

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

FILED
CLERK, U.S. DISTRICT COURT
AUG 23 2006
CENTRAL DISTRICT OF CALIFORNIA
BY *[Signature]* DEPUTY

Priority
 Send
 Clsd
 Enter
 JS-5/JS-6
 JS-2/JS-3
 Scan Only

SCANNED

ENTERED
CLERK, U.S. DISTRICT COURT
AUG 24 2006
CENTRAL DISTRICT OF CALIFORNIA
BY *[Signature]* DEPUTY

UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA

FRED 26 IMPORTERS, INC. and) Case No. CV 05-03477 DDP (Ex)
CHRISTINE SAGMIT,)
)
Plaintiff,) ORDER GRANTING PLAINTIFFS' MOTION
) FOR SUMMARY JUDGMENT AND DENYING
) DEFENDANTS' MOTION FOR SUMMARY
v.) JUDGMENT
)
UNITED STATES DEPARTMENT OF) [Motions filed on March 27, 2006]
HOMELAND SECURITY AND UNITED)
STATES CITIZENSHIP AND)
IMMIGRATION SERVICES,)
)
Defendants.)

This matter comes before the Court on cross motions for summary judgment filed by the defendants and the plaintiffs. After reviewing the parties' arguments, the Court grants the plaintiffs' motion and denies the defendants' motion.

I. Background

Fred 26 Importers, Inc. ("Fred 26") and Christine Sagmit ("Sagmit") (collectively the "plaintiffs"), bring this action against the United States Department of Homeland Security and the United States Citizenship and Immigration Services ("USCIS").

THIS CONSTITUTES NOTICE OF ENTRY
AS REQUIRED BY FRCP, RULE 77(d).

25

DOCKETED ON CM
AUG 24 2006
BY *[Signature]* 004

SCANNED

1 collectively the "defendants"). The plaintiffs allege that
2 the USCIS erred in denying Fred 26's application for an H-1B visa
3 filed on behalf of Sagmit.

4 A. H-1B Visa Application

5 An employer may file an H-1B visa petition on behalf of an
6 alien worker. 8 U.S.C. § 1184(c). Qualified non-immigrant aliens
7 may temporarily come to the United States to perform services in a
8 specialty occupation. 8 U.S.C. § 1101(a)(15)(H)(i)(b). A
9 specialty occupation is defined as an occupation that requires:

- 10 (A) theoretical and practical application of a body of highly specialized knowledge and
- 11 (B) attainment of a bachelor's or higher degree in a specific specialty (or its equivalent) as a minimum for entry into the
- 12 occupation in the United States.

13 8 U.S.C. § 1184(i)(1); see also 8 C.F.R. § 214.2 (h)(4)(ii).

14 To qualify as a specialty occupation, the position must meet one of
15 the following criteria:

- 16 (1) a bachelor's or higher degree or its equivalent is normally the minimum requirement for entry into
- 17 the particular position,
- 18 (2) the degree requirement is common to the industry in parallel positions among similar organizations or,
- 19 in the alternative, an employer may show that its particular position is so complex or unique that it can
- 20 be performed only by an individual with a degree,
- 21 (3) the employer normally requires a degree or its equivalent for the position, or
- 22 (4) the nature of the specific duties are so specialized and complex that knowledge required to perform the duties
- 23 is usually associated with the attainment of a bachelor's or higher degree.

24 8 C.F.R. § 214.2 (h)(4)(iii)(A).

25 Petitions for H-1B visas are filed with the USCIS Service Center
26 with jurisdiction in the area where the alien will work. 8 C.F.R.
27 § 214.2(h)(2)(i)(A).

28

SCANNED

1 B. Fred 26's Application to Employ Sagmit as a Human
2 Resources Manager

3 Fred 26 imports and exports kitchenware and household items.
4 The company has twelve employees and recently reported gross
5 revenues of \$4 million. (Certified Administrative Record ("CAR")
6 284.) On November 1, 2002, Fred 26 filed an application with the
7 USCIS California Service Center ("CSC") in order to employ Sagmit
8 as a temporary H-1B "specialty occupation" worker under 8 U.S.C. §
9 1101(a)(15)(H)(i)(b). Specifically, Fred 26 sought to employ
10 Sagmit as a human resources manager. As part of its application,
11 Fred 26 filed various forms required by the USCIS, including a
12 letter from Fred 26 and a credential evaluation stating that
13 Sagmit's foreign degree is equivalent to a bachelor's degree in
14 human resources management. (CAR 284-286; 290-291.)

