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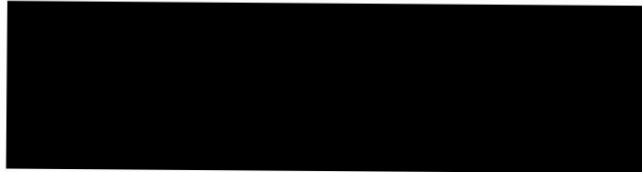
U.S. Department of Homeland Security
20 Mass Ave., N.W., Rm. 3000
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U.S. Citizenship
and Immigration
Services

151

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FILE: EAC 03 029 55093 Office: VERMONT SERVICE CENTER Date: JUL 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 documents have been returned to the office that originally decided your case. Any further inquiry must be made to that office.

for Michael T. Kelly
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 operates a professional dry cleaners with 10 employees. It seeks to employ the beneficiary as its manager of operations. 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 because the proffered position is not a specialty occupation. On appeal, the petitioner submits a brief and additional documentation.

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.

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 additional evidence; (3) the petitioner's response to the director's request; (4) the director's denial letter; 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 its manager of operations. Evidence of the beneficiary's duties includes: the I-129 petition; and the petitioner's response to the director's request for evidence. According to this evidence, the beneficiary would perform duties, in part, that entail: managing

day-to-day operations, monitoring project status regularly; ensuring effective utilization of all account resources; developing and implementing cost reduction programs; tracking budget and expenditures related to project; developing project plans encompassing requirements definition [sic] through post-implementation review; being active proponent of the quality processes and programs; effectively managing employee turnover to meet business goals; meeting and exceeding all customer expectations with prompt follow-up and by showing genuine concern; ensuring timeliness and accuracy of payroll administration for all employees; being responsible for the hiring, recruiting, and training of personnel; acting as catalyst and support to identify continuous improvement programs/projects, capital expense programs/projects and those programs and projects that are to be undertaken by the operations teams for the purpose of improving financial performances; being responsible for account profitability and loss; developing and maintaining prompt account billing and collection procedures; providing appropriate financial analysis, devising and maintaining reporting; interfacing with vendors and customers to provide on-going, day-to-day operations; being responsible for leadership and day-to-day management of all areas of customer service and administration; drafting and negotiating commercial contracts and managing administration of contracts. The petitioner stated that the proffered position requires a bachelor's degree or equivalent in business administration.

The director found that the proffered position was not a specialty occupation. The director found that the petitioner had not established that the proffered position was a specialty occupation as defined by the criteria listed above. Additionally, the director found that the evidence of record does not establish that the beneficiary is qualified to perform the services of a specialty occupation.

On appeal, counsel asserts that based on the caliber of its operations, the proffered position requires at least a bachelor's degree in business administration or a closely related field. The petitioner asserts that the beneficiary qualifies for the position based on his bachelor level studies and work experience in the field of business administration. Counsel explains that the petitioner has been in operation since 1957 with 10 employees. The petitioner asserts that the beneficiary will perform duties that are only managerial in nature. The petitioner states that its structure "requires only supervisors/managers to be on [sic] permanent positions and all other employees are hired on temporary basis per assignment or project." Counsel notes that the beneficiary will replace an employee who holds a Master's degree in Business Administration. Counsel asserts that the petitioner has submitted extensive documentation to verify that the beneficiary's degree in business administration was required for the implementation of duties in this specialty occupation. Counsel refers to the Department of Labor's *Occupational Outlook Handbook (Handbook)* in support of his assertion that the proffered position requires a bachelor's degree. Counsel notes that although the *Handbook* section on top executives and general managers does mention that it is possible for individuals without a college degree to work their way up within the company, counsel asserts that CIS should note that this is not typical of the industry and should not follow this "exception to industry standards."

Counsel asserts that the petitioner, as well as other similar companies in the industry, requires the minimum of a bachelor's degree in business administration/management or the equivalent for entry into the position. Counsel refers to a letter submitted in response to the director's request. This letter was addressed to the offices of the attorney of record and dated October 24, 2001. The instant petition was filed in November 2002. The letter was prepared by Global Language Services and refers to the *Handbook* (1996-1997 edition) and the Department of Labor's *Dictionary of Occupational Titles*. The author of this letter concluded that virtually all department managers are holders of at least a four-year degree or the equivalent, and that current employers require a minimum of a bachelor's degree for the position of department manager. As noted above, the *Handbook* does not support this author's conclusion. Furthermore, the DOL has replaced the *DOT* with the *Occupational Outlook Network (O*Net)*. The *DOT* and *O*Net* provide 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 Specific Vocational Preparation (SVP) relied on by the *DOT* and *O*Net* does not indicate that a specific degree is required for an 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. The *Handbook* provides a more comprehensive description of the nature of a particular occupation and the education, training and experience normally required to enter into and advance within an occupation. For this reason, the AAO is not persuaded by a claim that the offered position is a specialty occupation simply because of a rating in the *DOT*. Finally, as stated above, the letter was written more than a year before the filing of this petition. The letter does not indicate that the author reviewed the specific job description of the proffered position in relation to the petitioner's business. There is thus an inadequate factual foundation to support the author's conclusion that the proffered position requires a degree in a specialty. 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).

