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U.S. Department of Homeland Security

Bureau of Citizenship and Immigration Services

ADMINISTRATIVE APPEALS OFFICE
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BCIS, AAO, 20 MASS, 3/F
Washington, DC 20536

DA



File: WAC 03 039 54089 Office: CALIFORNIA SERVICE CENTER

Date: **JUL 18 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:



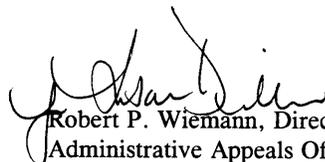
INSTRUCTIONS:

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 the Bureau of Citizenship and Immigration Services (Bureau) 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, California Service Center, and the matter is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed.

The petitioner is a California import and export company established in 1979 that specializes in sending frozen vegetables and fruits to Japan and other Asian countries. It has 16 employees and a gross annual income of \$38,000,000. It seeks to temporarily employ the beneficiary as an export sales coordinator for a period of three years. The director determined that proffered position was not a specialty occupation and compared it to the positions of shipping clerk, and cargo and freight agent.

On appeal, counsel asserts that the position of export sales coordinator is a specialty occupation and submits further documentation.

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 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 November 18, 2002, the petitioner described the duties of the proffered position as follows:

[The beneficiary] will be responsible for coordinating the export of frozen vegetables, fruits and other frozen and dried food products from the United States, Canada and Latin America to Japan, China, and Taiwan under the direction of the Import/Export Sales Manager. Her duties will include coordinating the logistics of goods for export and preparing export documents in compliance with the regulations of each importing country. [The beneficiary] will also be partly responsible for coordinating and implementing the most effective means of transporting the traded goods, both inland and ocean freight, for our target markets, thus providing competitive pricing to our customers. Specifically, [the beneficiary] will be responsible for the following:

- o Preparing purchase and sales contracts;
- o Monitoring inventory levels of product and packaging supplies;
- o Monitoring sales levels of each customer by item and preparing reports for analysis by senior management;
- o Translating United States, Canadian and Latin American crop and market information for senior management;
- o Developing methods to maximize container capacity to reduce shipping costs;
- o Coordinating packaging of products at frozen food facilities to meet cargo deadlines and specifications;

- o Preparing all shipping documents for transmission to customers in Japan, China and Taiwan in order to clear cargo at point of destination;
- o Arranging for certificates issued by the United States Department of Agriculture (USDA) to ensure quality of frozen vegetables shipped and sold to Japan, China and Taiwan;
- o Tracking and maintaining purchase orders on a monthly basis to control inventory and ensure Noon International's ability to ship goods immediately;
- o Handling customs and shipping problems, and other related customer complaints; and
- o Attending to detailed requirements of each customer to ensure and further promote customer satisfaction.

The petitioner also submitted a letter from [REDACTED] [REDACTED] an associate professor of Seton Hall University who examined the duties of the proffered position and stated: "export sales coordinators working at an advanced level are required to demonstrate academic training and/or professional experience in international business, or a related area, at no less than a bachelor's level in order to competently execute the required job duties." The petitioner also submitted to the record a letter from [REDACTED] Assistant Manager of Toyota Tsusho America, San Francisco, California, an international import and export company. In this letter, [REDACTED] stated that his firm had employees in similar positions as the petitioner and that all of these employees had at least a bachelor's degree in international business or a closely related field.

On November 27, 2003, 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, the percentage of time that the beneficiary would spend performing the specific duties each day, the level of responsibility, and an explanation for why the work to be performed required the services of a person who had a baccalaureate degree. The director also asked for copies of the vacancy announcement or classified advertisements used to solicit individuals for the proffered position. In addition the director requested the petitioner's employee organizational chart and additional immigration and educational information on any employee who would be supervised by the beneficiary. Finally the director requested more evidence to establish any of the criteria of 8 C.F.R. § 214.2 (h)(4)(iii)(A), and stated that the petitioner should submit information on degree requirements for parallel positions among organizations that had a similar number of employees, namely, sixteen.

