialty based on training or work experience. Consequently, the petitioner has not established that the beneficiary is qualified to perform services in the specialty occupation, in accordance with 8 C.F.R. § 214.2(h)(4)(iii)(D)(1). A credentials evaluation service may evaluate educational credentials only. 8 C.F.R. § 214.2(h)(4)(iii)(D)(3). The petitioner has not established that the beneficiary is qualified to perform the services of a specialty occupation. For this additional reason, the petition may not be approved.

Thus, the record does not establish that the proffered position is a specialty occupation and that the beneficiary is qualified to perform the services of that occupation.

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 met that burden. Accordingly, the AAO will dismiss the appeal.

**ORDER:** The appeal is dismissed. The petition is denied.