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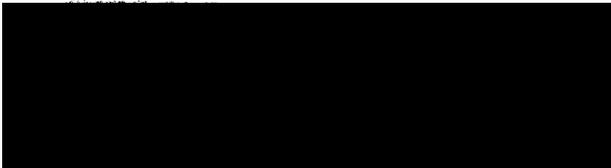
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FILE: WAC 04 079 53717 Office: CALIFORNIA SERVICE CENTER Date: **AUG 22 2005**

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.

Robert P. Wiemann, Director
Administrative Appeals Office

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

The petitioner is an apparel manufacturer, with approximately 300 employees, that seeks to employ the beneficiary as an industrial production analyst. The petitioner, therefore, 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 counsel submits a brief and additional evidence.

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.

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) counsel's response to the director's request; (4) the director's denial letter; and (5) Form I-290B and supporting documents. The AAO reviewed the record in its entirety before issuing its decision.

The petitioner is seeking the beneficiary's services as an industrial production analyst. Evidence of the beneficiary's duties includes: the Form I-129; the attachments accompanying the Form I-129; the company support letter; and the petitioner's response to the director's request for evidence. According to this evidence, the beneficiary would perform duties that entail planning and implementing the production schedule within budgetary limitations and time constraints imposed by customers; analyzing the plant's personnel and capital resources to select the most efficient way of meeting the production schedule and quota; developing and implementing production and quality control standards by inspecting and evaluating current established standards with different division managers to identify problem areas and to devise more efficient methods (20% of time); coordinating production activities with procurements maintenance, and quality control activities to obtain optimum production and utilization of human resources, machine and equipment (20% of time); formulating and implement training programs to improve the standard of quality and reorganize manufacturing process based on the findings to prevent drop in quality below that of established standards (10% of time); analyzing and designing master schedule workflow for different manufacturing processes to establish sequence and lead time for each process to meet customer requirements such as quantity, specifications, and shipping dates (15% of time); planning, designing and creating workflow schedules for each department and operation according to sequence of fabrication, assembly, installation, and other manufacturing operations for guidance of production workers (15% of time); conferring with department supervisors to determine status of assigned projects and preparing reports to the upper management and accordingly adjust work schedules to meet customer requirements (10% of time); coordinating with procurement department to ensure maintenance of inventory at a desired level, taking into consideration company's financial resources, client demand for specific products and delays in production due to inventory shortage (10% of time).

The petitioner indicated that the duties of the proffered position require the services of an individual who is the holder of a bachelor's degree in business administration or management and even prefers an advanced degree in business administration or industrial engineering.

The director issued a request for evidence to solicit additional information to determine whether the proffered position qualified as a specialty occupation. The director requested a copy of the petitioner's organizational chart including a brief job description for each position. The petitioner provided an overall organizational chart as well as a more detailed chart for the Quality Control Division. The director issued a second request for evidence requesting information about the beneficiary's employment history and immigration status. Counsel for the petitioner responded and provided requested evidence.

The director was not convinced that the petitioner has a definite employment position for the beneficiary. The director noted that the petitioner has three positions in the quality control division: Industrial Engineer, Industrial Distribution Analyst and Industrial Production Analyst and the director determined that they were performing similar duties. Additionally, the director noted that the Forms DE-6 were for an employer named Textile Unlimited and the submitted income tax return belonged to E & J Textile Group. The director noted that though the petitioner explained that it is related to E & J Textile Group, the director found that it did not clarify if the employees identified in the DE-6 are working for both companies. The director indicated that discrepancies encountered in the evidence call into question the petitioner's ability to document the requirements under statute and regulations. The director found that the discrepancies have not been explained satisfactorily. Finally, the director determined the petitioner has not established that the proffered position qualifies as a specialty occupation.

On appeal, counsel contends that the director does not rebut the specialty nature of the proposed position. Counsel states that in the initial petition the petitioner included ample evidence to prove that the position of industrial production analyst is a speciality occupation. Counsel refers to the Department of Labor's *Occupational Outlook Handbook (Handbook)* in support of his contention. Counsel notes that the *Handbook* states, "many industrial production managers have a college degree in business administration, management, industrial technology, or industrial engineering."

Upon review of the record, the petitioner has established one of the four criteria outlined in 8 C.F.R. § 214.2(h)(4)(iii)(A). Therefore, the proffered position is a specialty occupation.

The AAO considers 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)).

In determining whether a position qualifies as a specialty occupation, CIS looks beyond the title of the position and determines, from a review of the duties of the position and any supporting evidence, whether the position actually requires the theoretical and practical application of a body of highly specialized knowledge, and the attainment of a baccalaureate degree in a specific specialty as the minimum for entry into the occupation as required by the Act.

Based on the record of proceeding, the AAO has determined that the proffered position is most similar to that of an industrial production manager in the *Handbook*. According to the *Handbook*, industrial production managers duties vary from plant to plant but share many of the same major responsibilities which include production scheduling, staffing, procurement and maintenance of equipment, quality control, inventory control, and the coordination of production activities with those of other departments. The *Handbook* states that the primary mission of industrial production managers is planning the production schedule within budgetary limitations and time constraints. Industrial production managers do this by analyzing the plant's personnel and capital resources to select the best way of meeting the production quota. They determine, often using mathematical formulas, which machines will be used, whether new machines will be purchased, whether overtime or extra shifts where necessary, and what the sequence of production will be.

With respect to the educational qualifications required of industrial production managers, the *Handbook* states:

Because of the diversity of manufacturing operations and job requirements, there is no standard preparation for this occupation. However, a college degree is required, even for those who have worked their way up the ranks. Many industrial production managers have a college degree in business administration, management, industrial technology, or industrial engineering. . . . Some are former production-line supervisors who have been promoted.

Although many employers prefer candidates with a business or engineering background, some companies hire well-rounded liberal arts graduates.

Accordingly, the petitioner cannot establish that a baccalaureate or higher degree or its equivalent in a specific specialty is the normal minimum requirement for entry into the industrial production manager position. The *Handbook* states that degrees from different specialties will qualify as a minimum requirement for entry into the occupation.

However, the petitioner has established that the proffered position meets the criterion at 8 C.F.R. § 214.2(h)(4)(iii)(A)(4). The petitioner has established that the nature of the specific duties is so specialized and complex that the knowledge required to perform the duties is usually associated with the attainment of a baccalaureate or higher degree. The petitioner has separately submitted DE-6 Forms indicating that it employs 260 persons in the United States, apart from its parent company. It has established that it is a sizable company providing a vast array of services related to textile manufacturing, dyeing, and printing. The petitioner has established that the nature of the specific duties is so specialized and complex that the knowledge required to perform the duties is usually associated with the attainment of a baccalaureate or higher degree.

The record reflects that the beneficiary has the equivalent of a bachelor's degree in international business administration, indicating that he is qualified for this specialty occupation.

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 sustained that burden. Accordingly, the appeal will be sustained and the petition will be approved.

ORDER: The appeal is sustained. The director's order is withdrawn and the petition is approved.