15 On May 13, 2003, the CSC sent Fred 26 a notice requesting a
16 more detailed description of the human resources manager position
17 and an explanation for why the work requires the services of an
18 individual with a college degree in the occupational field. The
19 CSC also requested evidence that the human resources manager
20 position meets one of the four criteria listed in 8 C.F.R. §
21 214.2(h)(4)(iii)(A). (CAR 37-40.) Fred 26 submitted additional
22 materials in response to CSC's request, including letters from Fred
23 26's counsel, Fred 26's president, John Remington, a professor at
24 the Industrial Relations Center in the Carlson School of Management
25 at the University of Minnesota, and Jed DeVaro, a professor of
26
27
28

SCANNED

1 labor economics at the School of Industrial and Labor Relations at
2 Cornell University.¹ (Id. 41-47; 83-102.)

3 The letter from Fred 26's counsel argued that the human
4 resources manager position requires the services of a degree
5 holder. (Id. 41.) In support, Fred 26's counsel cited the
6 Department of Labor's Occupational Outlook Handbook, which states
7 in part that "[m]any employers prefer applicants [for human
8 resource positions] who have majored in human resources, personnel
9 administration, or industrial labor relations." (Id.)

10 Fred 26's president explained in his letter that the human
11 resources manager will be responsible for (1) carrying out
12 recruitment campaigns; (2) drafting a policy manual covering issues
13 such as insurance coverage, company policies and termination
14 information; (3) creating professional development programs; and
15 (4) formulating policies on issues such as employee standards and
16 wage administration. (Id. 45-47.)

17 Professors Remington and DeVaro stated that, in their opinion,
18 based on their research, businesses of varying sizes retain the
19 services of a degreed human resources manager. (Id. 87, 92.)
20 After reviewing the letters submitted by Fred 26, both professors
21 stated that, in their opinion, based on their experience and
22 research, the human resources manager position requires writing,
23 research, analytical and supervisory skills acquired in a
24 bachelor's degree in an area such as human resources. (Id.)

25
26 ¹ Fred 26 also submitted: (1) its tax returns for 2001 and
27 2002 (CAR 177-209); (2) wage records for its employees (Id. 210-
28 211); (3) its organizational flowchart (Id. 171-176); (4) a copy of
Sagmit's I-94 (Id. 253-54); (5) a copy of the Department of Labor's
Occupational Outlook Handbook (Id. 51-62); and (6) human resource
manager job postings for other companies (Id. 115-137).

1 Therefore, both professors concluded that the human resources
2 manager position at Fred 26 necessitates a bachelor's degree in
3 human resources management, business administration, communications
4 or related social science fields. (Id.)

5 C. CSC's Denial of Fred 26's Application

6 On December 22, 2003, the CSC Director denied Fred 26's
7 petition. The CSC Director noted that a human resources manager in
8 a large company often qualifies as a specialty occupation because
9 the nature of the manager's duties in a larger company necessitates
10 a degree in human resources or a related field. (CAR 35.) The CSC
11 Director found, however, that the duties of the position at Fred
12 26, a small company, "appear to be routine" and are "primarily
13 administrative." (Id.) Therefore, the Director concluded that a
14 personnel clerk can perform the duties and that the position does
15 not qualify as a specialty occupation under the first criterion of
16 8 C.F.R. § 214.2(h)(4)(iii)(A). The CSC Director also held that
17 the position does not qualify as a specialty occupation under the
18 other criteria of 8 C.F.R. § 214.2(h)(4)(iii)(A).

