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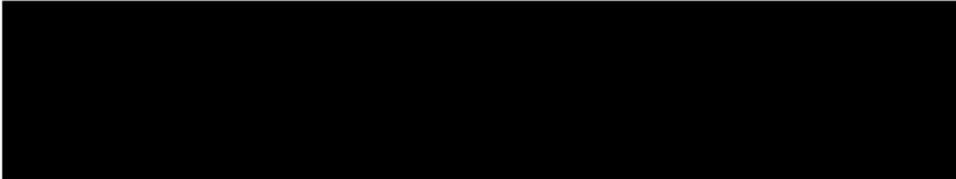
U.S. Department of Homeland Security
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U.S. Citizenship
and Immigration
Services

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FILE: EAC 06 148 53202 Office: VERMONT SERVICE CENTER Date: JAN 04 2008

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 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 an office printing and duplication services business that seeks to employ the beneficiary as a print production 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.

The record of proceeding before the AAO contains: (1) the Form I-129 and supporting documentation; (2) the director's request for evidence (RFE); (3) the petitioner's response to the director's request; (4) the director's denial letter; and (5) the Form I-290B, with the petitioner's brief. The AAO reviewed the record in its entirety before reaching its decision.

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 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 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 petitioner seeks the beneficiary’s services as a print production manager. Evidence of the beneficiary’s duties includes: the petitioner’s April 6, 2006 letter in support of the petition and the petitioner’s September 8, 2006 response to the director’s RFE. As stated by the petitioner, the proposed duties are as follows:

- Managing the entire print production process, ensuring high quality output in a cost efficient environment;
- Establishing and implementing company-wide production objectives, policies, and programs;
- Managing all print production projects and approving methods of production, preparing projects for imaging, reviewing projects for overprint, proper resolution, color corrections, and other imperfections;
- Providing options and trade-offs with a point of view and recommendations based on expertise;
- Analyzing how developing technologies in printing can increase company profitability and efficiency, and presenting findings to the company president;

- Reviewing monthly production reports;
- Exploring and providing innovative solutions and developing best practices;
- Attending various industry sponsored seminars relating to print and digital production;
- Organizing workflow and staffing needs;
- Assigning responsibilities and monitoring the process of production; and
- Ensuring proper and timely delivery of print projects.

The director found that the proposed duties are those of an industrial production manager. Citing the Department of Labor's (DOL) *Occupational Outlook Handbook (Handbook)*, the director noted that the minimum requirement for entry into the position was not a baccalaureate degree or its equivalent in a specific specialty. The director concluded that the petitioner failed to establish any of the criteria found at 8 C.F.R. § 214.2(h)(4)(iii)(A).

On appeal, the petitioner's president states, in part, that the proffered position is that of a print production manager, not an industrial production manager. He also states that the proffered position requires a minimum of a bachelor's degree, or an equivalent thereof, in printing technology, print, or a related field. He submits two expert opinions, job postings, and excerpts from DOL publications as supporting documentation.

Preliminarily, the petitioner's interpretation of the *O*Net* is not persuasive that the proffered position is a specialty occupation. The *O*Net* does not 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. The *O*Net* provides only general information regarding the tasks and work activities associated with a particular occupation, as well as the education, training, and experience required to perform the duties of that occupation. The SVP rating does not describe 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.

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 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 often considered by CIS when determining these criteria 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)).

The AAO routinely consults the *Handbook* for its information about the duties and educational requirements of particular occupations. The AAO does not find that the proffered position, which is similar to a printing machine operator with supervisory/managerial duties, is a specialty occupation. A review of the Printing Machine Operators occupation category in the *Handbook*, 2006-07 edition, finds no requirement of a bachelor's degree for entry into the field. Regarding the training requirements for printing machine operators, the DOL states, in part, that most printing machine operators are trained on the job while they work as assistants or helpers, and may advance in pay and responsibility by working on a more complex printing press. The DOL's 2006-07 *Career Guide to Industries* also reports that workers enter the printer industry with a various educational backgrounds. Of further note, although information on the petition reflects that the petitioner currently has five employees, the record contains no evidence in support of this claim such as quarterly wage reports. It is noted that the petitioner's 2004 federal income tax return reflects \$55,140 paid in compensation of officers and \$63,049 paid in salaries and wages. Simply going on record without supporting documentary evidence is not sufficient for the purpose 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 petitioner has not established the proffered position as a specialty occupation under 8 C.F.R. § 214.2(h)(iii)(A)(I).

Regarding parallel positions in the petitioner's industry, the petitioner submits Internet job postings for print production managers and similar positions. The listings provided, however, either fail to offer meaningful descriptions of the positions advertised or rely on duties unlike the duties listed by the petitioner. Specifically, the petitioner has not demonstrated that the proposed duties of the proffered position are as complex as the duties described for the advertised positions, such as the following: working directly with writers and artists to develop the highest level of production value and execution; overseeing the press department and pre-press area; working with the director of product development and the director of online marketing/promotion; hiring and monitoring design staff; managing 150+ employees; and participating in department meetings across marketing operations. Accordingly the petitioner has not established that the degree requirement is common to the industry in parallel positions among similar organizations.

The record also contains two opinions from a university associate professor of management science and a university director of an industrial management program, who both assert that the proffered position requires the minimum of a bachelor's degree in printing technology, or a related field, and that this requirement is an industry standard. The record, however, does not indicate that the writers have adequate knowledge of this matter. The opinions do not include a discussion of the proposed duties and/or the actual work that the beneficiary would perform within the context of this particular petitioner's business. The writers do not demonstrate knowledge of the petitioner's particular business operations. They do not relate any personal observations of those operations or of the work that the beneficiary would perform. Their opinions do not relate their conclusions to specific, concrete aspects of this petitioner's business operation to demonstrate a sound factual basis for their conclusions about the educational requirements for the particular position at issue. 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). As the opinions of the writers are not based on an adequate factual foundation, the AAO does not find them probative in this matter.

In the alternative, the petitioner may show that the proffered position is so complex or unique that only an individual with a degree can perform the work associated with the position. In the instant petition, the petitioner has submitted insufficient documentation to distinguish the proffered position from similar but non-degreed employment. The petitioner has failed to establish the proffered position as a specialty occupation under either prong of the criterion at 8 C.F.R. § 214.2(h)(4)(iii)(A)(2).

The AAO now turns to 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 petitioner’s president and owner stated in his September 8, 2006 response to the director’s RFE that the proffered position is a new position. The evidence of record therefore does not establish this criterion.

Finally, the AAO turns to the criterion at 8 C.F.R. § 214.2(h)(4)(iii)(A)(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.

The petitioner states, on appeal, that the proposed duties “demand an individual with at least a bachelor’s degree or equivalent in Printing Technology or related field.” The petitioner, however, has not established that they exceed in scope, specialization, or complexity those usually performed by printing machine operators with supervisory/managerial duties, an occupational category that does not require a baccalaureate or higher degree in a specific specialty. To the extent that they are depicted in the record, the duties do not appear so specialized and complex as to require the highly specialized knowledge associated with a baccalaureate or higher degree in a specific specialty. Therefore, the evidence does not establish that the proffered position is a specialty occupation under 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.

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.