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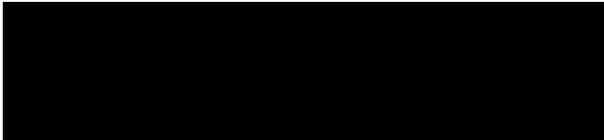
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U.S. Department of Homeland Security  
U.S. Citizenship and Immigration Services  
Office of Administrative Appeals MS 2090  
Washington, DC 20529-2090

U.S. Citizenship  
and Immigration  
Services

D2



FILE: EAC 07 145 50318 Office: VERMONT SERVICE CENTER

Date: **MAY 05 2009**

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, Vermont 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 engaged in the import and export of office and school supplies, and seeks to employ the beneficiary as its logistics 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, finding that the proffered position is not a specialty occupation. On appeal, counsel contends that the director's decision was erroneous, and submits a brief and additional evidence.

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)(ii):

*Specialty occupation* means an occupation which requires theoretical and practical application of a body of highly specialized knowledge in field 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 also 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 July 23, 2007; (3) the petitioner’s response to the director’s RFE dated August 3, 2007; (4) the director’s denial letter dated October 30, 2007; 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 a logistics manager. Evidence of the beneficiary’s duties includes: the I-129 petition; the petitioner’s undated letter in support of the petition; and the petitioner’s response to the director’s request for evidence. According to the petitioner’s initial letter of support, and in response to the request for evidence, the beneficiary’s responsibilities in the proffered position would be as follows:

- 1- Responsible for the entire life cycle of glue product and other school and office supplies; including acquisition, distribution, internal allocation and delivery. (25%)
- 2- Develop an understanding of customer’s needs, and take actions to ensure that such needs are met. (20%)
- 3- Develop and implement plans, schedules and responsibility, and compliance matrices. (15%)
- 4- Direct availability and allocation of materials, supplies, and finished products. (5%)
- 5- Protect and control proprietary materials. (5%)
- 6- Review logistics performance with customers against targets, benchmarks and service agreements. (15%)
- 7- Report project plans, progress, and results. (5%)
- 8- Establish task priorities, schedule and track work assignments, provide guidance and ensure availability of products. (10%)

The petitioner indicated that a qualified candidate for the job would possess a bachelor’s degree in business administration, logistics, and/or a closely related field or its equivalent and one year of experience in the field. Finally, the petitioner submitted an expert opinion letter from [REDACTED], Assistant Professor, School of Management at The State University of New York at Buffalo.

The director found that the proffered position was not a specialty occupation. Specifically, the director found that the description of proposed duties was too vague to establish that only a person possessing a bachelor's degree could perform such duties. Moreover, the director found that the expert opinion of [REDACTED] was insufficient to establish that the proffered position was in fact a specialty occupation. 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 asserts, in part, that the director erred in its analysis of *DOT's* SVP rating. In addition, counsel submits a new expert opinion from [REDACTED], in addition to other documentary evidence, and asserts that the totality of the evidence establishes that the proffered position is in fact a specialty occupation.

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 has not been established to be 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.

The AAO finds that the proffered position involves a combination of duties that fall under two different occupational categories in the *Handbook*. One is "general and operations manager," a sub-category of the broad occupational category called "top executives."

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>

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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).

The *Handbook* further explains that the nature of other high-level executives' responsibilities depends upon the size of the organization. For example, in large organizations, the duties of such executives are highly specialized. Some managers, for instance, are responsible for the overall performance of one aspect of the organization, such as manufacturing, marketing, sales, purchasing, finance, personnel, training, administrative services, computer and information systems, property management, transportation, or the legal services department. Specifically, the *Handbook* states that:

In smaller organizations, such as independent retail stores or small manufacturers, a partner, owner, or general manager often is responsible for purchasing, hiring, training, quality control, and day-to-day supervisory duties.

The *Handbook* goes on to describe the educational background and experience of top executives, including operations managers, as follows:

The formal education and experience of top executives varies as widely as the nature of their responsibilities. Many top executives have a bachelor's or higher degree in business administration or liberal arts . . . . Some top executives in the public sector have a background in public administration or liberal arts. Others might have a background related to their jobs . . . . Because many top executive positions are filled by promoting experienced, lower level managers when an opening occurs, many top managers have been promoted from within the organization. In industries such as retail trade or transportation, for instance, it is possible for individuals without a college degree to work their way up within the company and become managers. However, many companies prefer that their top executives have specialized backgrounds and, therefore, hire individuals who have been managers in other organizations.

