



U.S. Citizenship
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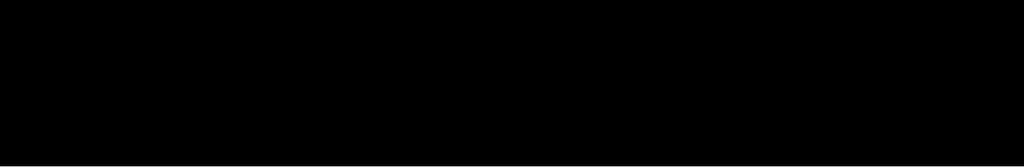
FILE: LIN 05 138 50705 Office: NEBRASKA SERVICE CENTER Date: AUG 02 2007

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 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 acting director of the Nebraska Service Center denied the nonimmigrant visa petition and a subsequent motion to reopen the proceedings. The matter is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be sustained. The petition will be approved.

The petitioner is a corporation engaged in merchandising, marketing, and promotions. In order to employ the beneficiary as one of its regional managers, the petitioner endeavors to classify her 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 determined that the petitioner failed to establish the position as a specialty occupation. On appeal, counsel contends that, contrary to the director's decision, the evidence establishes that the proffered position requires a bachelor's degree in a business specialty and therefore qualifies as a specialty occupation.

For the reasons discussed below the AAO finds that the evidence of record establishes that the proffered position is a specialty occupation. Accordingly, the appeal shall be sustained, and the petition shall be approved.

The record of proceeding before the AAO contains: (1) Form I-129 (Petition for Nonimmigrant Worker) and supporting documentation; (2) the director's request for additional evidence (RFE); (3) counsel's response to the director's RFE; (4) the director's denial letter; (5) Form I-290B, with counsel's brief; (6) a June 29, 2005 evaluation of the educational requirements of the proffered position, rendered by an assistant professor of Business Administration at Mercy College; and (7) an October 3, 2005 evaluation of the educational requirements of the proffered position, rendered by an associate professor of Marketing at Saint Louis University (SLU), which is accompanied by an August 26, 2002 letter from the chairman of the SLU Marketing Department that endorses the associate professor's qualifications.

The issue before the AAO is whether the proffered position qualifies as a specialty occupation. To meet its burden of proof in this regard, the petitioner must establish that the job it is offering to the beneficiary meets the following statutory and regulatory requirements.

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.

The term "specialty occupation" is further defined at 8 C.F.R. § 214.2(h)(4)(ii) as:

An occupation which [1] 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 [2] 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.

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) consistently interprets the term “degree” in the above criteria to mean not just any baccalaureate or higher degree, but one in a specific specialty that is directly related to the proffered position.

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 (5th 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.

The AAO will first address why it accords no significant evidentiary weight to the advisory opinions on the educational requirements of the proffered position.

For the following reasons the AAO discounts the SLU associate professor’s evaluation of the proffered position as one that constitutes “a specialty position and requires the services of someone with a Bachelor’s level degree in Business or a related field.” This evaluator’s opinions are conclusory: he does not cite studies, treatises, surveys, or any other factual basis for them. The only information that he cites about the position upon which he opines is a list of 11 generalized duties that do not provide specific details about what performance of the position would actually involve. The evaluation does not reference any observations of the petitioner’s Regional Manager operations, any review of related work products, or any other basis of knowledge of the proffered position beyond the list of generalized duties, which the AAO finds to be an inadequate basis to support the evaluator’s conclusions.

The June 29, 2005 evaluation by an assistant professor of Business Administration at Mercy College has the same evidentiary deficiencies as the SLU associate professor’s. This evaluator does not provide any

independent factual basis for his conclusions about the academic requirements for the position. Further, neither the evaluation nor any other evidence of record establishes that this evaluator has any knowledge about the proffered position beyond the evaluation's list of generalized duties, which the AAO finds to be an inadequate factual basis for the evaluator's conclusions.

As noted above, the AAO discounts the two assessments of the educational requirements of the proffered position because they lack an adequate factual basis. CIS uses an evaluation by a credentials evaluation organization of a person's foreign education as an advisory opinion only. CIS may, in its discretion, use as advisory opinions statements submitted as expert testimony. However, where an opinion is not in accord with other information or is in any way questionable, CIS is not required to accept or may give less weight to that evidence. *Matter of Caron International*, 19 I&N Dec. 791 (Comm. 1988).

