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U.S. Citizenship
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Services

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FILE: LIN 04 184 51951 Office: NEBRASKA SERVICE CENTER Date: FEB 03 2006

IN RE: Petitioner: [Redacted]
Beneficiary: [Redacted]

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 materials have been returned to the office that originally decided your case. Any further inquiry must be made to that office.

Robert P. Wiemann, Director
Administrative Appeals Office

DISCUSSION: The service center director denied the nonimmigrant visa petition. The matter is now on appeal before the Administrative Appeals Office (AAO). The appeal will be dismissed. The petition will be denied.

The petitioner is a landscaping company. It seeks to employ the beneficiary as a training and development specialist and 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 on the ground that the record did not establish that the proffered position qualifies as 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.

As provided in 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) 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 evidence (RFE); (3) the petitioner's response to the RFE; (4) the director's decision; and (5) Form I-290B, an appeal brief, and supporting materials. The AAO reviewed the record in its entirety before issuing its decision.

In its initial submissions, including Form I-129 and an accompanying letter, the petitioner described itself as a company that provides a variety of landscaping services – including design, construction, maintenance and irrigation systems – to customers such as offices, industrial and retail customers, and condo/home owner associations. The petitioner stated that it had 200 employees, gross annual income of \$17.3 million, and proposed to hire a training and development specialist to “plan, organize and oversee a wide range of training activities. The duties of the position were described as follows:

[The beneficiary] will provide new employees with orientation programs and coordinate job training. He will assist current employees with maintaining and improving their job skills. Further, he will prepare achieving employees with training opportunities to attain higher level positions requiring greater skills. He will work with supervisors to improve their interpersonal skills to achieve a more effective workforce. As necessary, [the beneficiary] will conduct individual training programs for current employees to strengthen current skill[s] or teach a new technique. He will plan and develop new training programs by assessing current programs and determining areas of weakness and developing a new training program that will improve the situation and further provide a more efficient working environment. Finally, [the beneficiary] will develop the necessary training materials, such as instruction and maintenance manuals and handouts, needed in conjunction with our training programs.

According to the petitioner the proffered position required a bachelor’s degree in arts, human resources, or personnel administration. The beneficiary has a teacher of modern languages degree from the Universidad del Valle in Colombia, granted on November 17, 2000, and a master of arts degree in Spanish from the University of Cincinnati, granted on June 13, 2003.

In response to the RFE the petitioner provided a more detailed description of the proffered position’s duties, listing them as follows:

- Provide all new employees with orientation programs including assisting the Spanish speaking employees in obtaining the proper tools to understand the various cultural differences they will face in the United States.
- Prepare all of the various training materials to insure absolute compliance with the safety aspects of the equipment.
- Coordinate job training, by assessing the new employees’ landscaping skill levels and determining where their skills would be best utilized.
- Coordinate with various department heads and organize a schedule for the new employee[s] to follow to obtain the necessary training including providing classroom instruction and written training materials for all phases of the job functions.
- Assist in the evaluations of job performance with department heads including documenting each employee’s progress, or lack thereof, and provide appropriate training as necessary including the scheduling of additional training sessions in areas of weakness. Determine

which employees are excelling and make promotional recommendations to supervisors and department heads. Arrange the necessary training for new job promotions.

- Plan and develop new training programs, as warranted by introduction of new landscaping equipment, coordinate training with company supervisor, determine which employees will use the new equipment, and work with department supervisor to ensure the employees receive the necessary training.
- Communicate with all employees on new company policies, such as changes in insurance, work environment policies with regard to safety and proper use of company products, and provide verbal and written instructions to employees to assist them in understanding changes.
- Prepare written materials regarding various training programs, work environment safety issues, and employee handbook.

In accord with the petitioner's own classification of the proffered position, the director determined that the duties of the position reflected those of a human resources specialist, as described in the Department of Labor (DOL)'s *Occupational Outlook Handbook (Handbook)*. The information in the *Handbook*, the director declared, indicated that a bachelor's degree in a specialized field of study is not the normal, minimum, industry-wide standard for entry into the occupation of human resource specialist. Nor did another DOL resource referenced by the petitioner – the *Dictionary of Occupational Titles (DOT)* – indicate that a baccalaureate degree is required for the proffered position. The evidence of record did not establish that a degree requirement is common to the petitioner's industry in parallel positions among similar organizations, the director determined, or that the petitioner has a history of normally requiring a specialty degree for the position. The director concluded that the proffered position does not meet any of the criteria of a specialty occupation enumerated at 8 C.F.R. § 214.2(h)(4)(iii)(A).

On appeal counsel asserts that the director erred in finding that a bachelor's degree in a specialized field of study is not a normal, minimum, industry-wide requirement for entry into the proffered position. According to counsel, the complex nature of the duties – including the need for bilingual competence in English and Spanish – requires an individual with a specialty degree like the beneficiary's. Counsel asserts that both the *Handbook* and the *DOT* indicate that a baccalaureate degree in a variety of disciplines is required for entry into the human resources field, and that any particular position – like that involved in the instant petition – may require a degree in a narrower range of disciplines. According to counsel, job announcements in the record from other companies advertising training specialist positions indicate that a bachelor's degree in education is a possible minimum educational requirement for the position. In addition, counsel states that the duties of the proffered position were performed in the past by two employees with a bachelor of arts in Spanish and a bachelor of arts in speech communication together with a master of arts in Spanish and Latin American literature, thus demonstrating that the petitioner has a history of requiring a specialty degree for the position.

