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U.S. Citizenship
and Immigration
Services

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FILE: WAC 04 254 50305 Office: CALIFORNIA SERVICE CENTER Date: NOV 03 2006

IN RE: Petitioner:
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:



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.

A handwritten signature in cursive script, appearing to read "Robert P. Wiemann".

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 an importer and wholesaler of crafts, party favors and fabric products. It seeks to employ the beneficiary as an international trade economist 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, an appeal brief, and supporting 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 an importer and wholesaler of crafts, party favors, and fabric products, established in 2002, with 13 employees and a projected gross income of more than \$2 million in 2004. Copies of the petitioners' federal income tax returns were submitted for the years 2002 and 2003, which recorded gross receipts for those years of \$984,690 and \$1,642,951, respectively. The petitioner proposes to employ the beneficiary as a part-time (25 hours/week) international trade economist for three years at a wage rate of \$575/week. The duties of the position were described as follows in the petitioner's initial letter:

The international trade economist will work under the close supervision of the general manager. He will devise methods to collect and process data regarding the production as well as compile data pertinent to the production process such as financing, wages, productivity, and country political conditions. In addition, he will review and analyze data to prepare reports under the close supervision of the general manager.

The beneficiary is qualified for the job, the petitioner declares, by virtue of his bachelor of science degree in trade and economy from Shanghai Finance and Economy University in China, awarded on July 1, 1987, and his master's degree in marketing from the same university, awarded on July 28, 1994. According to the report of an academic credentials evaluation service in Los Alamitos, California, the beneficiary's degrees are equivalent to a bachelor of arts in economics and a master of science in marketing from an accredited U.S. college and/or university.

In response to the RFE counsel explained that the proffered position would have no supervisory responsibilities and would involve duties previously performed by the general manager and the sales manager. The petitioner indicated that the beneficiary would spend 75% of his time collecting, processing, and compiling data related to the production process and 25% of his time reviewing and analyzing the data and preparing reports for management. An organizational chart was submitted, as well as a company catalogue, the company's business license and lease agreement, and photographs of the business premises.

In his decision the director found that the proffered position does not qualify as a specialty occupation. The director found that the petitioner failed to describe the duties of the position with sufficient clarity and that the record did not reflect that the petitioner was engaged in domestic or international production or manufacturing. The director found that the data collection involved in the job appeared to be available in various publicly available media. In the director's view, the evidence of record did not demonstrate that there would be enough work in the proffered position to warrant the hiring of an employee for the three-year period of requested H-1B classification. 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 director erred "in that due consideration was not given to the type of the petitioner's business as well as the integration of the production and manufacturing sources with the petitioner." Counsel explained that the petitioner purchases its products from manufacturers located primarily in China, and that close monitoring of those companies is necessary to maintain product supply. As stated by counsel:

[T]he investigation of the manufacturers and all data relating to their specific production issues is very important to the petitioner. Management must have current reports targeted to specific manufacturers in order to protect its supply in a fast-changing environment.

Independent research and analysis is necessary to meet these requirements. While various sources of information may be relied on, including information from the manufacturers themselves, it is the duty of the international trade economist to verify the reliability of the sources and analyze the information obtained.

Counsel provided the following additional information about the nature of the proffered position and its specific duties:

Data may be gathered in a number of ways. The petitioner is already dealing with a group of manufacturers in China, and occasional trips there may be required. However, products are also purchased in the United States and other countries. In order to remain competitive, we intend to survey sources of supply on a worldwide basis The purpose of the research is to make recommendations for new or additional sources of supply The efficacy of the sources is subject to a wide variety of factors. Thus the importance of pertinent data relating to financing, wages, productivity, and country conditions. It is important for the petitioner to have specialized reports . . . that allow management to instruct the marketing development department on how to focus its efforts The international trade economist is integral to the supply side of the equation. In turn, the reliability and quality of the supply will affect the ability of our marketing development department to expand our sales markets and increase sales.

According to counsel, the petitioner believes that a three-year period of H-1B employment at 25 hours/week will enable it to properly evaluate whether there is an ongoing necessity for the proffered position in the future. “The ability to supply quality products at a competitive price is critical to our business,” the petitioner declares, and if the work performed by the proffered position contributes to the company’s continued growth, “we forecast a continuing need for the research and evaluation necessary to maintain a product line providing value to our customers.”

In determining the nature of a particular position, and whether it qualifies as a specialty occupation, the duties that will actually be performed are dispositive, not the title of the position. The petitioner must show that the duties of the position normally require a degree in a specialty field. The critical issue is not the employer’s self-imposed standard, but whether the position actually requires the theoretical and practical application of a body of highly specialized knowledge and the attainment of a baccalaureate or higher degree in the specific specialty as a minimum for entry into the occupation. *Cf. Defensor v. Meissner*, 201 F.3d 384, 387-88 (5th Cir. 2000).

CIS routinely consults the Department of Labor (DOL)’s *Occupational Outlook Handbook (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 AAO determines that the duties of the proffered position are described in general terminology and fail to adequately specify what the beneficiary would be doing in relation to the petitioner's business as an importer and wholesaler of crafts, party favors, and fabrics. The petitioner does not explain how data relating to financing, wages, productivity, and country conditions will assist it in making decisions on new or additional sources of supply. As these duties do not convey any meaning in relation to the petitioner's business, the AAO cannot evaluate whether their performance will require the theoretical and practical application of a body of highly specialized knowledge. With respect to the remaining duties, as elaborated on appeal, the AAO determines that they fall within the DOL *Handbook's* broad occupational category of purchasing managers, buyers, and purchasing agents. The occupation is described, in pertinent part, as follows in the *Handbook*, 2006-07 edition, at 65:

Purchasing managers, buyers, and purchasing agents make up a key component of a firm's supply chain 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. 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.

. . . .

Evaluating suppliers is one of the most critical functions of a purchasing manager, buyer, or purchasing agent Purchasing professionals use many resources to find out all they can about potential suppliers. The Internet has become an effective tool in searching catalogs, trade journals, industry and company publications, and directories. Purchasing professionals will attend meetings, trade shows, and conferences to learn of new industry trends and make contacts with suppliers. Purchasing managers, agents, and buyers will usually interview prospective suppliers and visit their plants and distribution centers to assess their capabilities. It is important to make certain that the supplier is capable of delivering the desired goods or services on time, in the correct quantities, without sacrificing quality. Once all of the necessary information on suppliers is gathered, orders are placed and contracts are awarded to those suppliers who meet the purchaser's needs

With respect to the educational requirements of the occupation, the *Handbook* 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 66. 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. 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. Thus, 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), there is no evidence in the record that a degree requirement in a specific specialty is common to the petitioner's industry in parallel positions among similar organizations. 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. The position is not unique, and the record does not demonstrate a level of complexity beyond that of a purchasing agent, buyer, or purchasing manager, positions which the *Handbook* indicates do not normally require a specialty degree. Thus, the proffered position does not qualify as a specialty occupation under the either 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. The petitioner has not shown that the duties of the position are more specialized and complex than those of a purchasing agent, buyer, or purchasing manager, positions which the *Handbook* indicates do 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 AAO determines that 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.