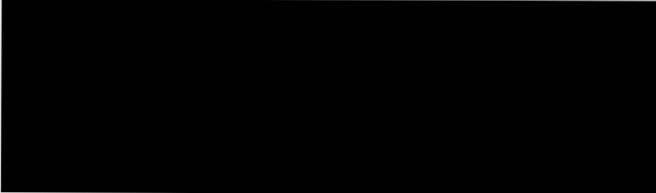




U.S. Citizenship
and Immigration
Services

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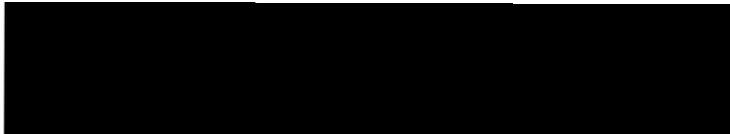


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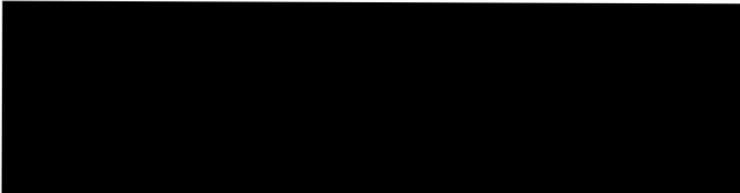
Date: JUN 22 2006

IN RE:



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 materials have been returned
to the office that originally decided your case. Any further inquiry must be made to that office.

Robert P. Wiemann, Chief
Administrative Appeals Office

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

The petitioner is a convenience store/check cashing business. It seeks to employ the beneficiary as a contract specialist and to classify him 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 on the ground that the record did not establish that the proffered position qualifies as a specialty occupation.

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 evidence (RFE); (3) the petitioner's response to the RFE; (4) the notice of decision; and (5) Form I-290B, a letter from counsel, and copies of previously submitted materials. The AAO reviewed the record in its entirety before issuing its decision.

In its initial submission, including the Form I-129 and an accompanying letter, the petitioner described itself as a convenience store/check cashing business serving low income areas in the city of Miami. The petitioner indicated that its business is a fledgling operation, established in 2004, with four employees at the time of filing. "Once a sufficient number of stores have been bought," the petitioner declared, "we will develop a centralized purchasing system which will allow us to obtain better prices for our customers and also increas[e] the return on the investments made." The petitioner stated that it had already purchased its first convenience store, which also provides check cashing services for its customers, and that it was "in the process of streamlining the operation to include a scanning process and inventory control program." To facilitate its business operations the petitioner seeks to hire the beneficiary for three years as a part-time contract specialist (20 hours/week). The duties of the position were described as follows in the letter accompanying the petition:

[The beneficiary will] analyze our business practices and procedures as well as liaise with management to ensure compliance [with] all purchasing policies. He will analyze products, establish prices, source items, coordinate activities to procure the specified goods, and confer with vendors to ascertain availability, delivery schedule and estimate values according to market price. He will negotiate with our suppliers and prepare contracts. He will evaluate and monitor the performance to determine the need for amendments and/or extensions of the contracts and schedules.

According to the petitioner, the position requires at least a baccalaureate degree. The beneficiary is qualified for the job, the petitioner declares, by virtue of his bachelor's degree in the field of law from the Catholic University Andres Bello in Venezuela, awarded on November 23, 1987.

In response to the RFE counsel elaborated on the duties of the proffered position, as follows:

While the duties initially outlined in the petitioner's supporting statement focus on the analysis, management, and preparation of purchasing contracts, the actual position duties are more related to the contractual obligations and requirements of the check cashing, wire transfer and money order area of the petitioner's business activities. The beneficiary will not merely function as a purchasing agent for the convenience stores, but will manage the compliance issues involved with the check cashing, wire transfer and money order business activities. These duties include a constant review of the petitioner's contractual relationships, their adjustment as needed, the execution of all reports, and the generation of all essential materials to ensure governmental and contractual compliance.

Counsel referred to the proffered position as a purchasing agent, consistent with descriptions of that occupation in two Department of Labor (DOL) resources – the *Dictionary of Occupational Titles (DOT)* and the *Occupational Outlook Handbook (Handbook)*. According to counsel, the foregoing resources and other published materials about purchasing positions indicate that the occupational field requires a bachelor's degree.

