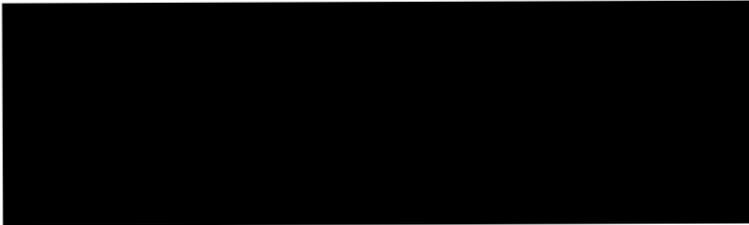


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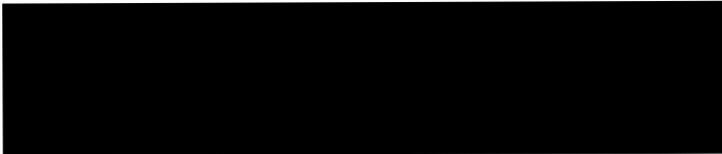
D2

FILE: WAC 05 174 50398 Office: CALIFORNIA SERVICE CENTER Date: **SEP 26 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, Chief  
Administrative Appeals Office

**DISCUSSION:** The service center director denied the nonimmigrant visa petition and the matter is now before the Administrative Appeals Office (AAO) on appeal. The director's decision will be withdrawn. The petition will be remanded for the entry of a new decision.

The petitioner owns and operates nine gas stations and convenience stores with 23 employees. It seeks to employ the beneficiary as its senior business manager. The petitioner 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 documentation.

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 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 its senior business manager. Evidence of the beneficiary's duties includes: the I-129 petition; and the petitioner's response to the director's request for evidence. According to this evidence, the beneficiary would perform duties that entail:

- prepare and analyze detailed and comprehensive financial reports of each location as well as the company as a whole (35% of time): prepare pro formas, comprehensive balance sheets, cash flow and income statements; monthly sales compilations and calculate and evaluate various ratios comparing cash flow to outstanding debt both on a per store location and the entity as a whole.
- seek out and perform due diligence on new investment opportunities (25% of time): meet with business owners, business brokers and agents and secure various financial documentation and carefully analyze the data for its accuracy; compute ratios and determine accuracy of financial statements to assess true profitability and viability of the business;
- ensure integration of various businesses into single operation (5% of time): create comprehensive financial system;
- devise and implement various marketing plans and strategies to locate fleet accounts and attract new business opportunities at each store level (15% of time);
- oversee all store level managers and ensure achievement of growth goals at the store level (15% of time);
- perform management of all human resources and personnel issues (5% of time): consult on all human resources if requested by a store manager; handle or resolve any personnel issues; interview and hire all store managers.

The petitioner indicated that the proffered position requires a minimum of an undergraduate degree in business administration or a related field.

The director found that the proffered position was not a specialty occupation. The director noted that some of the duties of the position are similar to those of a financial manager. The director found that the record did not establish that the petitioner had the financial or organizational scope or complexity to credibly offer a position for a financial manager. The director stated that the petitioner had 12 employees. The director found that the record did not establish that the petitioner has several divisions or departments each with its own budget that would require financial oversight by a financial manager.

The director found that the remaining duties were those of a general or regional manager. The director referred to the Department of Labor's *Occupational Outlook Handbook (Handbook)* section on top executives and senior managers indicating that a baccalaureate level of training is preferred, but is not a normal, industry-wide minimum requirement for entry into the occupation. The director found that the petitioner had not established that the proffered position satisfied any of the above listed criteria and determined that the position was not a specialty occupation.

On appeal, counsel states that the petitioner is a holding company that was formed in December 2004. It owns and operates nine gas stations and convenience stores and has short and long-term expansion plans. Counsel explains that the proffered position is a specialty occupation and the duties are those of a financial manager as described in the *Handbook*. Counsel asserts that the beneficiary will oversee the preparation of financial reports, direct investment activities, and implement cash management strategies and long term financial goals of the petitioner. Counsel explains that the beneficiary will analyze information from all of the petitioner's nine stations and create a comprehensive financial system. Counsel states that the petitioner's goals include obtaining new facilities and that the beneficiary will perform due diligence on financial reports

of prospective locations. Counsel states that the beneficiary will direct the organization's financial goals, objectives and budgets. Counsel states that the beneficiary will oversee the investment funds and manage the associated risks, supervise the cash management activities and execute capital raising strategies to support the petitioner's expansion and deal with mergers and acquisitions. Counsel explains that the petitioner has an outside accounting firm and that the beneficiary would not be performing bookkeeping duties.

