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

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



FILE: LIN-02-098-51975

OFFICE: NEBRASKA 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)

IN BEHALF OF PETITIONER:



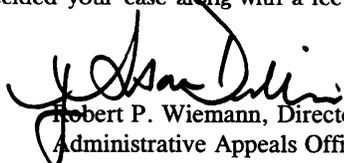
INSTRUCTIONS:

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, Nebraska Service Center, 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 is a retailer of oriental rugs that employs four persons and has a gross annual income of \$450,000. It seeks to employ the beneficiary as an appraiser. The director denied the petition because the petitioner failed to establish that the offered position qualified as a specialty occupation.

On appeal, counsel submits a brief and additional evidence. Counsel states, in part, that the offered position qualifies as a specialty occupation.

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.

The issue to be discussed in this proceeding is whether the position offered to the beneficiary qualifies as a specialty occupation.

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.

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.

The letter accompanying the initial I-129 petition stated that the beneficiary will: (1) examine, inspect, and assess rugs to determine their authenticity and value; (2) attend public and private auctions to select, appraise, and judge rugs before bidding; and (3) orally or in writing, recommend the rug's value after determining its quality and expected market value.

With respect to the offered position's requirements, the petitioner's letter stated:

The minimum requirements [sic] for the [a]ppraiser position are [sic] a bachelor['s] degree in any field and one-year [of] experience in art appraisal. The position requires a bachelor's degree because of the complexity of the analysis involved in pricing of rugs. In addition, a minimum of one-year experience is required so as to ensure the candidate has the sufficient training to assess the quality of rugs as pieces of art. The complexity of the position qualifies it as a specialty occupation. . . .

On March 12, 2002, the director issued a request for evidence. The director sought documentation that would show that the position qualified as a specialty occupation under 8 C.F.R. § 214.2(h)(4)(iii)(A). In addition, the director requested a statement describing the percentage of time that the beneficiary will spend performing each of the position's duties, and an explanation of how the beneficiary's education and training correlated to the position. Last, the director sought evidence of the beneficiary's B-2 status.

In response, counsel submitted a letter stating that the position qualified as a specialty occupation. First, counsel claimed that

the position's duties are complex and unique because fine Oriental rugs are Middle Eastern and Asian in origin, requiring familiarity with the cultural history of the areas to accurately appraise and value the rugs. Counsel explained that, to judge a rug's value, appraisers must determine its age and identify its place of origin by considering a village or town's style, motif, and tribal design. Counsel stated that the beneficiary has to study many factors when assessing an Oriental rug's value, for example, the characteristics and quality of materials, dyes, design, weaving, knotting, artistry, and the loom.

According to counsel, specialized knowledge of Oriental rug appraising cannot be acquired from trial and error, experience alone, or an apprenticeship. Counsel averred that the ability and skills required to appraise Oriental rugs are so unique and complex that knowledge required to perform the duties is usually associated with the attainment of a baccalaureate "in which certain key courses are completed." Counsel maintained that the appraisal of Oriental rugs requires coursework in history and culture.

Counsel's letter elaborated on the beneficiary's experience and formal education, explaining how the beneficiary's coursework in Islamic history and culture would provide an understanding of tribal rugs and folk artistry, how his methodical research skills would help him to research rug design and traditional carpet weaving methods, and how his bachelor's degree in business administration degree would provide him with managerial knowledge and the ability to assess market trends and economic conditions. Counsel stated that, because the value of Oriental rugs ranges from \$5,000 to \$1,000,000, the beneficiary's reasoning must be competent and sound. Finally, counsel stated that the beneficiary would negotiate purchases with overseas suppliers.

With respect to the percentage of time that the beneficiary will spend performing each duty, counsel stated that about 65 percent of his time each day would entail appraisal activities such as attending auctions, traveling to different locations, and inspecting rugs. And, about 35 percent of the time would be spent keeping abreast of price trends and market conditions: studying trade journals, industry publications and specialized directories, attending meetings, and meeting with other dealers and export agencies about marketing.

Last, the letter explained the beneficiary's B-2 status.

On July 2, 2002, the director denied the petition, finding that the petitioner failed to establish that the offered position qualified as a specialty occupation. In the first place, the director noted that the Department of Labor's *Occupational Outlook Handbook* (the *Handbook*) did not list the position of appraiser, and that the closest position would be the position of visual

artist. The director stated that the *Handbook* reports that the training requirements for visual artists vary, depending on the specialty, and that formal training is not necessary for fine artists; nevertheless, it is very difficult to become skilled enough to make a living without some training.