In her decision the director found that the proffered position does not qualify as a specialty occupation. In accord with counsel's categorization of the position in the response to the RFE, the director determined that the duties of the proffered position fit within the occupational category of purchasing managers, buyers, and purchasing agents, as described in the DOL *Handbook*. The director quoted information in

the *Handbook* indicating that a baccalaureate level of education is not the normal minimum requirement for entry into the occupation. The petitioner did not establish that a baccalaureate requirement is common to the industry in parallel positions among similar organizations, the director stated, or that the proffered position is so complex or unique that only an individual with a degree can perform it. The director concluded that the proffered position does not qualify as a specialty occupation under any of the criteria enumerated at 8 C.F.R. § 214.2(h)(4)(iii)(A).

On appeal counsel asserts that the proffered position qualifies as a specialty occupation under the first, second, and fourth criteria of 8 C.F.R. § 214.2(h)(4)(iii)(A). Counsel refers to previously submitted documentation in support of this claim, and does not provide any additional documentation on appeal.

In determining whether a position meets the statutory and regulatory criteria of a specialty occupation, CIS routinely consults the DOL *Handbook* as an authoritative source of information about the duties and educational requirements of particular occupations. Factors typically considered are whether the *Handbook* indicates a degree is required by the industry; 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*, 764 F.Supp. 1095, 1102 (S.D.N.Y. 1989)). CIS also scrutinizes the specific duties and complexity of the position at issue, with the *Handbook's* occupational descriptions as a reference, as well as the petitioner's past hiring practices for the position. See *Shanti, Inc. v. Reno, id.*, at 1165-66.

The duties of the proffered position described in counsel's response to the RFE add significantly to the duties originally described by the petitioner. While the duties described in the petitioner's initial letter to the service center are those of a purchasing agent for the convenience stores, as counsel acknowledges in the response to the RFE, the additional duties described in the response to the RFE involve check cashing, wire transfer, and money order activities of the petitioner's business. These duties are unrelated to the purchasing duties originally described. A petitioner may not make material changes to its petition in an effort to make a deficient petition conform to legal requirements. See *Matter of Izummi*, 22 I&N Dec. 169 (Assoc. Comm. 1998). "The AAO cannot consider facts that come into being only subsequently to the filing of the petition." *Id.* at 176. The AAO determines that the additional duties described in the response to the RFE constitute a material change to the petition. Accordingly, the new position description and supporting documentation cannot be considered by the AAO in adjudicating the appeal.

The AAO agrees with the director that the duties of the proffered position, as described by the petitioner in its initial letter to the service center, accord with those described in the *Handbook's* occupational category of purchasing managers, buyers, and purchasing agents – in particular, buyers and purchasing agents. The occupation is described in the *Handbook*, 2006-07 edition, in pertinent part as follows:

Purchasing managers, buyers, and purchasing agents buy the goods and services the company or institution needs to either resell to customers or for the establishment's own use. *Wholesale and retail buyers* purchase goods for resale, such as clothing or electronics, and purchasing agents buy goods and services for use by their own company or organization such as raw materials for manufacturing or office supplies Purchasing professionals consider price, quality, availability, reliability, and technical support when choosing suppliers and merchandise. They try to get the best deal for their

company, meaning the highest quality goods and services at the lowest possible cost to their companies

. . . .

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* In retail firms, buyers purchase goods from wholesale firms or directly from manufacturers for resale to the public [B]uyers working for small stores may purchase the establishment's complete inventory.

With respect to the educational requirements of the occupation, the *Handbook, id.*, states the following:

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.

Id. at 62-63. Thus, the *Handbook* indicates that a variety of backgrounds can be suitable for a purchaser or buyer, depending on the particular position. Smaller companies tend to be more flexible. They may "prefer" a college degree, but do not always require one, or may not require a degree in a specific specialty. Furthermore, the *Handbook* describes other possible routes to a purchaser or buyer position, such as promotion through the ranks after initial employment at a lower position that does not require a degree. The AAO notes, in this regard, that the proffered position in this case is not managerial in nature, but rather an entry-level position in a fledgling business which, at the time the instant petition was filed, claimed to have four employees and operate a single convenience store.