In response, the petitioner explained that it was a trading company engaged in exporting and importing frozen vegetables and fruit, frozen processed food products, and canned vegetable and fruit products. The petitioner stated that it does business in Japan, China, Taiwan and eight other counties. It further explained that exporting and importing food items is much more difficult than non-perishables due to health and safety rules, among other issues. The petitioner stated that the proffered position was an entry-level position for a person with a bachelor's degree or the equivalent, and that the beneficiary would not supervise other employees at the company. The petitioner also stated that all four existing export or import sales coordinator positions required at least a bachelor's degree in international business or marketing or equivalent education and work experience. The petitioner submitted no further documentation with regard to the academic credentials of its current staff.

In addition, the petitioner submitted the following breakdown of the duties of the proffered position:

[The beneficiary] will spend 100 percent of her time exporting of [sic] our products from the U.S., Latin America and Canada to Japan and other Asian countries. These responsibilities require advanced knowledge of and experience with international shipping procedures, including International Commerce (INCO) terminology, trading terminology, inland and ocean shipping, and import regulations at each destination country. . . .

Forty percent of the position's time will be spent on export contract [sic] and other shipping documentation and export coordination. Overall this involves price analysis, delivery reliability and contract negotiation. These responsibilities will entail formulating purchase and sales contracts for cargo shipment to ensure the security of annual or spot orders. Once the Export Sales Coordinator ensures the orders can be processed by the requested date, the containers must be booked with ocean freight companies and inland transportation must be arranged. The Export Sales Coordinator must issue export shipping documentation, including commercial invoices, packing lists, ocean bills of lading, packer's certificates of quality and condition, USDA certificates of quality and condition, freezing certificates and no-wood certificates, within four days after shipment to ensure that the documents are received prior to the arrival of the goods at the foreign port. . . .

Fifteen percent of this position's time will involve inventory control. [The beneficiary] will maintain contract balances for each item and track materials used to package frozen or dried food products. She will

be responsible for providing the Export Sales Manager with the projected amount of packaging materials needed for the company's contracted annual exports. As part of the inventory control function, [the beneficiary] will also coordinate the creation of new packaging designs received as the company acquires new customers. This requires that she keep abreast of the ever-changing regulations concerning food packaging in each importing country so that labeling and packaging is produced in compliance with these laws. [The beneficiary] will also be responsible for selecting and summarizing market and crop information for our clients in Japan.

Forty-five percent of this position's time will consist of liaising with customers regarding export shipping, inventory control, new packaging and product quality complaint issues. [The beneficiary] will provide support for customers regarding all aspects of the export process. This involves explaining import/export rules, document requirements, packaging regulations, shipping and customs rules and solving shipping and handling problems. . . .

The petitioner submitted an organizational chart entitled "Noon International Danville Headquarters Frozen Food Division Organizational Chart" that identified nine employees. In addition, the petitioner submitted nine job vacancy announcements taken from the Internet. The petitioner also submitted an excerpt on import-export agents from the Department of Labor's (DOL) *Dictionary of Occupational Titles (DOT)*; a copy of *Hong Kong T.V. Video Program, Inc, v. Ilchert*, 655 Fed. Supp. 712 (N.D. 1988); and an approval notice for an H-1B petition for Bruno De Britto, whom the petitioner identified as the beneficiary's predecessor in the proffered position. The *DOT* excerpt identified foreign agent as an alternate title for import-export agent.

On December 27, 2002, the director denied the petition. The director stated that the position appeared to combine the duties of shipping, receiving, and traffic clerks, cargo and freight agents, and transportation and materials moving workers. As such, the director indicated that the 2002-2003 edition of the Department of Labor's (DOL) *Occupational Outlook Handbook (Handbook)* stated the following: "The OOH does not indicate that a baccalaureate or higher training is required to perform these duties. The most significant source of training is work experience in a related field."

