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Citizenship and Immigration Services

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



FILE: EAC 02 118 51077 OFFICE: VERMONT SERVICE CENTER

DATE: DEC 17 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:



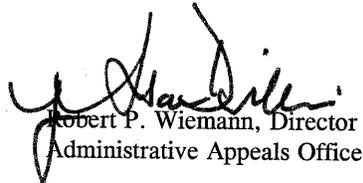
INSTRUCTIONS:

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 is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed.

The petitioner is a wholesale and retail distributor of quality carpets and rugs that currently employs 14 persons and has a gross annual income of \$3,050,080. It seeks to employ the beneficiary as a quality control inspector for a period of three years. The director denied the petition because the proffered position is not a specialty occupation.

On appeal, counsel submits a brief.

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.

On the Form I-129, the petitioner listed the proffered position as "Quality Control Inspector." Submissions with the Form I-129 included a letter from the petitioner's president that asserted that the petitioner needed a quality control inspector in order to protect against defects in the dyeing of its carpets and rugs. According to the president, these defects "may arise when dyeing is not chemically balanced or the chemical mixture of the dye on the rugs is not correctly composed of base or raw material." The

letter gave several examples of such defects: pattern distortion from the running of colors caused by liquid or moisture contact; uneven fading by improper and uneven oxidation of dyes; and uneven dyeing of raw materials, especially wool. The letter described the duties of the proffered position as follows:

As Quality Control Inspector, [the beneficiary] will inspect rugs and carpets produced through contract manufacturing for conformance to the [petitioner's] standards and customer particularization. Products will be tested onsite at industrial production facilities of our contractors as well as through our receiving department. [The beneficiary] will test the finished products for exposure and endurance to liquids and other damaging substances to ensure the longevity and intactness of the finished product after protection treatment has been applied. [The beneficiary] will monitor the treatment process at the production facilities to ensure proper treatment and quality production of our products to reduce costs of returns, increase customer satisfaction and production efficiency. [The beneficiary] will prepare reports and stamps of approval either passing or rejecting products and will maintain a log of such inspection.

According to the letter, the position requires a bachelor's degree in chemistry or chemical engineering, in order to "ensure that the incumbent is competent in the chemical makeup and application of substances and to render sound judgment that may be relied upon."

On review of the Form I-129 and associated documents, the director issued a request for additional evidence, which stated, in part, that the petitioner had not established the need for a person performing a specialty occupation. Accordingly, the director requested evidence related to the need for a bachelor's degree in chemistry or chemical engineering, including evidence that such a degree was a minimum standard requirement in the petitioner's company or industry. Specifically requested evidence included the educational credentials of the petitioner's employees who in the past two years had held positions similar to the one now proffered.

In response to the director's request, counsel provided, among other documents, another letter from the petitioner's president. This one enclosed an excerpt from the Department of Labor's *Occupational Outlook Handbook*, 2002-2003 edition (*Handbook*), on the general occupation that includes inspectors, testers, sorters, samplers, weighers, and quality control inspectors. The president cited the excerpt for the proposition that the position of quality control inspector "may require a bachelor's degree as it requires special skills."

In his denial of the petition, the director stated that the evidence of record did not establish that the proffered position qualified as a specialty occupation under the Act. The director noted several determinations that he made in reaching this conclusion. He found that the petitioner neglected to indicate the academic majors of the three employees cited as having at least bachelor's degrees, and did not provide the positions held by them and the one employee identified as holding a master's degree in biochemistry. The director also noted that the petitioner had submitted no evidence as to an industry-wide educational standard for quality-control inspector positions, or as to whether the petitioner had previously required a degree for the proffered position. He also stated that the *Handbook* did not support the petitioner's assertion that a quality-control inspector position may require a bachelor's degree. Finally, while stating that "[o]nly those duties reported by the petitioner in regard to inspection at the production facilities appeared to be sufficiently specialized or complex as to possibly require a baccalaureate degree in chemical engineering," the director stated that the evidence left him "unpersuaded" that the beneficiary would be performing the inspections on contractor manufacturers' sites.

On appeal, counsel maintains, in part, that the petitioner "has submitted extensive and exhaustive documentation throughout the process establishing the complexity and sophistication of the Beneficiary's proposed duties."