In determining whether a position meets the statutory and regulatory criteria of a specialty occupation, CIS routinely consults the DOL *Handbook* as an authoritative source of information about the duties and educational requirements of particular occupations. Factors typically considered are whether the *Handbook* indicates a degree is required by the industry; 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)). CIS also analyzes the specific duties and complexity of the position at issue, with the *Handbook*’s occupational descriptions as a reference, as well as the petitioner’s past hiring practices for the position. See *Shanti, Inc. v. Reno, id.*, at 1165-66.

The petitioner’s description of the proffered position’s duties accords with the *Handbook*’s description of training and development managers and specialists, which is a sub-category of the *Handbook*’s broad occupational category of “human resources, training, and labor relations managers and specialists.” Reflecting the broad range of positions within the occupational category, educational requirements for such positions also vary. As explained in the *Handbook*, 2004-05 edition, at page 49:

Because of the diversity of duties and levels of responsibility, the educational backgrounds of human resources, training, and labor relations managers and specialists vary considerably. In filling entry-level jobs, many employers seek college graduates who have majored in human resources, personnel administration, or industrial and labor relations. Other employers look for college graduates with a technical or business background or a well-rounded liberal arts education

Because an interdisciplinary background is appropriate in this field, a combination of courses in the social sciences, business, and behavioral sciences is useful. Some jobs may require a more technical or specialized background in engineering, science, finance, or law, for example

An advanced degree is increasingly important for some jobs. Many labor relations jobs require graduate study in industrial or labor relations. A strong background in industrial relations and law is highly desirable for contract negotiators, mediators, and arbitrators; in fact, many people in these specialties are lawyers. A background in law also is desirable for employee benefits managers and others who must interpret the growing number of laws and regulations. A master’s degree in human resources, labor relations, or in business administration with a concentration in human resources management is highly recommended for those seeking general and top management positions.

Based on the foregoing information, the AAO determines that a bachelor’s degree in a specific specialty is not the normal minimum requirement for entry into a training and development specialist position. While a bachelor’s degree in some field does appear to be a minimum requirement, the varying examples in the *Handbook* indicate that the area of desired educational specialty depends on such factors as the nature of the hiring entity, its line of business and scale of operations, and the complexity of its organizational structure. Thus, different employers look for different educational credentials in hiring entry-level training and development specialists, and some look simply for “a well-rounded liberal arts education.” Because a broad range of educational backgrounds is acceptable for entry into the occupation, the AAO concludes that a baccalaureate or higher degree in a specific specialty is not the normal minimum requirement for entry into the proffered position. Accordingly, the position does not meet the first alternative criterion of a specialty occupation, set forth in 8 C.F.R. § 214.2 (h)(4)(iii)(A)(1).

On appeal counsel refers to the *DOT, supra*, which rates training specialists as an occupation with an SVP (“specific vocational preparation”) of level 8. According to counsel that means the occupation requires a bachelor’s degree in a specialty field, as determined by the particular job. The *DOT*, however, is not a persuasive source of information about whether a particular job requires 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 the total number of years of vocational preparation required for a particular position. It does not specify 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 particular position would require. Thus, the *DOT* does not establish that a baccalaureate or higher degree in a specific specialty is required for entry into a training specialist position.

With respect to the second alternative criterion of a specialty occupation, set forth in 8 C.F.R. § 214.2(h)(4)(iii)(A)(2), the record includes a series of internet job announcements for training specialist positions. While all of the announcements indicate that a baccalaureate degree is required, there is no commonality with respect to an area of specialization. While a majority of the advertisements list several specialty areas that would be appropriate, some indicate only that a bachelor of arts degree is required, without indicating any particular specialty. These advertisements corroborate the information in the *Handbook* that a broad range of degrees is acceptable for entry into the position. None of the advertising organizations is in the same line of business as the petitioner, and none of the advertisements provides any information about the organization’s size and scale of operations relative to the petitioner. The AAO concludes, therefore, that the internet job announcements are not persuasive evidence 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 record show that the training and development specialist position is so complex or unique that it can only be performed by an individual with a baccalaureate degree in a specific specialty, as required for the position to 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, at 8 C.F.R. § 214.2(h)(4)(iii)(A)(3), counsel asserts that prior to the creation of the proffered position, training and development duties were performed by one individual with a baccalaureate degree in Spanish and another individual with a baccalaureate degree in speech communication with a minor in Spanish and a master of arts in Spanish and Latin American literature. No documentary evidence has been submitted of those educational degrees, however, or that either individual currently or previously worked for the petitioner. Simply going on record without supporting documentation does not satisfy the petitioner’s burden of proof. *See 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)). Moreover, the employer’s acceptance of a variety of liberal arts degrees for the position, rather than requiring a human resources background, is further indication that it does not require a degree in a specific specialty and that the position, therefore, is not a specialty occupation. *See Matter of Michael Hertz Associates*, 19 I&N Dec. 558 (Comm. 1988). The AAO determines that the record fails to establish that the petitioner normally requires a specialty degree or its equivalent for the training and development specialist position, 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 establish that the duties of the training and development specialist are so specialized and complex that the knowledge required to perform them is usually associated with a

baccalaureate degree in a specific specialty. Based on the information in the *Handbook* and the evidence of record – including the petitioner’s line of business, scale of operations, and description of the proffered position – the AAO concludes that the duties of the position could be performed by an experienced individual without baccalaureate level knowledge in a specific specialty. Thus, the proffered position does not meet the fourth alternative criterion of a specialty occupation at 8 C.F.R. § 214.2(h)(4)(iii)(A)(4).

For the reasons discussed above, the record fails to demonstrate that the proffered position meets any of the criteria enumerated at 8 C.F.R. § 214.2(h)(4)(iii)(A) to qualify as a specialty occupation. 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 petitioner bears the burden of proof in these proceedings. *See* section 291 of the Act, 8 U.S.C. § 1361. The petitioner has not sustained that burden. Accordingly, the AAO will not disturb the director’s decision denying the petition.

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