The director also found that the job vacancy announcements submitted by the petitioner did not establish that it was common among the industry to require an export sales coordinator to have a baccalaureate degree because the submitted job announcements were for much larger companies. Finally the director noted that the submitted information did not establish that the petitioner

normally required applicants for the position to possess a baccalaureate or higher-level degree in a specific field.

On appeal, counsel resubmits [REDACTED] initial opinion as to whether the export sales coordinator is a specialty occupation, the letter from [REDACTED] America, Inc., and the nine job vacancy announcements. With regard to new materials, counsel submits additional testimony from the petitioner's president and a supplemental statement from [REDACTED]

In his supplemental opinion on the nature of the proffered position, [REDACTED] states that he interviewed the petitioner's president and reviewed documentation on the duties of the proffered position. He then concludes that the position of export sales coordinator is a senior-level managerial position encompassing the disciplines of marketing, finance, economics, maritime management, international business, operations management and business administration.

In her statement on appeal, the petitioner's president states the following:

We require that all of our export sales coordinators have bachelor's degrees in international business or marketing or equivalent education and experience. This is necessary because they must handle a range of duties including marketing, finance, logistics and inventory analysis. The position of export sales coordinator requires the ability to perform detailed analyses and make independent decisions. This position deals with clients directly and the coordinator must be knowledgeable about the entire import and export process. Because of the size of our company, we do not hire individuals for each individual job function. Instead we hired export sales coordinators with the education and training to perform the full spectrum of job duties. We have found that a bachelor's degree in international business, marketing, business administration, or a related field provides the training in finance, operations management, logistics, business administration, economics[,] and foreign currency valuations necessary to successfully perform the duties of the position.

The petitioner's president also states that the proffered position requires a greater degree of complex analytical thought and independent decision making than the positions of a shipping, receiving and traffic clerk or a cargo and freight agent. According to the petitioner, the occupations that were identified by the director as analogous to the proffered position create and maintain shipping records, track shipments and determine shipping rates, whereas an export sales coordinator would negotiate contracts, perform complex financial and market analyses, and

manage inventory levels. The petitioner's president concludes her letter by stating the following:

In my thirty years of experience in the import and export industry, I have found that it is necessary to hire export sales coordinators who have at least a bachelor's degree in international business, marketing or a related field or who have equivalent education and training. This is not a clerical position. It is an entry-level management position, which requires the sophisticated and complex theoretical knowledge of finance, marketing, and economics obtained through the completion of a degree in these areas.

Counsel also states that the Bureau has erroneously characterized the proffered position as a combination of the duties of a shipping, receiving, and tracking clerk, a cargo and freight agent, and of persons employed in the transportation and material moving occupations. In addition, counsel states that the Bureau has previously held that import/export positions are specialist occupations and cites to an unpublished AAO decision. Counsel affirms that the director's decision in the instant petition is in actuality predicated on the size of the petitioner. Counsel states that the size of the petitioner's business is irrelevant to the petition and submits a copy of *Young China Daily v. Chappell* 742 Fed.Supp. 552 (N.D.Cal. 1989).

Finally, counsel states that similar positions should be decided in a like manner unless the prior decision is found to have been issued in error, and cites *Omni Packaging, Inc. v. INS* 753 Fed Supp. 500 (D.P.R. 1990). Counsel indicates that, since the director in his denial did not state that the previous H-1B petition for the beneficiary's predecessor was approved in error, the instant petition which is similar to the previous petition, should be approved.

Upon review of the record, the petitioner asserts that the proffered position is a specialty occupation because it has been assigned a specific SVP rating in the Department of Labor's *Dictionary of Occupational Titles (DOT)*. However, the *DOT* is not considered a persuasive source of information regarding whether a particular job 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.

The Department of Labor has replaced the *DOT* with the *Occupational Information Network (O*Net)*. Both the *DOT* and *O*Net* provide only general information regarding the tasks and work activities associated with a particular occupation, as well as the education, training and experience required to perform the duties of that occupation. The Department of Labor's *Occupational Outlook Handbook (Handbook)* provides a more comprehensive description of the nature of a particular occupation and the education, training and experience normally

required to enter into an occupation and advance within that occupation. For this reason, the Bureau is not persuaded by a claim that the proffered position is a specialty occupation simply because the Department of Labor has assigned it a specific SVP rating in the *DOT*.