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 duties of the proffered position resemble those of a general manager in the section entitled top executives in the *Handbook*. The *Handbook* reveals that general and operations managers plan, direct, or coordinate the operations of companies or public and private sector organizations. The *Handbook* notes that 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. The *Handbook* indicates that in some organizations, the duties of general and operations managers may overlap with the duties of chief executive officers. The *Handbook* indicates that the formal education and experience of top executives vary as widely as the nature of their responsibilities. Many top executives have a bachelor's or higher degree in business administration or liberal arts; many top executive positions are filled from within the organization by promoting experienced, lower-level managers when an opening occurs. The *Handbook* also states that in industries such as retail trade or transportation, it is possible for individuals without a college degree to work their way up within the company and become managers.

A review of the training required for general managers indicates that the formal education of such employees varies widely. Many general managers 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 general manager. Based on the evidence in the record, the AAO cannot conclude that a baccalaureate or higher degree or its equivalent in a specific specialty is the normal minimum requirement for entry into the particular position, manager of operations.

No evidence in the record satisfies the first alternative prong of the second criteria at 8 C.F.R. § 214.2(h)(4)(iii)(A): that a specific degree requirement is common to the industry in parallel positions among similar organizations. As noted above, counsel contends that although the *Handbook* reveals that some top executives and general managers may be promoted from within the company and that some employers do not require a bachelor's degree, this lack of requirement of a bachelor's degree is an exception and not the rule. Counsel's arguments do not refute the fact the *Handbook* indicates that the position of top executive or general manager does not require a bachelor's degree in a specific specialty. As noted above, counsel submits a letter in support of his assertion that the industry requires a bachelor's degree. However, as discussed above, the letter is not probative and does not provide sufficient evidence to satisfy this criterion.

Furthermore, the petitioner has submitted no evidence that satisfies the second alternative prong of the second criterion which is that the proffered position is so complex or unique that it can be performed only by an individual with a degree in a specific specialty. As discussed in this decision, the proposed position parallels that of an operations manager, which is an occupation that does not require a bachelor's degree in a specific specialty.

The record also 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 that the proffered position meets either of 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. The petitioner asserts that the beneficiary will replace an employee who has a master's in business administration. The petitioner submitted a Master's of Business Administration diploma for its employee and one paystub. The petitioner has been operating for more than forty years and has not established that it has a history of requiring a bachelor's degree in a specific specialty for the position. Therefore, the proffered position has not been established as a specialty occupation based on the petitioner's normal hiring practices.

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. Counsel asserts that the duties of the proffered position are quite complex. Without documentary evidence to support the claim, the assertions of counsel will not satisfy the petitioner's burden of proof. The unsupported assertions of counsel do not constitute evidence. *Matter of Obaigbena*, 19 I&N Dec. 533, 534 (BIA 1988); *Matter of Laureano*, 19 I&N Dec. 1 (BIA 1983); *Matter of Ramirez-Sanchez*, 17 I&N Dec. 503, 506 (BIA 1980). Counsel has not differentiated the duties of the proffered position from those normally required of an operations manager. 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).

The petitioner indicated that the position required a minimum of a bachelor's degree in business administration. A petitioner must demonstrate that the proffered position requires a precise and specific course of study that relates directly and closely to the position in question. Since there must be a close corollary between the required specialized studies and the position, the requirement of a degree with a generalized title, such as business administration or liberal arts, without further specification, does not establish the position as a specialty occupation. *Matter of Michael Hertz Associates*, 19 I&N Dec. 558 (Comm. 1988).

The director found that the evidence of record does not establish that the beneficiary is qualified to perform the services of a specialty occupation. As discussed above, the proffered position is not a specialty occupation; the issue of whether the beneficiary is qualified to perform the services of a specialty occupation is irrelevant.

For the reasons previously noted, 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.