



U.S. Citizenship
and Immigration
Services

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FILE: SRC 03 085 52941 Office: TEXAS SERVICE CENTER Date: **AUG 24 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 dismissed. The petition will be denied.

The petitioner imports and sells Mexican artifacts and accessories. It seeks to employ the beneficiary as a general director of commerce operations. 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 proposed position is not a specialty occupation. On appeal, counsel submits a brief.

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) 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 a general director of commerce operations. Evidence of the beneficiary's duties includes: the Form I-129; the attachments accompanying the Form I-129; the petitioner's 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 the selection of products and their markets; strategic planning to sell exported and imported products; market outlook; supervision of sales and income; negotiation of international contracts; arranging shipping details such as export licenses and customs declarations; packing, shipping, and routing of products; expediting import-export arrangements; preparing and maintaining export and import logistics; commercializing products and exposing them to foreign and domestic markets; and coordinating and implementing organizational activities in order to distribute products to Hispanics in the United States and the Caribbean. The petitioner seeks to employ the beneficiary, who possesses, according to the Foundation for International Services, Inc. (FIS), the educational equivalent to a baccalaureate degree in international business from an accredited college or university in the United States.

The director found the job postings and the information from the *Department of Occupational Titles (DOT)* unpersuasive in establishing that the proposed position is a specialty occupation.

On appeal, counsel states that the submitted job description and job postings established that the proposed position qualifies as a specialty occupation. Counsel asserts that the director erroneously found that since an import/export manager was not listed in the Department of Labor's (DOL) *Occupational Outlook Handbook* (the *Handbook*), a baccalaureate degree is not required for entry into the proposed position.

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 first 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.

Counsel asserts, in part, that the *DOT's* SVP rating was not considered, even though submitted into the record. 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 properly discounted the *DOT's* information.

The *Handbook* reveals that the proposed duties are a combination of those of a cargo and freight agent and a buyer. The AAO recapitulates here the *Handbook* text about cargo and freight agents.

Cargo and freight agents arrange for and track incoming and outgoing cargo and freight shipments in airline, train, or trucking terminals or on shipping docks. They expedite the movement of shipments by determining the route that shipments are to take and by preparing all necessary shipping documents. The agents take orders from customers and arrange for the pickup of freight or cargo for delivery to loading platforms. Cargo and freight agents may keep records of the properties of the cargo, such as its amount, type, weight, and dimensions. They keep a tally of missing items, record the conditions of damaged items, and document any excess supplies.

Cargo and freight agents arrange cargo according to its destination. They also determine the shipping rates and other charges that can sometimes apply to the freight. For imported or exported freight, they verify that the proper customs paperwork is in order. . . .

In the *Handbook*, buyers are portrayed as follows:

Purchasing managers, buyers, and purchasing agents seek to obtain the highest quality merchandise at the lowest possible purchase cost for their employers. . . . Purchasers and buyers determine which commodities or services are best, choose the suppliers of the product or service, negotiate the lowest price, and award contracts that ensure that the correct amount of the product or service is received at the appropriate time. In order to accomplish these tasks successfully, purchasing managers, buyers, and purchasing agents study sales records and inventory levels of current stock, identify foreign and domestic suppliers, and keep abreast of changes affecting both the supply of, and demand for, needed products and materials.

Purchasing managers, buyers, and purchasing agents evaluate suppliers on the basis of price, quality, service support, availability, reliability, and selection. . . .

Purchasing specialists who buy finished goods for resale are employed by wholesale and retail establishments, where they commonly are known as buyers or merchandise managers.

Wholesale and retail buyers are an integral part of a complex system of distribution and merchandising that caters to the vast array of consumer needs and desires. Wholesale buyers purchase goods directly from manufacturers or from other wholesale firms for resale to retail firms, commercial establishments, institutions, and other organizations. In retail firms, buyers purchase goods from wholesale firms or directly from manufacturers for resale to the public. Buyers largely determine which products their establishment will sell. Therefore, it is essential that they have the ability to predict what will appeal to consumers. They must constantly stay informed of the latest trends, because failure to do so could jeopardize profits and the reputation of their company. Buyers also follow ads in newspapers and other media to check competitors' sales activities, and they watch general economic conditions to anticipate consumer buying patterns. Buyers working for large and medium-sized firms usually specialize in acquiring one or two lines of merchandise, whereas buyers working for small stores may purchase the establishment's complete inventory.