Based on the foregoing analysis, the AAO determines that a baccalaureate or higher degree in a specific specialty is not the normal minimum requirement for entry into the proffered position. Accordingly, the position does not meet the first alternative criterion of a specialty occupation at 8 C.F.R. § 214.2(h)(4)(iii)(A)(1).

As for the second alternative criterion of a specialty occupation, at 8 C.F.R. § 214.2(h)(4)(iii)(A)(2), the record does not establish that a degree requirement in a specific specialty is common to the petitioner's industry in parallel positions among similar organizations. A letter from Global FX, a provider of currency exchange services, is irrelevant to the position at issue in this petition because it focuses exclusively on the knowledge and education required to perform check cashing duties and related tasks. Counsel refers to a couple of professional journals – *Purchasing Today* and *The Journal of Supply Chain*

Management – devoted to the purchasing profession, and indicates that the former has published a list of nearly 100 educational institutions in the United States that offer academic programs in purchasing and supply management. Though counsel asserts that this list is a strong indication of the academic community’s belief that the occupational field requires theoretical instruction as well as the practical application of complex concepts and analysis, counsel has not cited any excerpt from these publications declaring that private industry generally requires purchasing agents and buyers to have a baccalaureate or higher degree in a specific specialty. Counsel also cites several professional associations, quotes one of them – the National Association of Purchasing Management – as stating that “an ideal college program consists of an undergraduate degree in business,” and asserts that the president of another – the American Purchasing Society – has indicated that most companies require a degree for purchasing positions. No corroborating documentation has been submitted to substantiate the foregoing statements. Simply going on record without supporting documentation does not satisfy the petitioner’s burden of proof. *See Matter of Soffici*, 22 I&N Dec. 158, 165 (Comm. 1998) (citing *Matter of Treasure Craft of California*, 14 I&N Dec. 190 (Reg. Comm. 1972)). Moreover, the foregoing statements do not demonstrate that companies routinely require a baccalaureate or higher degree in a specific specialty for purchasing positions, and they do not address the educational requirements of the convenience store industry in particular. Thus, the evidence of record does not establish that the proffered position qualifies as a specialty occupation under the first prong of 8 C.F.R. § 214.2(h)(4)(iii)(A)(2). Nor has the petitioner shown that the proffered position is so complex or unique that it can only be performed by an individual with a degree in a specific specialty, as required for the position to qualify as a specialty occupation under the second prong of 8 C.F.R. § 214.2(h)(4)(iii)(A)(2).

As for the third alternative criterion of a specialty occupation, at 8 C.F.R. § 214.2(h)(4)(iii)(A)(3), the proffered position is newly created and the petitioner has no hiring history for it. Accordingly, the petitioner cannot demonstrate that it normally requires a specialty degree or its equivalent for the position, as required for it to qualify as a specialty occupation under 8 C.F.R. § 214.2(h)(4)(iii)(A)(3).

Lastly, the record does not establish that the duties of the proffered position are so specialized and complex that they require knowledge that is usually associated with a baccalaureate or higher degree in a specific specialty. Though counsel asserts that the purchasing-related duties of the position – including the determination of which products to offer in the convenience store(s), competitive pricing, positioning within the market, vendor selection, and the analysis of contractual terms and compliance – are associated with a university degree, the petitioner has not shown that these duties are more specialized and complex than those of a typical purchasing agent or buyer, an occupation which the *Handbook* indicates does not routinely require baccalaureate level knowledge in a specific specialty. Therefore, the proffered position does not meet the fourth alternative criterion of a specialty occupation at 8 C.F.R. § 214.2(h)(4)(iii)(A)(4).

For the reasons discussed above, the petitioner has failed to establish that the proffered position qualifies as a specialty occupation under any of the criteria enumerated at 8 C.F.R. § 214.2(h)(4)(iii)(A). The record does not establish that the beneficiary will be coming temporarily to the United States to perform services in a specialty occupation, as required under section 101(a)(15)(H)(i)(b) of the Act, 8 U.S.C. § 1101(a)(15)(H)(i)(b).

The petitioner bears the burden of proof in these proceedings. *See* section 291 of the Act, 8 U.S.C. § 1361. The petitioner has not sustained that burden. Accordingly, the AAO will not disturb the director's decision denying the petition.

ORDER: The appeal is dismissed. The petition is denied.