The petitioner fails to establish the first criterion because the *Handbook* states that educational requirements vary widely. Based on the foregoing information the AAO concludes that the proffered position does not meet the first alternative criterion of a specialty occupation, at 8 C.F.R. § 214.2(h)(4)(iii)(A)(1), because a baccalaureate degree in a specific specialty is not the normal minimum requirement for entry into the proffered position.

With regard to the second alternative criterion of a specialty occupation, at 8 C.F.R. § 214.2(h)(4)(iii)(A)(2), the record includes nine Internet job postings for logistics managers and one for a logistics project leader. It is noted that these postings are submitted for the first time on appeal. Upon review, the AAO finds that none of the companies represented in these postings are comparable to the petitioner in its scale of operations or line of business. Specifically, it is noted that at the time of filing, the petitioner was a three-month old company with only one employee. The job postings submitted in support of the second criterion are for vacant positions at established companies such as Scholastic, Inc., the world's largest publisher and distributor of children's books, and Siemens Energy and Automation, one of the largest global electronics and engineering companies. Moreover, none of the advertisements require that applicants must have a baccalaureate degree in a specific specialty. In fact, the posting for the position of "logistics services manager" at BNSF Logistics states that "all majors" are acceptable. Thus, the Internet job postings do not establish that a degree requirement in a specific specialty is common to the petitioner's industry in parallel

positions among similar organizations, as required for the proffered position to qualify as a specialty occupation under the first prong of 8 C.F.R. § 214.2(h)(4)(iii)(A)(2). Nor does the evidence of record demonstrate that the proffered position is so complex or unique that a degree in a specific specialty is required to perform the job. Accordingly, the proffered position does not qualify as a specialty occupation under the second prong of 8 C.F.R. § 214.2 (h)(4)(iii)(A)(2).

As for the third alternative criterion of a specialty occupation, the petitioner was incorporated on January 3, 2007, three months prior to the filing of the petition. According to the record, the petitioner employs only one person, its president. Therefore, the proffered position of logistics manager is newly created and the petitioner has no hiring history for it. Thus, the petitioner cannot show that it normally requires a baccalaureate or higher degree in a specific specialty, as required for the position to qualify as a specialty occupation under 8 C.F.R. § 214.2(h)(4)(iii)(A)(3).

Finally, the record does not show that the duties of the proffered position are so specialized and complex that they require knowledge at the level of a baccalaureate or higher degree. Although the petitioner submits two expert opinions from [REDACTED]s and [REDACTED], the AAO does not find these opinions persuasive. As noted by the director, the description of responsibilities associated with the proffered position are so vague that it is virtually impossible to determine the level of complexity required to perform such duties. However, [REDACTED] and [REDACTED] emphatically claim that based on their professional opinions, duties such as “reporting project plans, projects and results” require an individual with a bachelor’s degree in business administration, logistics, management, or a related field. Neither opinion states with specificity the reasons why the specific duties of the proffered position could not be performed by a non-degreed individual.

The AAO may, in its discretion, use as advisory opinion statements submitted as expert testimony. However, where an opinion is not in accord with other information or is in any way questionable, the AAO is not required to accept or may give less weight to that evidence. *Matter of Caron International*, 19 I&N Dec. 791 (Comm. 1988). Both opinions submitted from [REDACTED] and [REDACTED] in support of the complex knowledge required to perform the duties of the proffered position are generalized and do not specifically evaluate the duties of the proffered position. Instead, they generally discuss their own opinions with regard to the qualifications necessary for a logistics manager to successfully function in such a position. Moreover, the description of the duties of the proffered position, as discussed above, 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).

Finally, it should be noted that on appeal, counsel relies on *DOT’s* SVP rating and asserts that the director erroneously analyzed these levels. 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.

For the reasons discussed above, the record does not establish that the proffered position meets any of the criteria enumerated in 8 C.F.R. § 214.2(h)(4)(iii)(A) to qualify as a specialty occupation. Therefore, the petitioner has not established that the beneficiary will be coming temporarily to the United States to perform services in a specialty occupation, as required under section 101(a)(15)(H)(i)(b) of the Act, 8 U.S.C. § 1101(a)(15)(H)(i)(b).

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.