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U.S. Department of Homeland Security
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Washington, DC 20529

U.S. Citizenship and Immigration Services

PUBLIC COPY

[redacted]

FILE: EAC 03 117 52487 Office: VERMONT SERVICE CENTER Date: MAR 18 2005

IN RE: Petitioner: [redacted]
Beneficiary:

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:

SELF-REPRESENTED

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, 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 confectionary and novelty company that seeks to employ the beneficiary as a candy batch maker. 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, the petitioner submits additional evidence.

Section 214(i)(l) of the Act, 8 U.S.C. § 1184(i)(l), 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 candy batch maker. The petitioner's July 7, 2003 letter described the duties of the proffered position. It stated that the beneficiary will calculate ingredient amounts to formulate or modify recipes to produce specific confectionery products; determine and optimize mixing sequences; operate equipment to process formulations; examine, feel, and taste products to evaluate color, texture, flavor, and bouquet; and establish specifications for tableting operations. The letter also described the beneficiary's daily activities. The petitioner's January 10, 2003 letter indicated that the beneficiary is qualified for the proffered position based on his knowledge of mathematics and his job experience. The petitioner submitted information from the Department of Labor's *Occupational Information Network (O*Net)* and Foreign Labor Certification Data Center's *On Line Wage Library (OLWL)* to show the educational requirements of the proffered position.

The director determined that the proffered position was not a specialty occupation. Referring to the presented information, the director stated that it did not establish the necessary elements of a specialty occupation, which are theoretical and practical application of a body of highly specialized knowledge, and 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. The director also determined that the beneficiary was not qualified to perform the duties of a specialty occupation.

The petitioner states that the proffered position requires more on-the-job experience than an associate's degree. According to the petitioner, the Occupational Employment Survey (OES) code for food batch makers reports that most occupations in the zone require training in vocational schools, related on-the-job experience, or an associate's degree, and some may require a bachelor's degree. The petitioner asserts that the beneficiary is qualified for the proffered 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 in a specific specialty is the normal minimum requirement for entry into the particular position; a specific 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 in a specific specialty.

On appeal, the petitioner asserts that the proffered position requires "more on job experience than an associate['s] degree." This assertion fails to establish that the proffered position is a specialty occupation. For a position to qualify as a specialty occupation under 8 C.F.R. § 214.2(h)(4)(iii)(A)(*1*), the petitioner must 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. The petitioner accepts on-the-job experience instead of a bachelor's degree, and the evidence does not establish that the acceptable experience must be the equivalent

of a bachelor's degree in a specific specialty. Given that the petitioner accepts such on-the-job experience instead of a baccalaureate degree for the proffered position, it cannot establish 8 C.F.R. § 214.2(h)(4)(iii)(A)(*1*).

Because the petitioner accepts on-the-job experience instead of a baccalaureate degree, it cannot establish the criterion at 8 C.F.R. § 214.2(h)(4)(iii)(A)(*2*): that its specific degree requirement is common to the industry in parallel positions among similar organizations or, in the alternative, that the position is so complex or unique that it can be performed only by an individual with a degree in a specific specialty.

Nor can the petitioner establish the third criterion at 8 C.F.R. § 214.2(h)(4)(iii)(A) which requires that the petitioner establish that it normally requires a degree or its equivalent in a specific specialty for the proffered position. Again, the petitioner accepts on-the-job experience instead of a baccalaureate degree.

Finally, the petitioner fails to establish the fourth criterion under 8 C.F.R. § 214.2(h)(4)(iii)(A), whereby it is required to show 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 in a specific specialty. Once again, the petitioner accepts on-the-job experience instead of a baccalaureate degree.

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 director found that the beneficiary was not qualified for the proffered position. Because the proffered position is not a specialty occupation, the beneficiary is qualified to perform the position.

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.