Next, the director found that the petitioner did not provide evidence to establish that (1) a degree requirement is common to the industry in parallel positions among similar organizations; (2) there is a degree requirement for entry into the occupation of appraising; or (3) it normally requires a degree or the equivalent to perform the duties of an appraiser. Nor could the director find a direct correlation between the beneficiary's bachelor's degree in business administration and his coursework and the position's duties. Moreover, the director determined that the two letters from art exhibitors stating, "[t]he duties of an art appraiser can be performed only by an individual such as [the beneficiary] who has a bachelor's degree," were not substantiated by evidence that would show that the specific duties of the position are so complex that knowledge required to perform them is usually associated with the attainment of a baccalaureate degree.

On appeal, counsel claims that the petitioner has established that the offered position, appraiser, qualifies as a specialty occupation under 8 C.F.R. § 214.2(h)(4)(iii)(A).

Counsel states that the petitioner satisfies the first criterion at 8 C.F.R. § 214.2(h)(4)(iii)(A) because the baccalaureate degree is the normal minimum requirement for entry into the offered position. Counsel maintains that "[a]n applicant with a bachelor's degree in any field can adequately perform the entry-level duties of an appraiser." Counsel also states that the *Handbook* reveals that the duties of examiners, investigators, and claims adjustors are parallel to those of appraisers because they evaluate and assess items, determine authenticity and value, provide written bids, reports, recommendations, and analyze market value. In addition, counsel states that the *Handbook* specifically reports that a bachelor's degree is required for the positions of examiners, investigators, and claims adjustors, and that the *Handbook* states that no specific college major is recommended for the positions. Counsel submits pages of the Department of Labor's *Dictionary of Occupational Titles* to show that the duties of the positions are similar to appraisers' duties. Finally, the petitioner's letter, dated January 21, 2002, states, that "the minimum requirement for entry into its [a]ppraiser position is a bachelor[s] degree in any field and one year of appraising experience."

Counsel's statements and the evidence contained in the record fail to establish the first criterion because the petitioner does not require candidates to possess a bachelor's degree in a specific

specialty. Section 214(i)(1) of the Act defines the term "specialty occupation" as an occupation that requires the theoretical and practical application of a body of highly specialized knowledge, and the attainment of a bachelor's or higher degree in the specific specialty (or its equivalent) as a minimum for entry into the occupation. The petitioner's letter clearly states that it accepts candidates holding bachelor's degrees in any field as long as the person has one year of appraising experience. Accordingly, the petitioner fails to satisfy the Act's requirement that the bachelor's degree be in a specific specialty.

Another of counsel's assertions is that the petitioner establishes the second criterion at 8 C.F.R. § 214.2(h)(4)(iii)(A) because the degree requirement is common to the industry in parallel positions among similar organizations or, in the alternative, that its position is so complex or unique that it can be performed only by an individual with a degree. Counsel maintains that the *Handbook* reveals that the requirement of a bachelor's degree is common to the industry for claims adjusters, examiners, and investigators positions; therefore, the requirement would apply to appraisers. Counsel also provides an article written by Aaron Groseclose and entitled "*So You Want to Be an Appraiser*," because it shows that qualified appraisers have formal education in areas such as appraisal theory, ethics, and the law, in addition to knowledge of rugs.

Counsel's assertions are without merit. As previously discussed, Section 214(i)(1) of the Act states that the petitioner must require that candidates possess bachelor's degrees in a specific specialty for the position to qualify as a specialty occupation. Again, the petitioner fails to satisfy this requirement because it does not require a degree in a specific specialty. Moreover, the record does not contain evidence that would show that it is common to the industry in parallel positions among similar organizations to require a bachelor's degree in a specific specialty. Likewise, Aaron Groseclose's article does not state that a bachelor's degree in a specific specialty is required for appraiser positions.

The petitioner states that its appraiser position is newly created; thus, the petitioner is unable to establish the third criterion at 8 C.F.R. § 214.2(h)(4)(iii)(A), namely, that it normally requires a degree or its equivalent for the position.

The fourth criterion at 8 C.F.R. § 214.2(h)(4)(iii)(A) states that the petitioner must establish that 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. Counsel asserts that the offered position requires a bachelor's degree because of the complex analysis involved in pricing rugs. In addition, counsel claims that the list of university partners that provide certificates in

appraising demonstrate that formal education is required for the occupation.

Counsel's claims are without substance. As already discussed, the petitioner fails to satisfy the fourth criterion because it does not require that candidates possess bachelor's degrees in a specific specialty. Moreover, university certificates in appraising are not equivalent to a bachelor's degree. The evidence contained in the record fails to establish that the specific duties of the position are so complex that knowledge required to perform them is usually associated with the attainment of a baccalaureate degree in a specific specialty.

In conclusion, the petitioner fails to establish that the offered position, appraiser, qualifies as a specialty occupation under 8 C.F.R. § 214.2(h)(4)(iii)(A).

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.