Counsel further asserts that the petitioner "has described in detail the proposed duties of the Beneficiary, and has additionally provided information/documentation evidencing that the Beneficiary's duties are complex enough that they require a Baccalaureate degree." Counsel also highlights that, while the director stated that the petitioner had not provided evidence to verify that quality control inspections would actually be performed at manufacturers' facilities, the denial nevertheless stated that those aspects of the duties "appeared to be sufficiently specialized or complex to possibly require a bachelor degree in chemical engineering."

Finally, the brief asserts that the director had erred by not recognizing that the business documents submitted in response to the request for additional evidence had established that the petitioner had access to its manufacturers' facilities for inspection purposes:

In [the] June 12, 2002 US INS Request for Evidence[,]
it clearly states . . . that copies of contracts or
agreements should be submitted by the petitioner to
evidence that the Beneficiary will have access to their
facilities. In our September 5, 2002 response we have

submitted documentary evidence such as contracts, invoices and purchase orders establishing the business relationship and therefore need for such inspections. It is a matter of Law that an invoice is a contract and as such establishes [a] business relationship and thus access between the Petitioner's employee(s) and the manufacturing facility. If this was not sufficient[,] however, we do enclose herein a letter dated December 10, 2002 and issued by Shaanxi Foreign Economic & Trade Development Corp. clearly and further evidencing the need of the Petitioner to have their Quality Control Inspector visit production facilities—in this instance the production facilities located in China.

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.

It is worth emphasizing that "degree" as used in each of the four criteria above means one in a specific specialty, that is, in a discipline characterized by a body of highly specialized knowledge. See section 214(i)(1) of the Act, 8 U.S.C. § 1184(i)(1).

Upon full review of the entire record, the AAO has determined that the petitioner has not established that the proffered position is a specialty occupation: the evidence does not satisfy any one of the qualifying criteria of 8 C.F.R. § 241.2(h)(4)(iii)(A). Each criterion will be discussed separately below.

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 AAO regularly consults the *Handbook* for information about the duties and educational requirements of certain occupations. Here, as did the petitioner and the director, the AAO focused on the *Handbook's* treatment, at pages 550-552, of the general occupation that includes inspectors, testers, sorters, samplers, weighers, and quality control inspectors. As this excerpt from page 550 reflects, the proffered position falls within the scope of this occupation:

Inspectors, testers, sorters, samplers, and weighers ensure that your food will not make you sick, your car will run properly, and your pants will not split the first time you wear them. These workers monitor or audit quality standards for virtually all manufactured products, including foods, textiles, clothing, glassware, motor vehicles, electronic components, computers, and structural steel. As quality becomes increasingly important to the success of many production firms, daily duties of inspectors have changed. In some cases, their titles also have changed to quality-control inspector or a similar name, reflecting the growing importance of quality

Because these three *Handbook* pages relate to the position at issue, the following excerpt, from page 551, is persuasive evidence that an entry-level quality-control inspector position does not normally require a bachelor's degree, let alone one in a specific specialty such as chemistry or chemical engineering:

Training requirements vary, based on the responsibilities of the inspector, tester, sorter, sampler, or weigher. For workers who perform simple "pass/fail" tests of products, a high school diploma is preferred and may be required for some jobs. Simple jobs may be filled by beginners provided with in-house training. Training for new inspectors may cover the use of special meters, gauges, computers, or other instruments; quality-control techniques; blueprint reading; safety; and reporting requirements. There are some postsecondary training programs in testing, but many employers prefer to train inspectors on the job.

Complex precision-inspecting positions are filled by experienced assemblers, machine operators, or mechanics who already have a thorough knowledge of the products and production processes. To advance to these positions, experienced workers may need training in statistical process control, new automation, or the company's quality assurance policies. As automated

inspection equipment becomes more common, computer skills are increasingly important.

In general, inspectors, testers, sorters, samplers, and weighers need mechanical aptitude, math and communication skills, and good hand-eye coordination and vision. Advancement for these workers frequently takes the form of higher pay. They also may advance to Inspector of more complex products, supervisor, or related positions, such as purchaser of materials and equipment.

The AAO looks beyond the title of a proffered position to carefully review all of the evidence relevant to its duties and to determine the knowledge, education, special training, skills, and experience required to perform such duties. In the instant proceeding, the evidence in the record does not refute the *Handbook's* import that quality-control inspection positions do not normally require a bachelor's degree in a specific specialty.