Counsel explains that the petitioner has at least 23 employees as indicated on the Form I-129 and not twelve employees as noted by the director. In support of its statements, the petitioner submitted its tax wage listing filed with the Arizona Department of Economic Security as evidence of the number of employees and its payroll journal for May 2005. The petitioner submitted its profit and loss statement for January through March 2005 indicating total income of \$3,171,229 and net income of \$227,656. The petitioner submitted copies of its settlement statements for eight properties. The petitioner submitted copies of its business checking statements for January through April 2005.

The AAO agrees that the record establishes that the proffered position is a financial manager, and is a specialty occupation.

Upon review of the record, the petitioner has established one of the four criteria outlined in 8 C.F.R. § 214.2(h)(4)(iii)(A). Therefore, the proffered position is 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; 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 Department of Labor's *Occupational Outlook Handbook (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*, 764 F. Supp. 1095, 1102 (S.D.N.Y. 1989)).

The AAO routinely consults the *Handbook* for its information about the duties and educational requirements of particular occupations. The *Handbook* states that for a financial manager, a bachelor's degree in finance, accounting, economics, or business administration is required.

Therefore, the evidence establishes that the proffered position is a specialty occupation under 8 C.F.R. § 214.2(h)(4)(iii)(A)(1).

The second issue in this proceeding is whether the beneficiary is qualified to perform the duties of a specialty occupation.

The *Handbook* states the following about the training and educational requirements for financial managers:

A bachelor's degree in finance, accounting, economics, or business administration is the minimum academic preparation for financial managers.

Pursuant to 8 C.F.R. § 214.2(h)(4)(iii)(C), to qualify to perform services in a specialty occupation, an alien must meet one of the following criteria:

- (1) Hold a United States baccalaureate or higher degree required by the specialty occupation from an accredited college or university;
- (2) Hold a foreign degree determined to be equivalent to a United States baccalaureate or higher degree required by the specialty occupation from an accredited college or university;
- (3) Hold an unrestricted state license, registration or certification which authorizes him or her to fully practice the specialty occupation and be immediately engaged in that specialty in the state of intended employment; or
- (4) Have education, specialized training, and/or progressively responsible experience that is equivalent to completion of a United States baccalaureate or higher degree in the specialty occupation, and have recognition of expertise in the specialty through progressively responsible positions directly related to the specialty.

The petitioner submitted a copy of the beneficiary's certificate from the Indian School of Business, post-graduate program in management. Additionally, the petitioner submitted a copy of the beneficiary's bachelor of science, a three-year course, from the University of Calcutta. The petitioner did not submit evidence that the beneficiary has a foreign degree determined to be equivalent to a United States baccalaureate or higher degree required by the specialty occupation from an accredited college or university. Therefore, the record is insufficient to establish that the beneficiary has at least a bachelor's degree in finance, accounting, economics, or business administration.

Upon review of the record, there is insufficient evidence in the record to determine that the beneficiary is qualified to perform the duties of a specialty occupation under the criterion at 8 C.F.R. § 214.2(h)(4)(iii)(C)(1).

**The director's decision will be withdrawn and the matter remanded for entry of a new decision.** The director may afford the petitioner reasonable time to provide evidence pertinent to the issue of whether the beneficiary is qualified to perform the duties of the specialty occupation. The director shall then render a new decision based on the evidence of record as it relates to the regulatory requirements for eligibility. As always, the burden of proving eligibility for the benefit sought remains entirely with the petitioner. Section 291 of the Act, 8 U.S.C. § 1361.

**ORDER:** The director's June 23, 2005 decision is withdrawn. The petition is remanded to the director for entry of a new decision, which if adverse to the petitioner, is to be certified to the AAO for review.