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U.S. Citizenship
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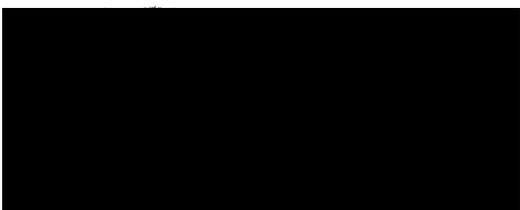


FILE: WAC 03 170 54680 Office: CALIFORNIA SERVICE CENTER Date: FEB 16 2005

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 is a distributor of golf apparel and accessories that seeks to employ the beneficiary as a buyer. 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 and previously submitted 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) 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 buyer. 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 coordinating activities involved in procuring golf equipment and accessories in order to forecast needs; maintaining a database of vendors; evaluating products for purchase based on evaluations of inventory, customer needs, and market analysis; conducting cost/benefit analysis; preparing purchase orders and negotiating contracts; maintaining and analyzing computerized records of items purchased, costs, delivery, and product quality; arranging the return of defective and unacceptable goods and conferring with quality control personnel; approving invoices for payment; authorizing expedited deliveries; and supervising support staff. The petitioner stated that a candidate for the proffered position must possess a bachelor's degree in business, marketing, or a related discipline.

The director determined that the proffered position was not a specialty occupation. Referring to the Department of Labor's (DOL) *Occupational Outlook Handbook* (the *Handbook*), the director found that the duties of the proffered position are performed by assistant buyers, and that educational requirements for entry level buying positions tend to vary with the size of the organizations. The director stated that the *Handbook* reveals that the largest stores and distributors seek applicants who have completed associate or bachelor's degree programs in marketing and purchasing. The director stated that the submitted evidence did not indicate that the petitioner normally requires candidates to possess a bachelor's or higher degree in the field. Finally, the director concluded that the proposed duties and stated level of responsibility did not indicate a complexity or authority beyond what is normally encountered in the occupational field, and further, that the evidence did not show that the job offered could not be performed by an experienced person whose educational training fell short of a baccalaureate degree.

On appeal, counsel states that the director erroneously referred to the proffered position as an "assistant buyer." Counsel contends that the *Handbook* does not describe an assistant buyer, and that the proposed salary evinces that the proffered position is not an assistant buyer or junior level job. Referring to an evaluation by Educated Choices, LLC, counsel states that the evaluation established that the proffered position is analogous to a purchasing manager/buyer described in the *Handbook* as normally requiring a baccalaureate degree for entry into the occupation. Counsel contends that the *Handbook's* discussion about the educational requirements of buyers establishes that employers normally require a bachelor's degree. Counsel asserts that the submitted job postings established that the degree requirement is common to the industry in parallel positions among similar organizations, and states that all of the job postings require a bachelor's degree in business, marketing, or a related discipline. Referring to job postings from the American Purchasing Society, counsel states that eleven of the job postings require a bachelor's degree, and the positions that do not require a bachelor's degree require significant experience or are junior/entry level. Counsel states that the proffered position is newly created, and the petitioner's other employees hold baccalaureate degrees. According to counsel, the director determined that the proffered position's duties and stated level of responsibility must involve complexity or authority "that is beyond what is normally

encountered.” Counsel states that this differs from the regulation which requires that the duties must be specialized and complex enough so that the knowledge required is “usually” associated with the baccalaureate degree. Counsel refers to the Educated Choices, LLC evaluation, the submitted evidence, and the *Handbook's* information to claim that the petitioner satisfied 8 C.F.R. § 214.2(h)(4)(iii)(A)(4). Finally, counsel cites to an unreported case to state that CIS must examine the proffered position’s duties and the employer’s needs to determine whether a position is a specialty occupation.

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. The AAO routinely consults the *Handbook* for its information about the duties and educational requirements of particular occupations.

The *Handbook* conveys the following about purchasing managers, buyers, and purchasing agents.

Purchasing managers, buyers, and purchasing agents seek to obtain the highest quality merchandise at the lowest possible purchase cost for their employers. In general, *purchasers* buy goods and services for use by their company or organization, whereas *buyers* typically buy items for resale. 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. . . .

Purchasing managers, buyers, and purchasing agents evaluate suppliers on the basis of price, quality, service support, availability, reliability, and selection. . . . At meetings, trade shows, conferences, and suppliers’ plants and distribution centers, they examine products and services, assess a supplier’s production and distribution capabilities, and discuss other technical and business considerations that influence the purchasing decision. . . .

The *Handbook* reports the following about the educational requirements for these occupations:

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.

On appeal, counsel asserts that employers require a baccalaureate degree for a buyer, and that the *Handbook* indicates that educational requirements vary between jobs that require a master's degree or baccalaureate degree.

