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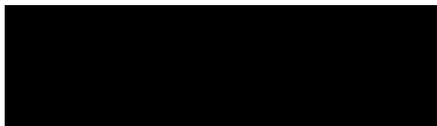
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U.S. Department of Homeland Security

Citizenship and Immigration Services

**identifying data deleted to
prevent clearly unwarranted
invasion of personal privacy**

ADMINISTRATIVE APPEALS OFFICE
CIS, AAO, 20 Mass, 3/F
425 Eye Street, NW
Washington, D.C. 20536



FILE: EAC 02 032 56239 Office: VERMONT SERVICE CENTER

Date: DEC 16 2003

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:



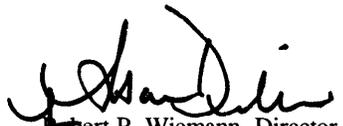
INSTRUCTIONS:

This is the decision 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, Vermont Service Center, and the matter is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed.

The petitioner is an import-export business. It employs six people and has a gross annual income of \$2,000,000. It seeks to temporarily employ the beneficiary as a director of exports for a period of three years. The director determined that the petitioner had not established that the proffered position was a specialty occupation or that the beneficiary was qualified to perform a specialty occupation.

On appeal, counsel asserts that the director erred in determining that the position is not a specialty occupation. Counsel also states that the beneficiary has a degree in economics and business and is qualified to perform a specialty occupation. Counsel indicated on the Form I-290B, dated August 2, 2002, that he would be submitting additional evidence to the AAO within 30 days. As of this date, however, the record does not contain any additional evidence. Therefore, the AAO considers the record complete.

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:

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 position description submitted by the petitioner with the petition states that the beneficiary would be "in charge of the creation of markets for the export of U.S. goods to China." The director requested additional evidence, specifically that the petitioner:

Submit additional evidence that the position of Director of Exports qualifies as a "specialty occupation," that is, evidence that the job requires services of an individual with at least a baccalaureate degree. This should include a detailed statement setting forth the beneficiary's proposed duties and responsibilities. Also indicate the educational requirements of the proposed position and how the beneficiary's education relates to the position itself.

Please submit evidence showing that you hire individuals with a baccalaureate degree in a specific field of study as a standard minimum requirement for the job offered.

Submitting a list of individuals that you currently employ in this position and the degree and field of study held by the employees listed may satisfy this requirement.

In response, the petitioner stated:

The individual in the position of director of exports directs the work of an import manager and that person's staff. We import more than \$200,000 per year from China at the present time. With the hiring of [the beneficiary] we expect to increase the China trade (including Hong Kong and Taiwan) to more than \$500,000 in the first year and double that in the following years. . . . This is a key position in our firm and requires an individual with at least a bachelor's degree to have the business knowledge to perform this formidable task.

The director denied the petition because the petitioner did not establish that the proffered position is a specialty occupation. In addition, the director also found that the beneficiary is not qualified to perform a specialty occupation.

On appeal, counsel states, "The Labor Department in its Occupational Outlook books indicates [sic] that the preparation for this positopn [sic] includes a university level degree."

In evaluating whether the proffered position is a specialty occupation, each of the four criteria listed at 8 C.F.R. § 214.2(h)(4)(iii)(A) will be considered separately below.

I. A baccalaureate or higher degree or its equivalent is normally the minimum requirement for entry into the particular position.

Citizenship and Immigration Services (CIS) often looks to the Department of Labor's *Occupational Outlook Handbook (Handbook)* when determining whether a baccalaureate or higher degree or its equivalent is normally the minimum requirement for entry into a particular position.

The proffered position is a director of exports. There is no listing for this position in the 2002-2003 edition of the *Handbook*. Counsel states that the *Handbook* indicates that a university level degree is required for this position, but does not state where that information is found, or in what category the position might fall, since there is no individual listing for this position.

The position descriptions provided by the petitioner and listed above are too general to be able to determine whether the position's duties fall under another title in the *Handbook*.

II. 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.

A. Degree Requirement is Common to the Industry

Factors often considered by CIS when determining the industry standard include: whether the *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." *Shanti, Inc. v. Reno*, 36 F.Supp.2d 1151, 1165 (D.Min. 1999) (quoting *Hird/Blaker Corp. v. Slattery*, 764 F.Supp. 872, 1102 (S.D.N.Y. 1991)).

As discussed above, the position is not specifically referenced in the *Handbook*.

Counsel submitted no affidavits from firms or individuals in the industry, which attest that such firms "routinely employ and recruit only degreed individuals," and that it is the industry standard to hire individuals with degrees equivalent to a bachelor's degree in marketing.

B. Complexity and Uniqueness of the Proffered Position

In the alternative, the petitioner may show that the proffered position is so complex or unique that it can be performed only by an individual with a degree. No evidence was offered to establish that the position is complex or unique.

III. The employer normally requires a degree or its equivalent for the position.

In the response to the director's request for evidence, the petitioner states that the company's two importers have degrees, and that it has "always hired individuals with university level education for the positions, as they are the key position[s] that can make or break the company." The petitioner does not discuss previous employees in the export manager position, so it did not establish that a degree is normally required for the proffered position.

IV. The nature of the specific duties are so specialized and complex that knowledge required to perform the duties is usually

associated with the attainment of a baccalaureate or higher degree.

Counsel has placed no evidence in the record regarding the specific duties of the position, or the specialized or complex nature of those duties.

The petitioner failed to establish that any of the four criteria enumerated in 8 C.F.R. § 214.2(h)(4)(iii)(A) are present in this proceeding. Accordingly, it is concluded that the petitioner has not demonstrated that the offered position is a specialty occupation within the meaning of the regulations.

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. Accordingly, the appeal will be dismissed.

ORDER: The appeal is dismissed.