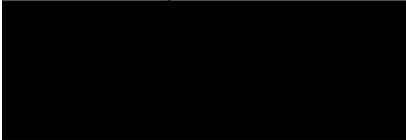


DA

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

PUBLIC COPY

ADMINISTRATIVE APPEALS OFFICE
CIS, AAO, 20 Mass, 3/F
425 I Street, N.W.
Washington, DC 20536



FILE: EAC 02 147 52259 OFFICE: VERMONT SERVICE CENTER DATE:

DEC 03 2003

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)

IN BEHALF OF PETITIONER:



Identifying data deleted to prevent clearly unwarranted invasion of personal privacy

INSTRUCTIONS:

This is the decision 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.

If you believe the law was inappropriately applied or the analysis used in reaching the decision was inconsistent with the information provided or with precedent decisions, you may file a motion to reconsider. Such a motion must state the reasons for reconsideration and be supported by any pertinent precedent decisions. Any motion to reconsider must be filed within 30 days of the decision that the motion seeks to reconsider, as required under 8 C.F.R. § 103.5(a)(1)(i).

If you have new or additional information that you wish to have considered, you may file a motion to reopen. Such a motion must state the new facts to be proved at the reopened proceeding and be supported by affidavits or other documentary evidence. Any motion to reopen must be filed within 30 days of the decision that the motion seeks to reopen, except that failure to file before this period expires may be excused in the discretion of Citizenship and Immigration Services (CIS) where it is demonstrated that the delay was reasonable and beyond the control of the applicant or petitioner. *Id.*

Any motion must be filed with the office that originally decided your case along with a fee of \$110 as required under 8 C.F.R. § 103.7.

Robert P. Wiemann, Director
Administrative Appeals Office

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

The petitioner is a marine consultant and broker for push boats, barges, and cargo transport equipment that currently employs only the owner and has a gross annual income of \$65,000. It seeks to employ the beneficiary as an importer for a period of three years. The director denied the petition because the proffered position does not qualify as a specialty occupation.

Counsel articulated the reasons for the appeal on the Form 1290B, but did not submit a brief or additional evidence.

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), provides for the classification of qualified nonimmigrant aliens who are coming temporarily to the United States to perform services in a specialty occupation.

Section 214(i)(1) of the Act, 8 U.S.C. § 1184(i)(1), defines the term "specialty occupation" as an one 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:

an 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.

The Form I-129 listed the proffered position as "Importer" and, the non-technical description of the job, stated, "Receives purchase orders from employer and assists in importation of marine equipment." Among the documents filed with the petition were a March 22, 2002 letter from the petitioner, and copies of the beneficiary's college transcript and her West Virginia University diploma for a bachelor of science degree in business administration.

The letter indicates that, as a sole proprietor business, the petitioner has provided marine consultant and broker services on the Mississippi River system and South American rivers. These services have included feasibility, economic, and operational studies regarding river push boats, barges, and cargo transfer equipment. This excerpt from the letter focuses specifically on the proffered position and the beneficiary's qualifications:

In the course of work, I learned of various opportunities to develop related services importing and marketing transport and transfer technologies and certain marine equipment and machinery, particularly from Japan and Korea. I have been seeking a person to assist in the importation of marine equipment, cargo transfer equipment and technology from Japan and Korea. The position would be an entry level job as the employee would work under my direct supervision. Because Rogers & Company would be dealing exclusively with Korea and Japan, fluency in these languages is essential to the success of this enterprise.

It is for this reason that I wish to employ [the beneficiary] as an importer with my company. [She] possesses a Bachelor's Degree in Business Administration. She is likewise fluent in the Korean, Japanese and English languages. She is additionally computer literate and possesses typing and word processing skills in these languages.

Focusing on the issue of whether the proffered position was a specialty occupation, the director requested additional evidence that the proffered position requires the services of an individual with at least a bachelor's degree, and that the petitioner or the petitioner's industry required a bachelor's degree in a specific field of study as a standard minimum requirement for the job offered. Also, the request specifically sought (1) a detailed statement of the beneficiary's proposed duties and responsibilities, (2) the educational requirements for the proposed position and how the beneficiary's education related to the position itself, (3) documentation of advertising efforts for the position, and (4) specific educational information about anyone who may have held the position in the past.

