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U.S. Department of Homeland Security
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**U.S. Citizenship
and Immigration
Services**

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FILE: EAC 05 228 52243 Office: VERMONT SERVICE CENTER Date: JUL 05 2007

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:
[Redacted]

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.

Michael T. Kelly
for Robert P. Wiemann, Chief
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 operates a supermarket. It seeks to employ the beneficiary as procurement analyst. 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 on the basis of his determination that the petitioner had failed to establish that the proposed position qualifies for classification as a specialty occupation under the criteria set forth at 8 C.F.R. § 214.2(h)(4)(iii)(A). On appeal, counsel contends that the director erred in denying the petition, and that the proposed position qualifies for classification as a specialty occupation.

The record of proceeding before the AAO contains (1) the 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) the Form I-290B and supporting documentation. The AAO reviewed the record in its entirety before issuing its decision.

Section 214(i)(1) of the Immigration and Nationality Act (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.

The term "specialty occupation" is further defined at 8 C.F.R. § 214.2(h)(4)(ii) as:

[A]n occupation which requires theoretical and practical application of a body of highly specialized knowledge in fields of human endeavor including, but not limited to, architecture, engineering, mathematics, physical sciences, social sciences, medicine and health, education, business specialties, accounting, law, theology, and the arts, and which requires the attainment of a bachelor's degree or higher in a 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 proposed position.

The petitioner is a supermarket with 50 employees. In its August 12, 2005 letter of support, the petitioner stated that the duties of the proposed position would include reviewing requisitions and selecting products for purchase by testing, observing, or examining items; researching and evaluating suppliers on price, quality, selection, service, support, availability, reliability, production and distribution capabilities, and suppliers’ reputation and history; estimating the values of products according to the beneficiary’s knowledge of market prices; determining methods of procurement; preparing purchase orders or bid requests; analyzing price proposals and negotiating contracts within budgetary limitations and scope of authority; discussing defective or unacceptable goods or services with inspection or quality control personnel, users, vendors, and others in order to determine the source of trouble and take corrective action.

In determining whether a proposed 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 Department of Labor’s *Occupational Outlook Handbook* (the *Handbook*) for its information about the duties and educational requirements of particular occupations.

A review of the duties of the proposed position finds them closely aligned to the responsibilities of purchasing managers, buyers, and purchasing agents. As discussed in the *Handbook*:

Purchasing managers, buyers, and purchasing agents make up a key component of a firm’s supply chain. They 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 agents and buyers of farm products* purchase goods such as grain, Christmas trees, and tobacco for further processing or resale. 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.

In large industrial organizations, a distinction often is drawn between the work of a buyer or purchasing agent and that of a *purchasing manager*. Purchasing agents commonly

focus on routine purchasing tasks, often specializing in a commodity or group of related commodities, such as steel, lumber, cotton, grains, fabricated metal products, or petroleum products. Purchasing agents usually track market conditions, price trends, and futures markets. Purchasing managers usually handle the more complex or critical purchases and may supervise a group of purchasing agents handling other goods and services. Whether a person is titled purchasing manager, buyer, or purchasing agent depends more on specific industry and employer practices than on specific job duties.

Purchasing specialists employed by government agencies or manufacturing firms usually are called *purchasing directors, managers, or agents*; or *contract specialists*. These workers acquire materials, parts, machines, supplies, services, and other inputs to the production of a final product. Some purchasing managers specialize in negotiating and supervising supply contracts, and are called contract or supply managers. Purchasing agents and managers obtain items ranging from raw materials, fabricated parts, machinery, and office supplies to construction services and airline tickets. Often, purchasing specialists in government place solicitations for services and accept bids and offers through the Internet. Government purchasing agents and managers must follow strict laws and regulations in their work, in order to avoid any appearance of impropriety. To be effective, purchasing specialists must have a working technical knowledge of the goods or services to be purchased.

The *Handbook* reports the following educational requirement for individuals seeking employment in this field:

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 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.

