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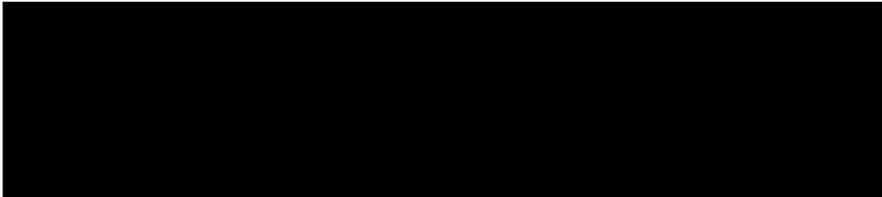
FILE: EAC 03 144 50985 Office: VERMONT SERVICE CENTER Date: **SEP 18 2006**

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 documents 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 and subsequently granted two motions to reopen and reconsider. In response to both motions, the director affirmed her decision to deny. 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 furniture import and sales business that seeks to employ the beneficiary as an importer: The petitioner endeavors to classify the beneficiary as a nonimmigrant worker in a specialty occupation pursuant to § 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 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; (5) the petitioner's motion to reconsider; (6) the director's decision affirming the denial of the petition; (7) the petitioner's second motion to reconsider; (8) the director's decision affirming the denial of the petition; and (9) 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 an importer. Evidence of the beneficiary's duties includes: the I-129 petition; the petitioner's April 7, 2003 letter in support of the petition; and the petitioner's response to the director's request for evidence. According to this evidence, the beneficiary would perform duties that entail: advising the petitioner concerning current and future foreign market conditions and availability of merchandise; conducting and analyzing market research in order to recommend the purchase of merchandise; estimating stock requirements based on sale orders, inventory, projected volume of sales, and the current condition of the economy; reviewing weekly and monthly sales reports and advising on appropriate marketing policy changes; converting product specifications from foreign to American standards; overseeing letters of credit, shipping details, such as import licenses, customs declarations, packing, shipping, and routing; coordinating import correspondence, bid requests, and letters of credit; improving efficiency of the petitioner's current administrative and management systems, simplifying reporting procedures, and instituting cost-saving procedures; and analyzing trade surveys to assess effectiveness of the petitioner's advertising, marketing, and public relations activities. The petitioner indicated that a qualified candidate for the job would possess a bachelor's degree in marketing, business, or an equivalent thereof.

The director found that the proffered position was not a specialty occupation because the job is not so complex as to require a baccalaureate degree. The director found further that the petitioner failed to establish any of the criteria found at 8 C.F.R. § 214.2(h)(4)(iii)(A).

On appeal, counsel states, in part, that the record contains two professional evaluation letters and college curricula information as evidence that the proffered position qualifies as a specialty occupation. Counsel states further that the record contains evidence such as information regarding new orders to show that its business is "growing and expanding very quickly." Counsel also states that CIS approved a similar case.

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 turns first to 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 Department of Labor's (DOL) *Occupational Outlook Handbook (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)).

The AAO routinely consults the *Handbook* for its information about the duties and educational requirements of particular occupations. The AAO does not concur with counsel that the proffered position, which combines the duties of a purchasing specialist and a marketing manager, is a specialty occupation. A review of the *Handbook*, 2006-2007 edition, under the category of Purchasing Managers, Buyers, and Purchasing Agents, finds that educational requirements for these occupations tend to vary with the size of the organization. Large stores and distributors prefer individuals who have completed a bachelor's program with a business emphasis. In this case, information on the petition reflects that the petitioner has only one employee and, therefore, is not a

large store or distributor. Further, the *Handbook* indicates that a bachelor's degree with a business emphasis is preferred, rather than required, by large stores and distributors. No evidence in the *Handbook* indicates that a baccalaureate or higher degree in a specific specialty, or its equivalent, is required for a purchasing specialist as described in the instant petition. Moreover, a review of the Advertising, Marketing, Promotions, Public Relations, and Sales Managers occupational category in the *Handbook*, 2006-2007 edition, finds no evidence indicating that a baccalaureate or higher degree in a specific specialty, or its equivalent, is normally required for a marketing manager job. The information regarding marketing courses at Bentley College is noted. The AAO cannot assume, however, that this undergraduate training program is solely related to the alleged complexity of the proffered position. 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 Soffici*, 22 I&N Dec. 158, 165 (Comm. 1998) (citing *Matter of Treasure Craft of California*, 14 I&N Dec. 190 (Reg. Comm. 1972)). Counsel's assertion that the petitioner's business is "growing and expanding very quickly" is noted. Although counsel submits copies of the petitioner's own computer-generated "Sales Order Register" as supporting documentation, the record contains no corroborating evidence such as federal income tax returns. Without documentary evidence to support the claim, the assertions of counsel will not satisfy the petitioner's burden of proof. The unsupported assertions of counsel do not constitute evidence. *Matter of Obaigbena*, 19 I&N Dec. 533, 534 (BIA 1988); *Matter of Laureano*, 19 I&N Dec. 1 (BIA 1983); *Matter of Ramirez-Sanchez*, 17 I&N Dec. 503, 506 (BIA 1980).