19 In January 2004, Fred 26 filed a Notice of Appeal from the CSC
20 Director's decision. On appeal to the Administrative Appeals
21 Office ("AAO"), Fred 26 argued that the job duties of the position
22 demonstrate that it is a human resources position as opposed to a
23 personnel clerk position. (Id. 19-22.) Fred 26 argued that the
24 CSC Director failed to consider the description of the human
25 resources manager position in the OOH and the letters submitted by
26 Professors Remington and DeVaro, all of which demonstrate that a
27 bachelor's degree in human resources or a related field is the
28

SCANNED

1 normal minimum requirement for entry into the human resources
2 manager position. (Id.)

3 On February 28, 2005, the AAO dismissed Fred 26's appeal. The
4 AAO found that the duties of the position require the services of a
5 human resources manager. (CAR 4-5.) The AAO concluded, however,
6 that the position does not meet the requirements of a specialty
7 occupation under 8 C.F.R. § 214.2(h)(4)(iii)(A). (Id. 5-6.)

8 For the first criterion in 8 C.F.R. § 214.2(h)(4)(iii)(A), the
9 AAO noted that the Citizenship and Immigration Services interprets
10 the term "degree" to mean a degree "in a specific specialty that is
11 directly related to the proffered position." (Id. 3; see also 8
12 U.S.C. § 1184(i)(1); 8 C.F.R. § 214.2(h)(4)(ii).) The AAO cited
13 the OOH and the letters from the two professors. The OOH states
14 that employers prefer applicants for human resource positions who
15 majored in human resources, personnel administration or industrial
16 labor relations. (CAR 5.) The two professors stated that the
17 position necessitates a bachelor's degree in human resources
18 management, business administration, communications or related
19 social science fields. (Id.) Therefore, the AAO concluded, the
20 evidence does not establish that a bachelor's degree in a specific
21 specialty is the normal minimum requirement for a human resources
22 manager. See 8 C.F.R. § 214.2(h)(4)(iii)(A).

23 The AAO also concluded that the position does not meet the
24 other three criteria in § 214.2(h)(4)(iii)(A). Specifically, the
25 AAO found that the record fails to establish that the specific
26 duties of the position are so specialized and complex that the
27 knowledge required to perform them is usually associated with a
28 bachelor's degree. (CAR 6.)

SCANNED

1 The AAO decision is the final agency decision, and therefore,
2 the decision subject to review under the APA.

3
4 **II. Discussion**

5 A. Legal Standard for Summary Judgment

6 Summary judgment is appropriate where "the pleadings,
7 depositions, answers to interrogatories, and admissions on file,
8 together with the affidavits, if any, show that there is no genuine
9 issue as to any material fact and that the moving party is entitled
10 to a judgment as a matter of law" on that issue. Fed. R. Civ. P.
11 56(c). In determining a motion for summary judgment, all
12 reasonable inferences from the evidence must be drawn in favor of
13 the nonmoving party. Anderson v. Liberty Lobby, Inc., 477 U.S.
14 242, 242 (1986).

15 A genuine issue exists if "the evidence is such that a
16 reasonable jury could return a verdict for the nonmoving party,"
17 and material facts are those "that might affect the outcome of the
18 suit under the governing law." Anderson, 477 U.S. at 248. Thus,
19 the "mere existence of a scintilla of evidence" in support of the
20 nonmoving party's claim is insufficient to defeat summary
21 adjudication. Id. at 252. A moving party who bears the burden of
22 proof at trial is entitled to summary adjudication only when the
23 evidence indicates that no issue of material fact exists. Celotex
24 Corp. v. Catrett, 477 U.S. 317, 325 (1986). If the moving party
25 does not bear the burden of proof at trial, he is entitled to
26 summary judgment if he can demonstrate that "there is an absence of
27 evidence to support the nonmoving party's case." Id. Once the
28 moving party meets its burden, the burden shifts to the nonmoving

SCANNED

1 party resisting the motion for summary judgment, who must "set
2 forth specific facts showing that there is a genuine issue for
3 trial." Anderson, 477 U.S. at 256.