In addition, counsel's reference to a previously approved H-1B petition for the beneficiary's predecessor does not appear material to this proceeding. The Bureau is not required to approve applications or petitions where eligibility has not been demonstrated. The record of proceeding, as presently constituted, does indicate that an H-1B petition for [REDACTED] was submitted by the petitioner to the Bureau and approved. Although both the petitioner and counsel assert that this individual was employed by the petitioner in a position identical to the proffered position, the petitioner has placed no documentary evidence in the record as to the employment of [REDACTED] in the export sales coordinator position, his specific duties while employed in the position, and his academic credentials.

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 submission of employment or wage records, a description of job duties and a baccalaureate diploma or transcript for [REDACTED] would have provided more probative weight with regard to this issue. It is, therefore, not possible to determine definitely whether the petition for Mr. De Britto was properly approved or approved in error. Furthermore, the Administrative Appeals Office is not bound to follow the contradictory decision of a Service Center. *Louisiana Philharmonic Orchestra v. INS*, 44 F.Supp. 2d 800, 803 (E.D. La. 2000), *aff'd* 248 F.3d 1139 (5th Cir. 2001), *cert. denied*, 122 S.Ct. 51 (2001).

Counsel further refers to an unpublished AAO decision that he asserts involved import/export positions. Counsel has furnished no evidence to establish that the facts of the instant petition are in any way analogous to those in the unpublished decision. Simply going on record without supporting documentary evidence is not sufficient for purposes of meeting the burden of proof in these proceedings. *Treasure Craft of California, supra*. Furthermore, while 8 C.F.R. § 103.3(c) provides that Bureau precedent decisions are binding on all Bureau employees in the administration of the Act, unpublished decisions are not similarly binding.

Counsel's statement with regard to the size of the petitioner's staff is well-founded. The size of a company or the fact that it is a new company is not necessarily a determining factor in whether a job would qualify as a specialty occupation. *Young China Daily v. Chappell, supra*. However, the request for information on companies of similar size that employ export sales coordinators appears a reasonable exercise of the director's

discretion in the adjudication of the instant petition.

Upon review of the record, the petitioner has not articulated a sufficient basis for classifying the proffered position as a specialty occupation. 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 - 8 C.F.R. § 214.2 (h) (4) (iii) (A) (1)

The Immigration and Naturalization Service, now the Bureau of Citizenship and Immigration Services (Bureau) 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.

In the instant petition, the petitioner has identified the position as an export sales coordinator, and submitted a *DOT* description of the job of an export-import or foreign agent. This latter classification, as described previously, will not be considered in this proceeding. The director in his decision identified the proffered position as a combination of the shipping, receiving and traffic clerk, cargo and freight agents and transportation and material moving occupations.

With regard to job duties for shipping, receiving and traffic clerks, and cargo and freight agents, all these occupations are examined under the subcategory entitled "material recording, scheduling, dispatching, and distributing occupations, except postal workers" in the office and administrative support occupations section of the *Handbook*. The *Handbook* on pages 407-408 states the following:

Workers in this group are responsible for a variety of communications, record keeping, and scheduling operations. *Cargo and freight agents* route and track cargo and freight shipments, whether from airline, train, or truck terminals, or shipping docks. They keep record of any missing or damaged items and any excess supplies. The agents sort cargo according to its destination and separate any items that cannot be packed together. . .

. . . .

Shipping, receiving, and traffic clerks track all incoming and outgoing shipment of goods transferred between businesses, suppliers and customers. These clerks may be required to lift cartons of various sizes. Shipping clerks assemble, address, stamp and ship merchandise or materials. Receiving clerks unpack,

verify and record incoming merchandise. Traffic clerks record the destinations, weight, and cost of all incoming and outgoing shipments. In a small company, one clerk may perform all of these tasks.

