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

DZ

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



File: WAC 02 132 56223 Office: CALIFORNIA SERVICE CENTER

Date:

IN RE: Petitioner:
Beneficiary:



DEC 23 2003

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:



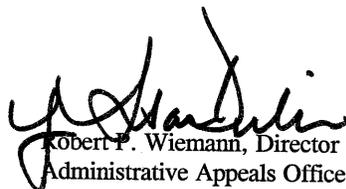
INSTRUCTIONS:

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 Director, California Service Center, denied the nonimmigrant petition. The matter is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed.

The petitioner is a garment and fabric importing company that has seven employees and a gross annual income of over \$12 million. It seeks to temporarily employ the beneficiary as a production coordinator for a period of three years. The director determined that the petitioner had not established that the proffered position was a specialty occupation.

On appeal, counsel asserts that the position of production coordinator is a specialty occupation, and submits more information on the duties of the proffered position.

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 field 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 issue in this proceeding is whether the petitioner has established that the proffered position is a specialty occupation. In the original petition received by the California Service Center on March 11, 2002, the petitioner described the duties of the proffered position as follows:

Coordinates the production aspect of the company. Coordinating communication between buyer and supplier on such matters as price adjustment, delivery, charge backs, surcharge, etc. Handling all bank transactions including L/Cs, T/T payments, monitoring [sic] customers shipping schedules and controlling inventory of stocks.

On March 20, 2002, the director asked for further information with regard to whether the proffered position was a specialty occupation. In particular, the director requested a detailed statement on the beneficiary's proposed duties and responsibilities and the percentage of time that the beneficiary would spend performing the specific duties each day. The director also requested more evidence on how the proffered position met the criteria outlined at 8 C.F.R. § 214.2(h)(4)(iii)(A) for a specialty occupation. In addition, the director requested more evidence on whether the beneficiary was qualified to perform the duties of the proffered position.

On March 23, 2002, the petitioner provided a breakdown of the beneficiary's duties as follows:

- 1) Processing new purchase orders and calculating cost and margin. (20 [per cent])
- 2) Coordinating communication with suppliers, mainly regarding issues such as price and delivery. (30 [per cent])
- 3) Directing and processing sample traffic as same as delivery of actual production goods. (10 [per cent])
- 4) Routine communication with custom broker in order to process all necessary paperwork for custom clearance. (10 [per cent])

- 5) Coordinating communication between buyer and supplier on matters such as price adjustment, delivery, charge backs, surcharge, etc. (20 [per cent])
- 6) Handling all bank transaction[s] including L/C and T/T payments. (10 [per cent]).

The petitioner further explained that the beneficiary would supervise the invoicing clerk, filing clerk and data entry clerk. The petitioner stated that the beneficiary would report to the petitioner's vice president. The petitioner stated that the multifaceted function of the position with its demanding task required a person who could readily grasp the fluid concepts and patterns inherent in the petitioner's transactions and deal with the changing dynamics with versatility and effectiveness.

The petitioner also stated that it had another employee with substantially the same work duties who had a college degree. The petitioner submitted no further documentation to support this assertion. Finally the petitioner submitted documentation to establish that the beneficiary had foreign studies equivalent to a bachelor of arts degree in Spanish language and literature from a U.S. accredited educational institution.

On April 4, 2002, the director denied the petition. The director determined that the duties of the proffered position reflected those of an administrative support worker. The director also noted that the petitioner had not established that the employer normally required a degree or its equivalent for entry into the position, or that the nature of the specific duties was so specialized and complex that the knowledge required to perform the duties was usually associated with a baccalaureate degree.

On appeal, the petitioner submits the following job duties for the proffered position:

Working with the production plants in Korea to develop new products to meet the changing consumer trends in the United States. Planning with the production plants in Korea to concentrate on certain types of products to meet the consumer trends in the United States. While consulting with the plants in Korea, [the beneficiary] will also analyze the price level of the products in light of the profit compatibility. She will analyze the gross profit and net profit to be gained from the importing of such products. In fact, she will directly set the prices for the import of the products from Korea in accordance with the price and profit compatibility. She will oversee the complete process of the production in Korea and the import to the United States. Because approximately forty percent of the product will [then] go to Guatemala for further production, [the beneficiary] will also consult with

the production plants in Guatemala for the development of [a] production plan and also analyze the gross and net profit compatibility in light of the overall [p]rofitability [o]bjective of the company.