4 B. Judicial Review of Administrative Decision

5 Judicial review of the denial of an H-1B visa petition is
6 governed by the Administrative Procedure Act ("APA"), 5 U.S.C. §§
7 702, 706. A reviewing court must set aside agency action that is
8 "arbitrary, capricious, an abuse of discretion, or otherwise not in
9 accordance with law." 5 U.S.C. § 706(2)(A). The court must base
10 its determination on the administrative record. Tongatapu
11 Woodcraft Hawaii, Ltd. v. Feldman, 736 F.2d 1305, 1308 (9th Cir.
12 1984).

13 In reviewing an agency's decision under the arbitrary and
14 capricious standard, the court must determine whether the agency
15 based its decision on a consideration of the relevant factors, and
16 whether the agency made a clear error of judgment. N.W. Motorcycle
17 Ass'n v. U.S. Dep't. Of Agric., 18 F.3d 1468, 1471 (9th Cir. 1994)
18 (quotation omitted). In order to uphold an agency decision under
19 the arbitrary and capricious standard, the court must find that the
20 evidence before the agency provided a rational and ample basis for
21 its decision. N.W. Motorcycle, 18 F.3d at 1471.

22 C. The AAO's Decision

23 The defendants argue that the Court should issue summary
24 judgment in their favor, because the administrative record supports
25 the AAO's decision to deny the petition. (Defs.' Mot. 7.) The
26 plaintiffs argue that the letters from Professors Remington and
27 DeVaro and the description of the position in the OOH establish
28 that the human resources manager position is a specialty occupation

1 as defined in the first and fourth criteria in 8 C.F.R. §
2 214.2(h)(4)(iii)(A). Therefore, the plaintiffs contend, the AAO's
3 denial of the petition constitutes an abuse of discretion. (Pls.'
4 Mot. 19-20.)

5 1. First Criterion: Whether a Bachelor's Degree is
6 Normally the Minimum Requirement for
7 Entry into a Human Resources Manager Position

8 The AAO found that the evidence did not establish that a
9 bachelor's degree in a specific specialty is the normal minimum
10 requirement for a human resources manager. (CAR 5.)

11 The plaintiffs rely on Matter of Caron, 19 IN Dec. 791, 793
12 (BIA 1988) and contend that 8 C.F.R. § 214.2(h)(4)(iii)(A)(1) only
13 requires that a bachelor's degree in a narrow range of disciplines
14 constitute the normal minimum requirement for entry into the
15 position.² (Pls.' Mot. 13.) In support, the plaintiffs note that
16 Professors Remington and DeVaro stated that the human resources
17 manager position requires a degree in human resource management,
18 business administration or related fields in the social sciences.
19 (Id.) The plaintiffs also cite the OOH, which states that "[m]any
20 employers prefer applicants [for human resource positions] who have
21 majored in human resources, personnel administration, or industrial
22 labor relations." (CAR 41.) The plaintiffs further note that the
23 OOH recognizes that in many other occupations, degrees in related
24 areas will constitute the minimum requirement for entry into the
25 position. (Pls.' Mot. 14.)

27 ² The plaintiffs' reliance on Caron is misplaced, as Caron
28 did not address the meaning of a "specialty occupation" in the
context of 8 C.F.R. § 214.2(h)(4)(iii)(A).

SECRET

1 a. Administrative Record Does Support the AAO's
2 Decision Regarding First Criterion

3 It appears from the record that the AAO provided a rational
4 and ample basis for its decision regarding the first criterion.
5 See N.W. Motorcycle, 18 F.3d at 1471. A "specialty occupation" is
6 defined as the attainment of a bachelor's degree in a specific
7 specialty. See 8 U.S.C. § 1184(i)(1); 8 C.F.R. 214.2(h)(4)(ii).
8 Therefore, the AAO held that the term "degree" in 8 C.F.R. §
9 214.2(h)(4)(iii)(A) means a degree in a specific specialty that
10 directly relates to the proffered position. The AAO found that the
11 description of the position in the OOH and the letters submitted by
12 Professors Remington and DeVaro all demonstrate that the position
13 requires a degree in human resources or a related field.
14 Therefore, the AAO reasoned, the position does not require a degree
15 in a specific specialty.