With regard to training, or other qualifications for these jobs, the *Handbook* on page 409 states the following:

Many material recording, scheduling, dispatching, and distributing occupations are entry level and do not require more than a high school diploma. Employers, however, prefer to hire those familiar with computers and other electronic office and business equipment. Those who have taken business courses or have previous business, dispatching, or specific job-related experience may be preferred. . . . Typing, filing, record keeping, and other clerical skills also are important.

In comparing the stated duties of the proffered position and the *Handbook* classifications identified by the director, while the *Handbook* classification of freight agent does contain words used by the petitioner in its job description, such as "preparing shipping documents", the *Handbook* classifications appear to be predominantly clerical functions, often involving physical activities. In contrast, the proffered position appears to contain very few strictly clerical functions and its duties appear concentrated in the contracting for products, the resale or distribution of products to foreign customers, the inventory of products obtained through negotiated contracts, and the liaising with international customers and suppliers throughout the entire procurement and shipping process. As such, the proffered position does not appear analogous to any of the *Handbook* categories identified by the director.

While the proffered position also contains elements of a sales representative job, a more analogous *Handbook* classification for the proffered position based on the major job responsibilities appears to be purchasing manager, buyer or purchasing agent.

The *Handbook*, on page 80, states the following with regard to the duties of purchasing managers, buyers and purchasing agents:

Purchasing managers, buyers, and purchasing agents seek to obtain the highest quality merchandise at the lowest possible purchase cost for their employers. In general, purchasers buy goods and services for their company or organization, whereas buyers typically buy items for resale. Purchasers and buyers determine which commodities or services are best, choose the suppliers of the product or service, negotiate the lowest price, and award contracts that ensure that the correct amount of the product or service is received at the appropriate time. In order to accomplish these tasks successfully,

purchasing managers, buyers, and purchasing agents study sales records and inventory levels of current stock, identify foreign and domestic suppliers and keep abreast of changes affecting both the supply and demand for needed products and materials.

Purchasing managers, buyers, and purchasing agents evaluate suppliers based upon price, quality, service support, availability, reliability, and selection. . . . Other specific job duties and responsibilities vary by employer and by the type of commodities or services to be purchased.

. . . .

. . . Wholesale buyers purchase goods directly from manufacturers or from other wholesale firms for resale to retail firms, commercial establishments, institutions, and other organizations. Some firms promote qualified employees to these positions, while other employers recruit college graduates; regardless of academic preparation, new employees must learn the specifics of their employers' business.

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. Some retail firms promote qualified employees to assistant buyer positions; others recruit and train college graduates as assistant buyers. Most employers use a combination of methods. . . . 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.

Although the *Handbook* text supports the fact that wholesale firms apparently similar to the petitioner prefer to hire applicants with a college degree, it does not support the petitioner's assertion that a bachelor's degree or higher or its equivalent is normally the minimum requirement for entry into the import coordinator or analogous purchasing agent positions. In addition, the information contained in the *Handbook* also does not establish that a bachelor's degree in a specific degree is necessary for entry into the proffered position as required by the Act.¹

¹ The court in *Defensor v. Meissner* observed that the four

As stated previously, the statute establishes that the petitioner must show that the proffered position requires a baccalaureate or higher degree, or the equivalent, in a specific specialty. To interpret the criteria in 8 C.F.R. § 214.2(h) 4)(iii)(A) as solely requiring a bachelor's degree is an incorrect interpretation. Thus the petitioner has not established the first criterion of 8 C.F.R. § 214.2(h) (4) (iii) (A).

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 - 8 C.F.R. § 214.1(h) (4) (iii) (A) (2)

A. Degree Requirement is Common to the Industry

Factors often considered by the Bureau when determining the industry standard include: whether the Department of Labor's (DOL) *Occupation Outlook Handbook* (*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 *Handbook's* conclusions about a degree requirement for an export sales coordinator position were discussed in the previous section, and shall not be repeated here. In the instant petition, to establish the industry standard, the petitioner submitted nine vacancy announcements taken from the Internet. These vacancies covered a range of jobs from a Global Customs and Export Compliance Specialist position for Mary Kay, a cosmetics company, to an Import/Export coordinator position for the corporate section of Ingersoll-Rand, a manufacturing company. All nine vacancy announcements required a baccalaureate degree with a range of years of experience; however, none required a bachelor's degree in a specific specialty.