These findings do not support counsel's contention that a bachelor's degree is required for entry into this occupation. The *Handbook* states that educational requirements vary, and that most employers use a combination of internal promotion and hiring individuals with bachelor's degrees in order to fill these positions. Moreover, the fact that many employers "prefer" a degree is not synonymous with the "normally required" standard imposed by the regulation.

Nor does the AAO find counsel's citation of the Department of Labor's *Dictionary of Occupational Titles (DOT)* persuasive. The *DOT* is not a persuasive source of information regarding whether a particular job requires the attainment of a baccalaureate or higher degree in a specific specialty, or its equivalent, as a minimum for entry into the occupation. The *DOT's* assessment (the SVP rating) is meant only to indicate

the total number of years of vocational preparation required for a particular position. It does not describe how those years are to be divided among training, formal education, and experience, and does not specify the particular type of degree, if any, that a position would require. Accordingly, the AAO accords no weight to this information.

Finally, the AAO turns to counsel's assertion that the petition should be approved because both counsel and the petitioner has received H-1B approvals for similar positions in the past. This record of proceeding does not, however, contain all of the supporting evidence submitted to the service center in the prior cases. In the absence of all of the corroborating evidence contained in those records of proceeding, the documents submitted by counsel are not sufficient to enable the AAO to determine whether the positions offered in the prior cases were similar to the position in the instant petition.

Each nonimmigrant petition is a separate proceeding with a separate record. See 8 C.F.R. §103.2(b)(16)(ii). If the previous petitions were approved based upon the same evidence contained in this record, those approvals were erroneous. The AAO is not required to approve applications or 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). It would be absurd to suggest that CIS or any 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).

Furthermore, the AAO's authority over the service centers is comparable to the relationship between a court of appeals and a district court. Even if a service center director did approve a nonimmigrant petition similar to the one at issue here, the AAO would not be bound to follow the contradictory decision of a service center. *Louisiana Philharmonic Orchestra v. INS*, 2000 WL 282785 (E.D. La.), *aff'd*, 248 F.3d 1139 (5th Cir. 2001), cert. denied, 122 S.Ct. 51 (2001).

Accordingly, the proposed position does not qualify for classification as a specialty occupation under 8 C.F.R. § 214.2(h)(4)(iii)(A)(1).

The AAO now turns to a consideration of whether the petitioner, unable to establish its proposed position as a specialty occupation under the first criterion set forth at 8 C.F.R. § 214.2(h)(iii)(A), may qualify it under one of the three remaining criteria: a degree requirement as the norm within the petitioner's industry or the position is so complex or unique that it may be performed only by an individual with a degree; the petitioner normally requires a degree or its equivalent for the position; or the duties of the position are so specialized and complex that the knowledge required to perform them is usually associated with a baccalaureate or higher degree.

The proposed position does not qualify as a specialty occupation under either prong of 8 C.F.R. § 214.2(h)(4)(iii)(A)(2).

The first prong of this regulation requires a showing that a specific degree requirement is common to the industry in parallel positions among similar organizations. The AAO has reviewed the job postings submitted in response to the director's request for additional evidence and on appeal. Counsel, however, has failed to consider the specific requirements at 8 C.F.R. § 214.2(h)(4)(iii)(A)(2) for establishing a baccalaureate or higher degree as an industry norm. To meet the burden of proof imposed by the regulatory language, a petitioner must establish that its degree requirement is common in parallel positions among similar organizations.

First, the AAO notes that these job postings do not establish the petitioner's degree requirement as an industry norm. For example, the job posting from the Air Force Personnel Center states that, while a bachelor's degree is required, it may come from any of several fields. The postings from CitiGroup, CitiGroup Operations & Technology, Ann Taylor Stores, VarsityBooks, Sears, Roebuck, and Company, the Port Authority of New York and New Jersey, the Coca Cola Company, ICG Commerce, Handy & Harman, the Weyerhaeuser Company, NFI Industries, the Midcom Corporation, the Unisys Corporation, American Express, The Boeing Company, and the unnamed companies advertising their vacancies through Getronics, Fanning Personnel, Spherion, and Hudson Financial Solutions indicate that a degree in any field of study would be acceptable. Essentially, a degree in any field of study would suffice.