In his letter responding to the request for additional information, counsel stated that, as a new entrant into the importing field, the petitioner was "unaware of any industry-wide standard which requires an employee to possess a baccalaureate degree in a specific field of study to work as an importer." However, counsel also stated, "the specific duties of this position are so specialized and complex that the knowledge required to perform them is usually associated with the attainment of a baccalaureate degree or higher." The letter indicated that the position would focus on importation of marine equipment, cargo transfer equipment and technology from Japan and Korea and would involve location of and contact with manufacturers, in order to make purchases, arrange shipping and letters of credit, and obtain cost and freight insurance. The letter also maintained:

- The duties of the position require "tri-lingual" fluency (in English, Japanese, and Korean) and a level of fluency in Japanese and Korean that "would normally be found in a person in the U.S. work force who would normally hold a baccalaureate in one or more of these languages."
- It was "advantageous" that the person working as an importer have knowledge of the laws and business and cultural customs of Japan and Korea, knowledge that is typically held "by a person who has attained a baccalaureate degree, often majoring in international trade with pacific rim nations."
- It would be difficult to find a candidate who could perform the position's clerical duties without at least a bachelor's degree in international business with a minor in Asian languages.

Filed with counsel's reply letter were originals and copies of newspaper advertisements for the proffered position, which were

published under the title "Import/Export Specialist," and read as follows:

U.S. Business Administration Degree. Fluent in technical Korean and Japanese, typing & computer. Knowledge of Korean/Japanese manufacturers['] marine products. Must know documentation, shipping customs regulations & trading. Send: P.O. Box 148, Sewicklky, PA 15143.

The director denied the petition for the petitioner's failure to establish that the proffered position qualified as a specialty occupation by meeting at least one of the four requirements at 8 C.F.R. § 214.2 (h)(4)(iii)(A). In doing so, the director noted that the duties were similar to that of purchasing agent, an occupation which, as described in the Department of Labor's *Occupational Outlook Handbook*, 2000-2001 edition (*Handbook*), did not require a bachelor's degree in any specific specialty for entry-level employment. The director also stated that the evidence did not establish either (1) that the duties of the proffered position were so specialized and complex as to require knowledge usually associated with a bachelor's degree or higher in a specialized area, or (2) that a bachelor's degree or higher in a specific specialty is common to the industry in parallel positions among similar organizations.

On appeal, counsel contends that the duties of the proffered position are "so complex as to require a baccalaureate degree or the equivalent thereof." Counsel's major points include:

- "Very few persons in the U.S. work force speak all three of these languages with the degree of fluency that would be required to perform the activities cited in counsel's letter [i.e., the letter submitted in response to the request for additional evidence] absent a college degree in those languages."
- "Additionally very few persons would have the knowledge of the laws as well as the legal and cultural customs of Korea and Japan unless they had attained a college degree or the equivalent thereof through years of experience."
- "When one considers the language requirements . . . it would be difficult to find a qualified candidate in the U.S. work force that did not possess a baccalaureate degree."

Counsel also contends that the *Handbook* section cited by the director actually supports the petition, by indicating that, "in most cases," the level of knowledge and experience a trainee would need for promotion to purchasing agent "would require

someone with a baccalaureate degree or the equivalent thereof or on the job experience."

Finally, counsel asserts that the language requirements combined with the absence of response to any of the advertisements "make it clear that any qualified person working as an importer of marine equipment from Japan and Korea who is employed in the U.S. work force will more than likely possess a baccalaureate degree."

The AAO looks beyond the title of the position to carefully review all the evidence relevant to the duties of the position, and to determine the knowledge, education, special training, skills, and experience required to perform such duties.

The complete record has been fully reviewed to determine whether the petitioner has established the proffered position as a specialty occupation under any one of the qualifying criteria of 8 C.F.R. § 241.2(h)(4)(iii)(A). As the following discussion of each criterion will show, the facts presented by the petitioner are not sufficient to justify classifying the proffered position as a specialty occupation.

I. Baccalaureate or higher degree or its equivalent as the normal minimum requirement for entry into the particular position.

-8 C.F.R. § 214.2 (h) (4) (iii) (A) (1).

The issue here is whether the duties of the proffered position require, as a minimum for entry, a bachelor's degree or equivalent in a specific specialty.

The AAO has noted the petitioner's assertion that, in the U.S. work force, the "tri-lingual" fluency required for the proffered position "would normally be found in a person in the U.S. work force who would normally hold a baccalaureate in one or more of these languages." This assertion is not persuasive: it is speculative, unsupported by evidence in the record, and countered by the fact that the beneficiary here does not have a bachelor's degree in either English, Japanese, or Korean.