Citizenship and Immigration Services (CIS) regulations affirmatively require a petitioner to establish eligibility for the benefit it is seeking at the time the petition is filed. See 8 C.F.R. 103.2(b)(12). The petitioner must establish eligibility at the time of filing the nonimmigrant visa petition. A visa petition may not be approved at a future date after the petitioner or beneficiary becomes eligible under a new set of facts. *Matter of Michelin Tire Corp.*, 17 I&N Dec. 248 (Reg. Comm. 1978). With regard to the instant petition, on appeal, the petitioner submits additional job duties not included in the original petition. These proceedings will only consider the job duties outlined in the initial petition and further explained in the petitioner's response to the director's request for further evidence.

Upon review of the record, the petitioner has not articulated a sufficient basis for classifying the proffered position as a specialty occupation. Citizenship and Immigration Services (CIS) often looks to the Department of Labor's (DOL) *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 *Handbook* has no specific production coordinator classification; however, the proffered position has elements entailing the supervision of administrative staff, liaison with international sellers and custom brokers, and the processing of purchase orders. With regard to the supervisory aspects of the position, the job appears analogous in part to the *Handbook* classifications of administrative services managers. To a lesser degree the classification of purchasing buyers appears relevant to the job description. Neither classification requires a baccalaureate degree or its equivalent in a specific specialty for entry into the position. For example, on page 82, the *Handbook* states the following about the training of purchasing buyers, agents and managers:

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 are familiar with the merchandise they sell and with wholesaling and retailing practices. . . . Educational requirements tend to vary with the size of the organization. Large stores and distributors, especially those in wholesale and retail trade, prefer applicants who have completed a bachelor's degree program with a business emphasis.

With regard to training and other qualifications of administrative services managers, the *Handbook* states on page 25: "Educational requirements for these managers vary widely, depending on the size and complexity of the organization." The *Handbook* also states: "For first-line administrative services managers of secretarial mailroom and related support activities, many employers prefer an associate degree in business or management, although a high school diploma may suffice when combined with appropriate experience."

Although the *Handbook* text supports the fact that some wholesale firms may prefer to hire purchasing buyers who have a college degree, it does not establish that a bachelor's degree or higher or its equivalent in a specific specialty is normally the minimum requirement for entry into production coordinator positions. In addition, the academic requirements for the administrative services manager positions establish much lower academic requirements for entry into a job that would contain the supervisory administrative duties outlined in the petitioner's petition. Thus the petitioner has not established the first criterion of 8 C.F.R. § 214.2(h)(4)(iii)(A).

The petitioner also did not establish any of the other criteria of 8 C.F.R. § 214.2(h)(4)(iii)(A). In attempting to establish the third criterion of 8 C.F.R. § 214.2(h)(4)(iii)(A), the petitioner stated that another employee with similar duties to the proffered position had a baccalaureate degree. This assertion is found insufficient to establish this criterion. 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). Without more persuasive evidence, the petitioner has not established any of the four criteria of 8 C.F.R. § 214.2(h)(4)(iii)(A).

Beyond the decision of the director, the beneficiary does not appear qualified to perform the duties of the proffered position. The petitioner established that the beneficiary's studies in Ecuador and Korea were the equivalent of a baccalaureate degree in Spanish language and literature from a U.S. accredited institution. This degree does not appear to be the specific specialty presumably needed for a position involving international business and production coordination. The petitioner did not submit sufficient documentation to establish that the beneficiary's work experience was the equivalent of a more appropriate degree for the proffered position. See 8 C.F.R. § 214.2(h)(4)(iii)(D)(5). As the appeal will be dismissed on other grounds, this issue need not be examined further.

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.