The use of private-label merchandise and the consolidation of buying departments have increased the responsibilities of retail buyers. Private-label merchandise, produced for a particular retailer, requires buyers to work closely with vendors to develop and obtain the desired product. . . .

The AAO finds that the proposed duties are encompassed within those of a cargo and freight agent and a buyer as those occupations are depicted in the *Handbook's* passages set forth above. The beneficiary will arrange export licenses and custom declarations; pack, ship, and route products; expedite import-export arrangements; and prepare and maintain export and import logistics. Likewise, cargo and freight agents arrange cargo according to its destination, determine shipping rates and other charges, and for imported or exported freight verify that the proper customs paperwork is in order. The beneficiary's duties to select products and their markets; provide strategic planning for future sales of products; provide market outlook; supervise sales and income; negotiate international contracts; expose products to foreign and domestic markets; and coordinate and implement activities to obtain the best distribution of products to the marketplace is very similar to a buyer. Buyers determine which commodities are best, negotiate the lowest price, study sales records levels, identify foreign and domestic suppliers, predict what will appeal to consumers, and keep abreast of changes affecting both the supply of, and demand for, needed products and materials.

Employers, according to the *Handbook*, do not require more than a high school diploma for a cargo and freight agent position; and for a buyer, the AAO recapitulates here the *Handbook's* text:

Qualified persons may begin as trainees, purchasing clerks, expeditors, junior buyers, or assistant buyers. Retail and wholesale firms prefer to hire applicants who have a college degree and who are familiar with the merchandise they sell and with wholesaling and retailing practices. Some retail firms promote qualified employees to assistant buyer positions; others recruit and train college graduates as assistant buyers. Most employers use a combination of methods.

Educational requirements tend to vary with the size of the organization. Large stores and distributors, especially those in wholesale and retail trade, prefer applicants who have completed a bachelor's degree program with a business emphasis. Many manufacturing firms put yet a greater emphasis on formal training, preferring applicants with a bachelor's or master's degree in engineering, business, economics, or one of the applied sciences. A master's degree is essential for advancement to many top-level purchasing manager jobs.

The *Handbook* reveals that retail and wholesale firms prefer, but do not require, applicants to have a college degree, and that many manufacturing firms prefer, but do not require, applicants with a bachelor's or master's degree in engineering, business, economics, or one of the applied sciences. Thus, the AAO concludes that the proposed position is similar to a buyer and a freight and cargo agent and that the *Handbook* shows that these occupations do not require a baccalaureate degree in a specific specialty.

To establish the first alternative prong at 8 C.F.R. § 214.2(h)(4)(iii)(A)(2) - that a specific degree requirement is common to the industry in parallel positions among similar organizations - the petitioner submits job postings. The employers in the postings, however, differ in nature from the petitioner, a small importer and seller of Mexican artifacts and accessories. Kerry, Inc. manufactures food ingredients; BAC Global is a \$1.8 billion transportation and logistics company; Northrop Grumman Mission Systems is a defense company; General Electric is a conglomerate; and the U.S. Association of Importers and Textiles and Apparel provides services to customs brokers. The postings, therefore, fail to establish that a specific degree requirement is common to the industry in parallel positions among similar organizations.

The petitioner has not satisfied the second alternative prong at 8 C.F.R. § 214.2(h)(4)(iii)(A)(2) as no evidence in the record shows 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 relayed in this decision, the *Handbook* discloses that the proposed position corresponds to that of a buyer and a freight and cargo agent, which are occupations that do not require a baccalaureate degree in a specific specialty.

No evidence in the record establishes the regulation at 8 C.F.R. § 214.2(h)(4)(iii)(A)(3): that the petitioner normally requires a degree or its equivalent for the position.

To satisfy the regulation at 8 C.F.R. § 214.2(h)(4)(iii)(A)(4), the petitioner must establish that the nature of the specific duties is so specialized and complex that the knowledge required to perform them is usually associated with the attainment of a baccalaureate or higher degree. In this decision the AAO has already conveyed that the proposed duties resemble those of a buyer and cargo and freight agent, which are occupations that the *Handbook* reveals do not require a baccalaureate degree in a specific specialty. Accordingly, the petitioner fails to establish the fourth criterion at 8 C.F.R. § 214.2(h)(4)(iii)(A).

As related in the discussion above, the petitioner has failed to establish that the proffered position is a specialty occupation. Accordingly, the AAO shall not disturb the director's denial of the petition on this ground.

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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.