The record contains two letters from a college professor who asserts that the proffered position is an international marketing position that normally requires at least a bachelor's degree in marketing. The opinion rendered by the professor is not probative. First, despite his assertion that positions such as the proffered position are normally filled by recruiting a college graduate specializing in marketing with work experience, neither the professor's letter nor any other evidence of record substantiates that he is qualified as an expert on recruiting and hiring practices in the purchasing/marketing industry. Second, the record does not indicate that the professor has adequate knowledge of the particular issue here. The professor describes the duties in exclusively general and generic terms that reveal nothing about the actual work that the beneficiary would perform within the context of this particular petitioner's business. Other than stating that the petitioner is a small enterprise, the professor does not demonstrate knowledge of the petitioner's particular business operations. He does not relate any personal observations of those operations or of the work that the beneficiary would perform, nor does he state that he has reviewed any projects or work products related to the proffered position. Third, the professor's opinion does not relate his conclusions to specific, concrete aspects of this petitioner's business operation to demonstrate a sound factual basis for his conclusions about the educational requirements for the particular position here at issue. CIS may, in its discretion, use as advisory opinions statements submitted as expert testimony. However, where an opinion is not in accord with other information or is in any way questionable, CIS is not required to accept or may give less weight to that evidence. *Matter of Caron International*, 19 I&N Dec. 791 (Comm. 1988).

Regarding parallel positions in the petitioner's industry, counsel asserts that CIS has already determined that the proffered position is a specialty occupation since CIS has approved another, similar petition in the past. This record of proceeding, however, does not contain all of the supporting evidence submitted to the service center in the prior case. In the absence of all of the corroborating evidence contained in that record of proceeding, the documents submitted by counsel are not sufficient to enable the AAO to determine whether the position offered in the prior case was similar to the position in the instant petition.

Each nonimmigrant petition is a separate proceeding with a separate record. *See* 8 C.F.R. § 103.8(d). In making a determination of statutory eligibility, CIS is limited to the information contained in the record of proceeding. *See* 8 C.F.R. § 103.2(b)(16)(ii). Although the AAO may attempt to hypothesize as to whether the prior case was similar to the proffered position or was approved in error, no such determination may be made without review of the original record in its entirety. If the prior petition was approved based on evidence that was substantially similar to the evidence contained in this record of proceeding, however, the approval of the prior petition would have been erroneous. CIS is not required to approve petitions where eligibility has not been demonstrated, merely because of prior approvals that may have been erroneous. *See, e.g., Matter of Church Scientology International*, 19 I&N Dec. 593, 597 (Comm. 1988). Neither CIS nor any other agency must treat acknowledged errors as binding precedent. *Sussex Engg. Ltd. v. Montgomery* 825 F.2d 1084, 1090 (6th Cir. 1987), *cert denied*, 485 U.S. 1008 (1988).

The record also does not include any evidence from firms, individuals, or professional associations regarding an industry standard, or documentation to support the complexity or uniqueness of the proffered position. As indicated in the earlier discussion about the *Handbook's* information, to the extent that it is depicted in the record, the proffered position does not appear unique from or more complex than purchasing specialist/marketing manager positions that do not normally require at least a baccalaureate degree, or the equivalent, in a specific specialty.

The petitioner, therefore, has not established the criteria set forth at 8 C.F.R. § 214.2(h)(4)(iii)(A)(1) or (2)

The AAO now turns to the criterion at 8 C.F.R. § 214.2(h)(4)(iii)(A)(3) – the employer normally requires a degree or its equivalent for the position. As counsel does not address this issue on appeal, it will not be discussed further. The evidence of record does not establish this criterion.

Finally, the AAO turns to the criterion at 8 C.F.R. § 214.2(h)(4)(iii)(A)(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.

To the extent that they are depicted in the record, the duties do not appear so specialized and complex as to require the highly specialized knowledge associated with a baccalaureate or higher degree, or its equivalent, in a specific specialty. As described, the proposed duties appear no more specialized and complex than those general duties which the *Handbook* attributes to the general occupational category of purchasing specialists/marketing managers, for which the *Handbook* does not indicate a normal requirement for usual association with at least a bachelor's degree in a specific specialty. Therefore, the evidence does not establish that the proffered position is a specialty occupation under 8 C.F.R. § 214.2(h)(4)(iii)(A)(4).

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.