The director noted that the petitioner is a merchandising business established in 1988 that has a gross annual income of \$8,736,604.00 and employs 2,500 individuals in a combination of full-time, part-time, and contract positions. The petitioner's March 17, 2005 letter of support that was filed with the Form I-129 introduced the proffered position as follows:

Generally, the Regional Manager is required to promote grocer and retail products to [the] targeted market via hired promoters in various grocers and retail outlets. While reporting to the Retail Operations Manager, the Regional Manager is responsible to manage all contracted promotions in Indiana, Wisconsin, and Minnesota. Venues include locally and nationally owned and operated grocers and retail stores. Regional Manager is provided a contract to promote [a] specified product at [a] specified venue. Regional Manager is responsible to implement contract/promotion by staffing the promotion with qualified promoters/employees. In order to properly staff promotion, Regional manager must recruit, interview, hire, and train promoters including the development and implementation of training curriculum. Conduct initial in-person promoter training; direct maintenance training conducted by area manager or location coordinator. Keep consistent and direct contact with all store owners and responsible for problem resolution for complaints of store managers. Implementation of contract also includes appropriate marketing, design, set up, location and profile staffing for each promotion. Must attend each new venue/store open house as company representative. Travel is required for staff interviews, initial promoters training, store manager meetings and open houses for new venues. . . .

Exhibit A to counsel's reply to the RFE is a three-page table of "Job duties with time estimate." The table's categories with related projected weekly time requirements per category are: (1) Recruitment (8 hours/20.0%); (2) Candidate selection (5 hours/12.5%); (3) Train new (retrain existing) event personnel (10 hours/25.0%); (4) Approve promotional materials and directives (3 hours/7.5%); (5) Ensure adequate promotion staffing (8 hours/20.0%); (6) Direct supervision to store level Coordinators and Area Manager (5 hours/12.5%); (7) Client communication (3 hours/7.5%); (8) Travel as necessary (0 hours/0.05%); and (8) Misc. department functions (3 hours/7.5%). The section for each category includes a paragraph describing associated duties.

The petitioner has not satisfied the criterion at 8 C.F.R. § 214.2(h)(4)(iii)(A)(I), which assigns specialty occupation status to a position for which the normal minimum entry requirement is a baccalaureate or higher degree, or the equivalent, in a specific specialty closely related to the position's duties.

The AAO recognizes the Department of Labor's *Occupational Outlook Handbook (Handbook)* as an authoritative source on the duties and educational requirements of a wide variety of occupations.¹

To the extent that they are described in the record, the proffered position and the duties comprising it most closely resemble the promotions manager occupation as discussed in the 2006-2007 *Handbook* section "Advertising, Marketing, Promotions, Public Relations, and Sales Managers" (pages 27-29). The *Handbook* describes this occupation as follows:

Promotions managers supervise staffs of promotion specialists. These managers direct promotion programs that combine advertising with purchase incentives to increase sales. In an effort to establish closer contact with purchasers—dealers, distributors, or consumers—promotion programs may use direct mail, telemarketing, television or radio advertising, catalogs, exhibits, inserts in newspapers, Internet advertisements or Web sites, in-store displays or product endorsements, and special events. Purchasing incentives may include discounts, samples, gifts, rebates, coupons, sweepstakes, and contests.

As evident in the following excerpt, the *Handbook* indicates that a bachelor's degree or higher is not a normal requirement for entry into the promotions manager occupation:

A wide range of educational backgrounds is suitable for entry into advertising, marketing, promotions, public relations, and sales managerial jobs, but many employers prefer those with experience in related occupations plus a broad liberal arts background. A bachelor's degree in sociology, psychology, literature, journalism, or philosophy, among other subjects, is acceptable. However, requirements vary, depending upon the particular job.

For marketing, sales, and promotions management positions, some employers prefer a bachelor's or master's degree in business administration with an emphasis on marketing. Courses in business law, economics, accounting, finance, mathematics, and statistics are advantageous. In highly technical industries, such as computer and electronics manufacturing, a bachelor's degree in engineering or science, combined with a master's degree in business administration, is preferred.

....

Most advertising, marketing, promotions, public relations, and sales management positions are filled by promoting experienced staff or related professional personnel. For example, many managers are former sales representatives, purchasing agents, buyers, or product, advertising, promotions, or public relations specialists. In small firms, where the number of positions is limited, advancement to a management position usually comes slowly. In large firms, promotion may occur more quickly.

¹ The *Handbook*, which is available in printed form, may also be accessed on the Internet, at www.stats.bls.gov/oco/. The AAO's references are to the 2006-2007 print edition of the *Handbook*.