The AAO does not agree with counsel's assertion. The *Handbook* explains that large stores and distributors and manufacturing firms prefer, *but do not require*, candidates who have completed a specific baccalaureate degree. The petitioner, therefore, fails to establish that a baccalaureate or higher degree or its equivalent in a specific specialty is the normal minimum requirement for entry into the particular position, buyer, because the *Handbook* reveals that employers do not require a bachelor's degree in a specific specialty for a buyer.

Counsel's reference to a passage in "Professionals: A Matter of Degree" is not persuasive in establishing that the proffered position is a specialty occupation because the author of the passage, Mr. Martin J. Lawler, provides no legal authority to substantiate his assertions. Similarly, counsel's reference to an unreported case to state that CIS must examine the proffered position's duties and the employer's needs to determine whether a position is a specialty occupation is not persuasive. An unreported case carries no precedential value. Furthermore, while 8 C.F.R. 103.3(c) provides that precedent decisions are binding on all CIS employees in the administration of the Act, unpublished decisions are not similarly binding.

To establish the second criterion - that a specific degree requirement is common to the industry in parallel positions among similar organizations - counsel refers to job postings. For various reasons, the job postings are insufficient in establishing the second criterion. Many of the organizations such as ABS Computer Technologies, Inc., Vans, Inc., Guess, PeopleSource, Inpac USA, and ITT HydroAir require candidates with a bachelor's degree, though they do not indicate that the degree must be in a specific specialty. The position with Interplace, Inc. requires migration and integration of AS 400 among 16 branch offices; thus, the job differs from the proffered position. The organizations are either dissimilar in nature, size, or scope to the

petitioner, a distributor of golf apparel and accessories, or insufficient information is in the posting about the organization. ITT HydroAir is a manufacturer; PeopleSource and La Agencia De Orci are advertising agencies; Interplace, Inc. is an international trading and distributing company specializing in Asian foods; the industrial product distributor deals with industrial products; Guess is in the global fashion industry; Guitar Salon International sells guitars; Princess Cruises sells vacation packages; EarthLink, ABS Computer Technologies, Inc., and USA Wireless Solutions are in the technology industry; Carat North America is a media company; Masterfoods USA is a food company; the San Gabriel Valley company is a manufacturer; City of Glendale is a public entity; and the Los Angeles organization is a floor covering distributor. No information is provided in the posting about Inpac USA; thus, the AAO cannot determine whether it is similar to the petitioner. For the reasons discussed above, the job postings fail to establish that a specific degree requirement is common to the industry in parallel positions among similar organizations.

The evaluation from Educated Choices, LLC stated that the industry standard is for employers to require a bachelor's degree for a buyer, and Educated Choices, LLC refers to the *Handbook* to support this assertion. Contrary to the assertion of Educated Choices, LLC, the *Handbook* explains that a buyer does not require a bachelor's degree in a specific specialty.

The petitioner fails to establish that the particular position is so complex or unique that it can be performed only by an individual with a degree. As already discussed, the *Handbook* reveals that the proffered position is performed by a buyer, an occupation that does not require a bachelor's degree in a specific specialty.

Since the proffered position is newly created the petitioner cannot establish 8 C.F.R. § 214.2(h)(4)(iii)(A)(3): that it normally requires a bachelor's degree or its equivalent in a specific specialty for the position.

The fourth criterion at 8 C.F.R. § 214.2(h)(4)(iii)(A) requires that the petitioner establish 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. Counsel points to the Educated Choices, LLC evaluation, the submitted evidence, and the *Handbook's* information to assert that the petitioner satisfied 8 C.F.R. § 214.2(h)(4)(iii)(A)(4).

This evidence is not persuasive. The AAO has already discussed the *Handbook's* information about buyers. Educated Choices, LLC stated that because the proffered position is managerial in nature it is a specialty occupation. Whether or not the proffered position is managerial in nature would not impact the degree requirement. As stated in the *Handbook*, employers do not require purchasing managers to possess a baccalaureate degree. Further, the statements of Dr. Brashear and [REDACTED] in the educational evaluation are not supported by independent evidence. Simply going on record without supporting documentary evidence is not sufficient for the purpose of meeting the burden of proof in these proceedings. *Matter of Treasure Craft of California*, 14 I&N Dec. 190 (Reg. Comm. 1972).

Counsel claims that the director improperly interpreted the regulation by stating that the proffered position's duties and stated level of responsibility must involve complexity or authority "that is beyond what is normally encountered." The director's statement is not incongruous with the regulation. Because the *Handbook*

reports that employers do not require a bachelor's degree in a specific specialty for a buyer, the director sought to determine whether the proffered position qualified as a specialty occupation on the ground that its duties and stated level of responsibility exceed what is normally encountered in the occupation.

Counsel stated that CIS approved another petition that had been previously filed by the petitioner on behalf of the same beneficiary. According to counsel, the prior petition sought the beneficiary's services as a market research analyst. However, the instant petition is for a buyer, not a market research analyst. Consequently, the prior petition is not applicable here because it relates to a different occupation.

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.

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.