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U.S. Department of Homeland Security  
U.S. Citizenship and Immigration Services  
Office of Administrative Appeals  
Washington, DC 20529-2090

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U.S. Citizenship  
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Services

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MAY 05 2009

FILE: SRC 05 160 50955 Office: TEXAS 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.

If you believe the law was inappropriately applied or you have additional information that you wish to have considered, you may file a motion to reconsider or a motion to reopen. Please refer to 8 C.F.R. § 103.5 for the specific requirements. All motions must be submitted to the office that originally decided your case by filing a Form I-290B, Notice of Appeal or Motion, with a fee of \$585. Any motion must be filed within 30 days of the decision that the motion seeks to reconsider or reopen, as required by 8 C.F.R. § 103.5(a)(1)(i).

John F. Grissom  
Acting Chief, Administrative Appeals Office

**DISCUSSION:** The Director, Texas Service Center, denied the nonimmigrant visa petition. A subsequent motion to reconsider was granted, and the director affirmed the previous denial. 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 engaged in the wholesale and export of beauty supply products that seeks to employ the beneficiary as its general 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).

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.

United States Citizenship and Immigration Services (USCIS) 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 (RFE) dated August 4, 2005; (3) the petitioner's response to the director's RFE dated November 1, 2005; (4) the director's decision dated January 3, 2006; and (5) the petitioner's Form I-290B and supporting documents received on February 1, 2006. The record also contains the director's initial denial for failure to respond to the RFE, the petitioner's motion to reopen, and the director's decision granting that motion. The AAO reviewed the record in its entirety before issuing its decision.

The petitioner is seeking the beneficiary's services as a general manager. Evidence of the beneficiary's duties includes: the I-129 petition; the petitioner's April 4, 2005 letter in support of the petition; and the petitioner's response to the director's request for evidence. According to the petitioner's April 4, 2005 letter, the beneficiary's proffered duties are as follows:

The General Manager will direct and coordinate the company's policies. He will formulate merchandising policies and coordinate merchandising activities. The position also requires for the individual to determine the amount of merchandise to be stocked and determine the necessary mark-up percentages to ensure profits. The newly created position of general manager became necessary as a result of our growth in the past two years. *The job duties need to fall under one person as they can no longer be delegated among the president and other employees.*

(Emphasis added).

On August 4, 2005, the director issued a request for evidence, which requested specific evidence in support of the contention that the proffered position required an individual with at least a four-year degree. The director specifically focused on the italicized sentence in the above paragraph as a basis for his request.

In response, the petitioner merely claimed in its November 1, 2005 letter that "[t]he position requires an applicant to have a minimum of a Bachelor's degree in Business Administration or its foreign equivalent. . . ." In support of this contention, the petitioner submitted several Internet job postings for general manager positions.

The director found, and the AAO concurs, that the proffered position of general manager is not a specialty occupation. Citing to 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 found further that the petitioner failed to establish any of the criteria found at 8 C.F.R. § 214.2(h)(4)(iii)(A).

On appeal, counsel for the petitioner contends that the director's decision was erroneous, and claims that the director erred by considering the size of the petitioning entity and likewise erred by failing to analyze the nature of the duties of the proffered position. Moreover, the petitioner claims that the proffered position of top executive is much akin to that of an operations manager, and urges reevaluation of the director's findings.

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; and 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 USCIS 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.Min. 1999)(quoting *Hird/Blaker Corp. v. Slattery*, 764 F. Supp. 872, 1102 (S.D.N.Y. 1991)).

The AAO routinely consults the *Handbook* for its information about the duties and educational requirements of particular occupations. The AAO does not concur with the petitioner that the proffered position is a specialty occupation.

In reaching its own conclusions regarding the nature of the proffered position, the AAO has reviewed the discussion of general and operations managers under the "Top Executives" category, as described by the 2008-2009 edition of the *Handbook*. It has taken particular note of the following section of that discussion:

*General and operations managers* plan, direct, or coordinate the operations of companies or public and private sector organizations. Their duties include formulating policies, managing daily operations, and planning the use of materials and human resources, but are too diverse and general in nature to be classified in any one area of management or administration, such as personnel, purchasing, or administrative services. In some organizations, the duties of general and operations managers may overlap the duties of chief executive officers.

\* \* \*

Substantial travel between international, national, regional, and local offices to monitor operations and meet with customers, staff, and other executives often is required of managers and executives. Many managers and executives also attend meetings and conferences sponsored by various associations. The conferences provide an opportunity to meet with prospective donors, customers, contractors, or government officials and allow managers and executives to keep abreast of technological and managerial innovations.<sup>1</sup>

Based on the petitioner's overview of the duties of the proffered position, which include formulating merchandising policies and activities, the AAO finds that the proffered position is akin to that of a general manager.