However, when a range of degrees can perform a job, the position does not qualify as a specialty occupation. *See Matter of Michael Hertz Associates*, 19 I&N Dec. 558 (Comm. 1988). To prove that a job requires the theoretical and practical application of a body of specialized knowledge as required by Section 214(i)(1) of the Act, the petitioner must establish that the position requires the attainment of a bachelor's or higher degree in a specialized field of study. As noted previously, CIS interprets the degree requirement at 8 C.F.R. § 214.2(h)(4)(iii)(A) to require a degree in a specific specialty that is directly related to the proposed position.

Also, the AAO notes that a bachelor's degree in business administration would be acceptable for the positions with the City of Hesperia, the Synnex Corporation, and the unnamed company advertising its vacancy through Olsten Staffing. However, a petitioner must demonstrate that the proffered position requires a precise and specific course of study that relates directly and closely to the position in question. Since there must be a close corollary between the required specialized studies and the position, the requirement of a degree with a generalized title, such as business administration or liberal arts, without further specification, does not establish the position as a specialty occupation. *Id.*

Further, the AAO notes that there is no evidence in the record to demonstrate that any of the companies that have posted these advertisements are similar to the petitioner in size, scope, and scale of operations, business efforts, or expenditures. Simply going on record without supporting documentary evidence is not sufficient for purposes 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)).

Moreover, even if the AAO were to find that these companies were similar to the petitioner, the job postings are too few to establish an industry-wide standard, particularly in light of the information from the *Handbook* pointing to the opposite conclusion.

Finally, the information regarding the duties and responsibilities of the advertised positions is general and does not support a meaningful comparison of their actual performance and specialty knowledge requirements to those of the proposed position. Thus, while relevant to this proceeding, the job postings submitted by counsel are insufficient to establish the petitioner's degree requirement as an industry norm in parallel positions among similar organizations.

For all of these reasons, the AAO finds that the petitioner has failed to satisfy the first prong of 8 C.F.R. § 214.2(h)(4)(iii)(A)(2).

The second prong of 8 C.F.R. § 214.2(h)(4)(iii)(A)(2) requires the petitioner to prove that the duties of the proposed position are so complex or unique that only an individual with a degree can perform them. The *Handbook* reveals that the duties of the proposed position are similar to those of a purchasing manager as outlined in the *Handbook*, which does not require a degree as a minimum entry requirement. The record contains no evidence that would support a finding that the position proposed here is more complex or unique than such positions at organizations similar to the petitioner.

The record does not develop information about the proposed position and its duties with sufficient specificity and detail to demonstrate uniqueness, complexity, or specialization that would distinguish them from purchasing manager positions and attendant duties that neither require nor are associated with at least a baccalaureate degree in a specific specialty. Therefore, the petitioner has not established that the proposed position qualifies for classification as a specialty occupation under either prong of 8 C.F.R. § 214.2(h)(4)(iii)(A)(2).

Therefore, the petitioner has not established that the proposed position qualifies for classification as a specialty occupation under either prong of 8 C.F.R. § 214.2(h)(4)(iii)(A)(2).

The proposed position does not qualify as a specialty occupation under 8 C.F.R. § 214.2(h)(4)(iii)(A)(3), which requires a showing that the petitioner normally requires a degree or its equivalent for the position. To determine a petitioner's ability to meet this criterion, the AAO normally reviews the petitioner's past employment practices, as well as the histories, including names and dates of employment, of those employees with degrees who previously held the position, and copies of those employees' diplomas.