Likewise unsupported by evidence in the record, and therefore of no persuasive weight, is the petitioner's statement that knowledge about Japanese and Korean laws and cultural and business customs that would be "advantageous to the position" is typically held by someone "who has attained a baccalaureate degree, often majoring in international language." 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 Treasure Craft of California*, 14 I&N Dec. 190 (Reg. Comm. 1972).

The evidence in the record indicates that the proffered position would involve duties that would require, as a minimum for entry,

fluency in English, Korean, and Japanese; computer literacy; and typing and word processing skills in the relevant language. However, the evidence does not establish that these duties require the specialized knowledge acquired by a bachelor's degree, or its equivalent, in any particular specialty. There is no evidence that the required language fluency is a specialty that can be acquired only by a bachelor's degree or equivalent in the languages. Likewise, the evidence does not establish that only a bachelor's degree or its equivalent in a specific specialty would endow a person with whatever knowledge may be required in any of the duty performance areas, including foreign trade, customs, laws, regulations, or related documentation. In particular, the record lacks persuasive evidence that the entry-level duties of the proffered position can only be performed by someone with a bachelor's degree in business administration with a concentration, like the beneficiary's, in Asian languages.

As it often does on specialty occupation issues, the AAO has considered the *Handbook*. In the denial, the director correctly asserted that the occupation of purchasing agent, as described at pages 73 to 76 of the *Handbook*, is similar to the proffered position, and requires no bachelor's degree in any specific specialty. The AAO also notes, however, that the *Handbook's* generic treatment did not address a position where, as here, foreign language fluency is an essential requirement.

The AAO has carefully considered the criticality of the language requirement as presented by the petitioner. Although the petitioner certainly has established that Korean, Japanese, and English fluency is essential to performance of the proffered position, the evidence fails to establish that such language proficiency is acquired only by the attainment of a bachelor's degree or its equivalent.

Finally, the AAO has considered the petitioner's contention that the language requirements of the proffered position and the lack of responses to its advertisements "make it clear that any qualified person working as an importer of marine equipment from Korea or Japan who is employed in the U.S. work force will more than likely possess a baccalaureate degree." The AAO will not speculate as to why the petitioner has not had responses to the job advertisements. However, it is worth noting that the issue here is not the educational characteristics of applicants, but, rather, whether the specific duties of the proffered position actually require a bachelor's degree or higher in a particular specialty.

All of the information and documentation provided by counsel and the petitioner fail to establish that the proffered 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.

II. Degree requirement that is common to the industry in parallel positions among similar organizations, or, alternatively, a particular position so complex or unique that it can be performed only by an individual with a degree.

-8 C.F.R. § 214.2 (h) (4) (iii) (A) (2).

A. Degree requirement common to the industry.

No evidence is presented on this issue, other than the owner of the petitioner's company acknowledging that he is "unaware of any industry-wide standard which requires an employee to possess a baccalaureate degree in a specific field of study to work as an importer."

B. Degree necessitated by the complexity or uniqueness of the position.

The record fails to establish that the particular duties of the proffered position are either so complex or so unique that only an individual with a bachelor's degree in a particular specialty could perform them.

III. Degree or its equivalent as the employer's normal requirement for the position.

-8 C.F.R. § 214.2 (h) (4) (iii) (A) (3).

The record establishes that this is the first time that the position in question has been proffered. In the absence of a prior hiring history, the petitioner cannot provide any relevant evidence on this issue.

IV. Specific duties of a nature so specialized and complex as to require knowledge usually associated with a baccalaureate or higher degree.-8 C.F.R. § 14.2 (h) (4) (iii) (A) (4).

As enumerated and described by the petitioner, the duties involve a cluster of several types of knowledge, ability, and skill, such as fluency in several languages, typing and computer skill, and knowledge of Japanese and Korean "laws and business and cultural customs." However, the evidence does not establish that these duties are, alone or in combination, so specialized and complex as to require knowledge usually associated with a baccalaureate degree or higher in any particular specialty.

The evidence does not establish that the proffered position would involve duties that would be particularly specialized or complex in any area of performance. For instance, the record establishes a need for English-Korean-Japanese communication skills, but not for any special proficiency that would usually be associated only

with a bachelor's degree or higher in one or more of those languages. Likewise, the record does not establish a need for a degree of clerical skills and knowledge of Korean and Japanese business, culture, and or customs that would usually be associated with a bachelor's degree or higher in a specialized field.

As the discussion above reflects, the evidence fails to establish that the proffered position qualifies as a specialty occupation under section 214(i)(1) of the Act, 8 U.S.C. § 1184(i)(1). Accordingly, the director's denial of the petition shall not be disturbed.

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.