Because the evidence of record does not substantiate the proffered position as one that normally requires at least a bachelor's degree, or its equivalent, in a specific specialty, the petitioner has not satisfied the criterion at 8 C.F.R. § 214.2(h)(4)(iii)(A)(1).

The petitioner has not satisfied the first alternative prong of 8 C.F.R. § 214.2(h)(4)(iii)(A)(2). This criterion requires the petitioner to establish that the specialized degree requirement is common to the petitioner's industry in positions that are both (1) parallel to the proffered position and (2) located in organizations that are similar to the petitioner.

In determining whether there is such a common degree requirement, factors often considered by CIS 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)).

As discussed above, the petitioner has not established that its proffered position is one for which the *Handbook* reports an industry-wide requirement for a bachelor's degree in a specific specialty. There are no submissions from professional associations, firms, or individuals in the petitioner's industry.

The job advertisements from three other firms are not probative. These advertisements do not all require at least a bachelor's degree in a specific specialty: one requires a college degree and only prefers that it have a "business emphasis"; another specifies only a "college degree"; and another only specifies a requirement for "a self-motivated college graduate or equivalent work experience."

The evidence of record does not satisfy the second 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 evidence of record does not develop the proffered position in terms of its complexity or uniqueness in comparison to the general range of positions in the promotional manager occupation, for which the *Handbook* indicates no necessity for a bachelor's degree in a specific specialty. Counsel's contention that this criterion has been satisfied has no weight, as it is not substantiated by evidence of record. Without documentary evidence to support the claim, the assertions of counsel will not satisfy the petitioner's burden of proof. The unsupported assertions of counsel do not constitute evidence. *Matter of Obaigbena*, 19 I&N Dec. 533, 534 (BIA 1988); *Matter of Laureano*, 19 I&N Dec. 1 (BIA 1983); *Matter of Ramirez-Sanchez*.

The petitioner has not satisfied the criterion at 8 C.F.R. § 214.2(h)(4)(iii)(A)(3) - the employer normally requires a degree or its equivalent for the position.

The information provided at page 3 of the brief on appeal about the petitioner's past educational requirements for the proffered position is inconsistent with the contention that the petitioner normally requires a bachelor's degree in a specific specialty closely related to the proffered position, in that one of the seven Regional Managers listed as holding "a B.A. in International Relations and, four years later, a B.A. in Spanish." The AAO is not persuaded that the Regional Managers actually possess the degrees attested to by the petitioner. The record contains neither diplomas nor transcripts. Further, counsel's letter of reply to the RFE (at paragraph 3, page 2) states that requesting copies of degree certificates has not been part of the petitioner's

hiring practice. Going on record without supporting documentary evidence is not sufficient for purposes of meeting the burden of proof in these proceedings. *Matter of Soffici*. Without documentary evidence to support the claim, the assertions of counsel will not satisfy the petitioner's burden of proof. The unsupported assertions of counsel do not constitute evidence. *Matter of Obaigbena; Matter of Laureano; Matter of Ramirez-Sanchez*, 17 I&N Dec. 503, 506 (BIA 1980).

Further, the petitioner addresses only a limited portion of the petitioner's hiring history and does not provide information to gauge how representative the credentials of the cited Regional Managers are of the credentials of the total number hired. The AAO also notes that to establish a history of requiring a degree, a petitioner must provide evidence of its recruiting history, not just its hiring record. This the petitioner has not done.

The petitioner has, however, satisfied the criterion at 8 C.F.R. § 214.2(h)(iii)(A)(4) for positions with specific duties so specialized and complex that their performance requires knowledge that is usually associated with the attainment of a baccalaureate or higher degree in a specific specialty. The totality of the evidence, including the information about the petitioner's operations and the day-to-day work demands that the petitioner's business will place upon the beneficiary, establish the specialization and complexity required by this criterion. Accordingly, the petitioner has established the proffered position as a specialty occupation.

The record includes an educational evaluation and related academic transcripts of the beneficiary that establish that he has achieved the equivalent of a U.S. bachelor's degree in business administration with a course concentration directly related to the performance requirements of the proffered position. Accordingly, the beneficiary is qualified to serve in the pertinent specialty occupation in accordance with the beneficiary qualification regulations at 8 C.F.R. §§ 214.2(h)(4)(iii)(C) and (D).

The petitioner has established that the position is a specialty occupation and that the beneficiary is qualified to perform the services it requires. Accordingly, the decision of the director will be withdrawn and the petition will be approved.

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 sustained that burden. Accordingly, the appeal will be sustained, and the petition will be approved.

ORDER: The appeal is sustained. The petition is approved.