The petitioner also submitted a letter from [REDACTED] Assistant Manager of Toyota Tsusho America, San Francisco, California, an international import and export company. Although [REDACTED] identifies that his company has similar employees, and that all have college degrees, he provides no substantive documentation of this fact. Without such evidence, it is not possible to establish that this letter would fulfill the

criteria at 8 C.F.R. 214.2 (h)(4)(iii)(A) present certain ambiguities when compared to the statutory definition, and "might also be read as merely an additional requirement that a position must meet, in addition to the statutory and regulatory definition." See *Defensor v. Meissner* 201 F.3d 388 (5th Cir. 2000).

suggested criteria that import/export firms "routinely employ and recruit only degreed individuals." The petitioner submitted no documentation that any professional export sales association has made a bachelor's degree a requirement for entry into the field, nor has it submitted letters or affidavits from firms or individuals in the industry which attest that such firms "routinely employ and recruit only degreed individuals." Accordingly the petitioner has not established that the degree requirement is common to the industry in parallel positions among similar organizations.

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. In the instant petition, the record is inconclusive as to the level of the position's complexity. On appeal, the petitioner submits a second letter from Professor Wisenblit that states the proffered position is a senior-level analytical and managerial position. Professor Wisenblit also states that the beneficiary would be working at a "relatively senior level, with responsibilities that necessitate an advanced academic and/or professional background in international business." However, the petitioner also submits a letter from its president that clearly states the proffered position is an entry-level position and that the beneficiary would report to the sales manager. While the petitioner has established an extensive and detailed list of job duties, it has not established that these duties are necessarily so complex or unique that only an individual with a bachelor's degree in a specific specialty could perform them. Accordingly, the petitioner has not established the second prong of 8 C.F.R. § 214.2 (h) (4) (iii) (A).

III. The employer normally requires a degree or its equivalent for the position - 8 C.F.R. § 214.2(h) (4) (iii) (A) (3)

Although the petitioner provided an organizational chart that identified three export sales coordinator positions and one import sales coordinator position in its Danville, California office, it provided no documentary evidence with regard to these individuals' academic credentials, such as diplomas or transcripts of courses. Simply going on record without supporting documentary evidence is not sufficient for purposes of meeting the burden of proof in these proceedings. *Treasure Craft of California, supra*. Without more persuasive evidence, the petitioner has not established this criterion.

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

The petitioner has placed extensive information on the record with regard to the job duties to be performed in the export sales

coordinator. What is less clear in the record is the level of specialization or complexity that some job duties would require. For example, in the record the Just-In-Time inventory model is mentioned; however, there is no indication that this approach to inventory control is either so specialized or complex that only a person with a baccalaureate degree could perform this job duty. The position as described by the petitioner appears to be a very detail-oriented job; however, this fact does not necessarily make the proffered position specialized or complex. The petitioner has not established that the proffered position within the petitioner's business is any more complicated or specialized than any other export sales coordinator position. Without more persuasive evidence as to the specialized or complex nature of the position, the petitioner has not met the fourth criterion of 8 C.F.R. § 214.2(h)(4)(iii)(A).

The petitioner has failed to establish that any of the four criteria enumerated above 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.

Beyond the decision of the director, the evidence in the record with regard to the beneficiary's qualification for the proffered position appears insufficient. The letter from the beneficiary's first employer in Japan clearly stated that the beneficiary's first position with the employer was clerical in nature. It does not appear that this first year of employment could be utilized in the computation of relevant experience to be counted towards a dual bachelor's degree in international business. As the appeal will be dismissed on another ground, however, this issue will not be discussed 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.