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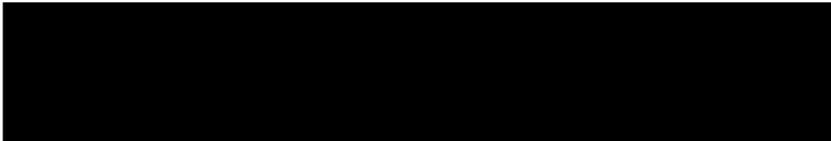
FILE: LIN 05 167 50253 Office: NEBRASKA SERVICE CENTER Date:

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.

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 appeal will be dismissed. The petition will be denied.

The petitioner is a seafood processing plant. It seeks to employ the beneficiary as a manufacturing production manager and endeavors to classify him 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 position does not qualify as a specialty occupation, and because the beneficiary is not qualified to perform the duties of a specialty occupation. On appeal, counsel submits a brief asserting that the proffered position is a specialty occupation.

The first issue to be discussed in this proceeding is whether the proffered position qualifies as a specialty occupation.

Section 101(a)(15)(H)(i)(b) of the Act, 8 U.S.C. § 1101(a)(15)(H)(i)(b), provides, in part, for the classification of qualified nonimmigrant aliens who are coming temporarily to the United States to perform services in a specialty occupation.

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:

[A]n 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.

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 are 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 for additional evidence; (4) the director’s denial letter; and (5) the Form I-290B with supporting documentation. The AAO reviewed the record in its entirety before issuing its decision.

The petitioner is seeking the beneficiary’s services as a manufacturing production manager. Evidence of the beneficiary’s duties includes the Form I-129 petition with supporting documentation and the petitioner’s response to the director’s request for evidence. According to this evidence the beneficiary would:

- Manage production, processing, distribution, and marketing activities of the petitioner;
- Develop budgets and approve expenditures for supplies, materials, and labor to meet production targets;
- Review fresh sardine supply schedules and determine production schedules and work schedules for seasonal labor;
- Review manufacturing plant operations and confer with technical staff and the plant manager to resolve production or processing problems;
- Hire, train, evaluate, and supervise company personnel and handle any grievances;
- Prepare production reports for the parent company in Taiwan;
- Establish product quality standards for the purchase of fresh sardines and seafood processing techniques to ensure finished products are of prescribed quality; and
- Develop and implement production tracking and quality control systems, analyzing production, quality control, maintenance, and other operational reports, to detect production problems.

The petitioner requires a minimum of a bachelor’s degree in business administration, industrial engineering or a related field for entry into the offered position.

The AAO routinely consults the Department of Labor's *Occupational Outlook Handbook (Handbook)* for information about the duties and educational requirements of particular occupations. The duties of the proffered position are essentially those noted for industrial production managers who plan, direct, and coordinate the production activities required to produce goods. These individuals make sure that production proceeds smoothly and stays within budget. They oversee production, reducing costs wherever possible and make sure products are produced on time and are of good quality. This requires the production manager to analyze plant personnel and capital resources to select the best way of meeting production goals. The industrial production manager must determine which machines will be used, whether production requires the purchase of new machinery, the production sequences to be followed, and staffing levels needed. The *Handbook* notes that because of the diversity of manufacturing operations and job requirements, there is no standard preparation for this occupation. Some employers require a college degree, while others train promising apprentices or workers. However, most employers prefer a college degree, even for those who have worked their way up through the ranks. Many industrial production managers have a college degree in business administration, management, industrial technology, or industrial engineering. Some are former production-line supervisors who have been promoted and have taken employer-sponsored training classes. Although many employers prefer candidates with a business or engineering background, some companies will hire well-rounded liberal arts graduates who are willing to spend time in a production related job. A degree in a specific specialty is not required for entry into the proffered position. Degrees in a wide range of unrelated disciplines are acceptable for positions actually requiring a degree. The petitioner has failed to establish the first criterion of 8 C.F.R. § 214.2(h)(4)(iii)(A).

The petitioner does not assert that a degree in a specific specialty is common to the industry in parallel positions among similar organizations, or that it normally requires a degree in a specific specialty for entry into the proffered position, and offers no evidence in this regard. The petitioner has not established the referenced criteria at 8 C.F.R. § 214.2(h)(4)(iii)(A)(2) or (3).

Finally, the record does not establish that the duties to be performed by the beneficiary are so specialized or complex that knowledge required to perform them is usually associated with the attainment of a baccalaureate or higher degree in a specific specialty. Nor does the record establish that the duties are so complex or unique that they can be performed only by an individual with a degree in a specific specialty.

The record establishes that the petitioner recently purchased the rights to a seafood manufacturing facility and invested in improvements to the facility. The record does not, however, distinguish the duties of the position at the seafood plant from other industrial production managers that qualify for the position without a degree in a specific field. The evidence does not describe the budgets to be developed, the personnel to be hired, trained, and managed, or the quality controls to be developed and implemented. The duties are only generally described and do not allow the AAO to determine that a degree in a specific field is required to perform them. Simply going on the 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 190 (Reg. Comm. 1972)). The petitioner states that the Department of Labor's Occupational Information Network (O*NET) establishes that the proffered position is a specialty occupation because it states that the position has an SVP rating of 7.0 – 8.0 and that most occupations in that range require a bachelor's degree. The petitioner's assertions in this regard are not persuasive. Neither the DOT's SVP rating nor a Job Zone category indicate 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 petitioner has failed to establish the referenced regulatory criteria at 8 C.F.R. § 214.2(h)(4)(iii)(A)(2) or (4).

The petitioner has failed to establish that the offered position meets any of the criteria listed at 8 C.F.R. § 214.2(h)(4)(iii)(A). Accordingly, the AAO shall not disturb the director's denial of the petition.

The director also found that the beneficiary was not qualified to perform the services of a specialty occupation. As the AAO has found that the position is not a specialty occupation, the beneficiary's qualifications are not relevant to the outcome of the proceeding.

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 and the appeal shall accordingly be dismissed.

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