While the AAO notes that the petitioner has hired two degreed individuals in the past, it also notes that both of those individuals were H-1B beneficiaries. As noted previously, it appears that the granting of those petitions may have been erroneous. The petitioner's creation of a position with a perfunctory bachelor's degree requirement will not mask the fact that the position is not a specialty occupation. CIS must examine the ultimate employment of the alien, and determine whether the position qualifies as a specialty occupation. *Cf. Defensor v. Meissner*, 201 F. 3d 384 (5th Cir. 2000). The critical element is not the title of the position or an employer's self-imposed standards, 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 the minimum for entry into the occupation as required by the Act. To interpret the regulations any other way would lead to absurd results: if CIS were limited to reviewing a petitioner's self-imposed employment requirements, then any alien with a bachelor's degree could be brought into the United States to perform a menial, non-professional, or an otherwise non-specialty occupation, so long as the employer required all such employees to have baccalaureate or higher degree. *See id.* at 388. Accordingly, the proposed position does not qualify for classification as a specialty occupation under the criteria set forth at 8 C.F.R. § 214.2(h)(4)(iii)(A)(3).

To the extent that they are depicted in the record, the duties of the proposed position 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. Again, there is no information in the record to support a finding that the proposed position is more complex or unique than similar positions in other, similar organizations. As the *Handbook* reveals, such organizations do not normally impose a bachelor's degree requirement. Therefore, the evidence does not establish that the proposed position is a specialty occupation under 8 C.F.R. § 214.2(h)(4)(iii)(A)(4).

Finally, the AAO turns to the petitioner's submission of a letter, written by [REDACTED] dated January 31, 2006. [REDACTED] states that, in his opinion, the proposed position requires at least a bachelor's degree in business administration.¹ However, the AAO finds that an inadequate factual foundation to support [REDACTED]'s opinion has been established. He does not note the location or size of the petitioner, nor indicate whether he reviewed company information about the petitioner, visited its site, reviewed the job duties of any individuals working in positions similar to the position proposed here, or interviewed anyone affiliated with the petitioner. The extent of his knowledge of the proposed position is, therefore, questionable. Thus, the petitioner has not established the reliability and accuracy of his pronouncements and this submission is therefore not probative of any of the specialty occupation criteria. Nor has [REDACTED] submitted any industry data or other information to refute the information contained in the *Handbook*, which does not find a bachelor's degree in a specific field to be the normal entry requirement for positions such the one proposed here. The AAO may, in its discretion, use as advisory opinion statements submitted as expert testimony. However, where an opinion is not in accord with other information or is in any way questionable, the AAO is not required to accept or may give less weight to that evidence. *Matter of Caron International*, 19 I&N Dec. 791 (Comm. 1988).

Accordingly, [REDACTED] letter has satisfied none of the aforementioned criteria, and has not established the proposed position as a specialty occupation.

Finally, the AAO finds unpersuasive counsel's citation of *Unico American Corporation v. Watson*, 1991 WL 11002594 (C.D. Cal. 1991), an unpublished decision from a district court. In contrast to the broad precedential authority of the case law of a United States circuit court, the AAO is not bound to follow the published decision of a United States district court in cases arising within the same district. See *Matter of K-S-*, 20 I&N Dec. 715 (BIA 1993). The reasoning underlying a district court judge's decision will be given due consideration when it is properly before the AAO; however, the analysis does not have to be followed as a matter of law. *Id.* at 719. In addition, as published decisions of the district courts are not binding on the AAO outside of that particular proceeding, an unpublished decision of a district court has even less persuasive value.

The proposed position does not qualify for classification as a specialty occupation under any of the criteria set forth at 8 C.F.R. §§ 214.2(h)(4)(iii)(A)(1), (2), (3), and (4), and the petition was properly denied. As the proposed position is not a specialty occupation, the beneficiary's qualifications to perform its duties are immaterial. Accordingly, the AAO will 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.

¹ A petitioner must demonstrate that the proposed position requires a precise and specific course of study that relates directly and closely to the position in question. Since there must be a close corollary between the required specialized studies and the position, the requirement of a bachelor's degree with a generalized title, such as business administration or liberal arts, without further specification, does not establish the position as a specialty occupation. *Matter of Michael Hertz Associates*, 19 I&N Dec. 558 (Comm. 1988).