A review of the training required for positions included in the heading of top executives indicates that the formal education of such employees varies widely. While the *Handbook* indicates that many top executives have a bachelor's degree in business administration or liberal arts, no evidence in the *Handbook* indicates that a baccalaureate or higher degree in a specific specialty, or its equivalent, is required for a top executive or, more specifically, a general manager.

In response to the petitioner's contentions on appeal, the AAO has also examined the *Handbook's* overview of operations managers; however, it is noted that both general and operations managers are included in the same

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<sup>1</sup> *Occupational Outlook Handbook*, 2008-2009 Edition, at [www.bls.gov/oco/ocos012.htm](http://www.bls.gov/oco/ocos012.htm).

heading. Therefore, whether the title of the proffered position be general manager or operations manager, the AAO finds that the duties of the proffered position are akin to those set forth in the above sections.

Counsel also contends on appeal that in the Dictionary of Occupational Titles (*DOT*), the position of general manager possesses a Specific Vocational Preparation (SVP) of 8. Counsel asserts that the *DOT's* SVP rating should be considered, although not submitted into the record. The *DOT* is not a persuasive source of information regarding whether a particular job requires the attainment of a baccalaureate or higher degree in a specific specialty, or its equivalent, as a minimum for entry into the occupation. An SVP rating is meant to indicate only the total number of years of vocational preparation required for a particular position. It does not describe how those years are to be divided among training, formal education, and experience, and it does not specify the particular type of degree, if any, that a position would require. For this reason, the director did not err in discounting the *DOT* information.

Regarding parallel positions in the petitioner's industry, the petitioner has provided four job vacancy postings advertised at [www.monster.com](http://www.monster.com). Two advertise positions in operations management, and the other two advertise positions for a manager/supervisor of staff. Although all of the postings indicate that a bachelor's degree in business administration or a related field is a requirement, the advertisements are for entities that are not similar in scope or focus to the petitioning entity. The petitioner claims to be a wholesaler and exporter of beauty supply products.

The job postings submitted are for the following companies: (1) Avon, a direct seller of beauty products, and (2) RSC Equipment Rental, a provider of rental equipment; (3) ipsh!, a mobile marketing and advertising agency, and (4) an unnamed company engaged in distribution and wholesale in the gift and furniture industry. The wide variety of fields in which the above-referenced companies are engaged does little to persuade the AAO that these are parallel positions in the petitioner's industry, which is essentially wholesale and export of beauty products. While Avon is also engaged in the sale of beauty products, that company engaged in direct sales as opposed to the wholesale and export of beauty products. Furthermore, the proposed positions contained in these advertisements differ from the proffered position in this petition. Specifically, the position of general manager is difficult to equate to a manager or supervisor of staff. Moreover, the other two positions in operations management, when examined more closely, are somewhat unspecific and difficult to equate to the specific duties identified by the petitioner for the proffered position. Finally, the record does not include any evidence from professional associations regarding an industry standard, or documentation to support the complexity or uniqueness of the proffered position. The petitioner has, thus, not established the criteria set forth at 8 C.F.R. § 214.2(h)(4)(iii)(A)(1) or (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. In its initial letter of support, the petitioner stated that the position of general manager needed “to fall under one person as they can no longer be delegated among the president and other employees.” When more information was requested by the director in the RFE, counsel responded by stating that the petition of general manager was a new position, and therefore no evidence of past hiring practices for this position was available.

Since the record does not contain any evidence of the petitioner's past hiring practices, the petitioner has not met its burden of proof in this regard. Moreover, it should be noted that, if the petitioner's indirect contention that the

duties of the proffered position were previously performed by the other employees of the company, the validity of the claim that a bachelor's degree is a minimum requirement to perform the duties is called into question. However, without further information, this issue cannot be pursued further.

Finally, the AAO turns to the criterion 8 C.F.R. § 214.2(h)(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 has submitted no independent documentation, such as letters or expert testimony, in support of the contention that complex knowledge is required to perform the duties of the proffered position. Instead, the petitioner and counsel simply provide their own opinions with regard to the qualifications necessary for a general manager to successfully function in the proffered position. Moreover, the description of the duties of the proffered position does not specifically identify any tasks that are so specialized or complex that only a degreed individual could perform them. 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, or its equivalent, 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. Accordingly, the AAO shall not disturb the director's denial of the petition.

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.