The record does not substantiate the assertion that the proposed duties can be performed only by a person with a bachelor's degree in the highly specialized disciplines of chemistry or chemical engineering. The statements of counsel and the petitioner's president to this effect lack persuasive weight, because they are not supported by the evidence in the record. Simply going on record without supporting documentary evidence is not sufficient to meet the burden of proof in these proceedings. *Matter of Treasure Craft of California*, 14 I&N Dec. 190 (Reg. Comm. 1972). Likewise, the assertions of counsel do not constitute evidence. *Matter of Obaigbena*, 19 I&N Dec. 533, 534 (BIA 1988); *Matter of Ramirez-Sanchez*, 17 I&N Dec. 503, 506 (BIA 1980).

The AAO does not agree with counsel's characterization of the record as containing "extensive and exhaustive documentation" that establishes the "complexity and sophistication of the proposed duties." In fact, the duties are described in broad terms; no specific tasks are identified. There are no descriptions of or documents about the specific tests that the beneficiary would have to conduct, the instruments that he would have to use, the calculations that he would have to make, the references he would use, and the analyses that he would have to employ.

As the evidence does not establish the proffered position as one that normally requires a bachelor's degree or higher in a specific specialty, the petitioner has not met the specialty occupation criterion of 8 C.F.R. § 214.2(h)(4)(iii)(A)(1).

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.

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)).

The record contains no evidence regarding an industry-wide standard, and, as discussed above, the *Handbook* does not report any industry requirement for a degree. Accordingly, the evidence does not satisfy this regulatory criterion.

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 specific specialty could perform them. The duties are described in general terms, and do not elucidate any job demands beyond what might be generally expected of a person trained to implement limited chemical testing and analysis on a limited range of materials.

For the reasons discussed above, the director was correct in not granting the petition under 8 C.F.R. § 214.2(h) (4) (iii) (A) (2).

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 petitioner presented no evidence on this issue. While the petitioner identified the number of its employees holding a bachelor's degree or higher, it did not indicate the positions of those employees. Furthermore, the record includes no evidence as to what educational requirements there may have been for the proffered position in the past.

The absence of relevant evidence will not allow a finding for the petitioner on 8 C.F.R. § 214.2(h) (4) (iii) (A) (3).

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).

The record lacks concrete details about the specific, practical tasks involved in the performance of the proffered position. To the extent that they are depicted, the duties appear to involve technical testing and analysis of raw materials and dyes used in the production of rugs and carpets. However, the evidence does not provide particulars about such testing and analysis, or about any other aspects of duty performance. The evidence does not demonstrate that the specific duties are so specialized and complex as to require the highly specialized knowledge associated with a bachelor's degree in chemistry, chemical engineering, or any other specialty discipline.

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).

Although it based its decision upon the insufficiency of the evidence to qualify the proffered position as a specialty occupation, the AAO will briefly address the issue of the practicability of the beneficiary's performing part of his duties at manufacturers' locations, as this is addressed by both the director and counsel.

The AAO first notes this administrative matter: contrary to a statement therein, counsel's brief does not enclose a letter from the Shaanxi Foreign Economic & Trade Development Corp. As a result, the AAO does not have before it whatever that corporation had to say on this issue.

The AAO has considered the director's remark, in his denial of the petition, that he was not convinced that the beneficiary would actually perform quality-control inspections at manufacturers' production facilities. The AAO is not persuaded that the invoices and other business documents submitted by the petitioner prove that manufacturers will allow the beneficiary to conduct quality control tests at their sites. However, on the facts of this particular petition, such proof is not essential, and its absence is not cause to question the bona fide nature of the job offer. The AAO notes that the petitioner relies on outside manufacturers for quality goods for its rug and carpet business, and that there is no evidence that the petitioner would not be allowed to arrange for onsite quality-control work at manufacturers' sites. Furthermore, the petitioner states a good business reason for arranging such inspections. Also, the petitioner has indicated that the beneficiary's duties would also be exercised at its own receiving department. Accordingly, the issue of plant accessibility is not cause for denial of the petition.

As indicated in the specialty occupation discussion above, the petitioner has failed to establish a specialty occupation under

any one of the four specialty occupation criteria of 8 C.F.R. § 214.2 (h)(4)(iii)(A). Accordingly, the director's decision to deny the petition will 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.