16 The Court notes that the CSC Director held that, in a large
17 company, the human resources manager position will often qualify as
18 a specialty occupation because "the nature of the duties [are] such
19 that only a person with a degree in Human Resources or a related
20 field would be capable of performing the required duties." (CAR
21 35.) This suggests that a degree in a limited range of fields may
22 qualify as the minimum requirement for entry into a position.
23 However, the AAO provided a rational basis for its decision.
24 Accordingly, the Court will not set it aside.

25 ///

26 ///

27 ///

28

1 2. Fourth Criterion: Whether Nature of the Specified
2 Duties is So Specialized and Complex that Knowledge
3 Required to Perform the Duties is Usually Associated
4 with the Attainment of a Bachelor's Degree or a
5 Higher Degree

6 The AAO found that the record fails to establish that the
7 specific duties of the position are so specialized and complex that
8 the knowledge required to perform them is usually associated with a
9 bachelor's degree. (CAR 6.)

10 The plaintiffs contend that the letters from Professors
11 Remington and DeVaro establish that the job duties are sufficiently
12 complex. (Pls.' Mot. 15-16.) Both professors stated that the
13 human resources manager position requires writing, research,
14 analytical and supervisory skills acquired in a bachelor's degree
15 in an area such as human resources management. (CAR 87, 92.)

16 a. Administrative Record Does Not Support the
17 AAO's Decision Regarding the Fourth Criterion

18 The reviewing court may find an abuse of discretion when there
19 is "no evidence to support the decision or if the decision is based
20 on an improper understanding of the law." Occidental Eng'g Co. v.
21 INS, 753 F.2d 766, 768 (9th Cir. 1985). The record reveals that
22 the AAO failed to provide evidence in support of its decision, and
23 failed to consider crucial evidence submitted by Fred 26.

24 For the fourth criterion, the defendants argue that the AAO
25 based its decision on a determination that, due to Fred 26's small
26 size, the duties for the human resources manager position are not
27 sufficiently specialized or complex such that knowledge required to
28 perform the duties is usually associated with attainment of a

1 bachelor's degree. (Defs.' Mot. 9.) The record does not support
2 the defendants' argument. The Court finds that the AAO provided no
3 basis for its decision. The AAO did not cite any evidence in
4 support of its conclusion. It did not discuss the specific job
5 duties of the position, why the duties are not specialized or
6 complex, or why the size of the company impacts the nature of the
7 job duties. Rather, the AAO merely reiterated the criterion and
8 then stated that the position does not meet the requirement. The
9 conclusory nature of the AAO's finding provides no basis on which
10 the Court can evaluate the decision.

11 The AAO also failed to consider the letters submitted by the
12 professors with regards to the fourth criterion. The professors
13 stated that the nature of the job duties, rather than the size of
14 the company, determines whether a position requires a degree in the
15 area of human resources. (CAR 87, 92.) The professors went on to
16 state that the position requires a broad range of skills acquired
17 in a four-year university degree in human resources or a related
18 field. (Id.) The AAO did not address these statements, and simply
19 held that the record does not establish that the position meets the
20 fourth criterion. (CAR 6.) See The Button Depot, Inc v. U.S.
21 Dep't of Homeland Security, 386 F. Supp. 2d 1140, 1148 (C.D. Cal.
22 2005) (the AAO abused its discretion when it did not indicate any
23 basis for its conclusion that it "does not agree with the opinion
24 evidence submitted by the petitioner.") Further, the letters
25 provide the only evidence regarding the complexity of the job
26 duties. Therefore, the AAO's failure to even address the
27 professors' opinions constitutes an abuse of discretion. See Hong
28 Kong T.V. Video v. Ilchert, 685 F. Supp. 712, 717 (N.D. Cal. 1988)

SCANNED


1 (INS abused its discretion when it disregarded the only evidence
2 provided by the petitioner). Accordingly, the plaintiffs are
3 entitled to summary judgment.

4
5 **III. Conclusion**

6 Based on the foregoing reasons, the Court denies the
7 defendants' motion and grants the plaintiffs' motion.

8
9 IT IS SO ORDERED.

10
11
12 Dated: 8-23-06



DEAN D. PREGERSON
United States District Judge

10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28