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

MAR 12 2003

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ADMINISTRATIVE APPEALS OFFICE
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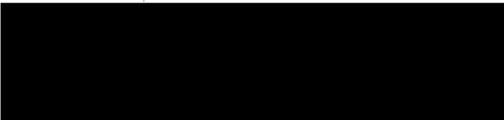
File: WAC-01-058-52150 Office: California Service Center Date:

IN RE: Petitioner: [Redacted]
Beneficiary: [Redacted]

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)

Identifying data deleted to prevent unwarranted invasion of personal privacy

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

The petitioner is an importer, wholesaler, and retailer of products manufactured in the Philippines with ten employees and a stated gross annual income in excess of \$2.9 million. It seeks to employ the beneficiary as a purchase price analyst for a period of three years. The director determined the petitioner had not established that the proffered position is a specialty occupation.

On appeal, counsel submits a statement and additional documentation.

The term "specialty occupation" is defined at 8 C.F.R. § 214.2(h)(4)(ii), as follows:

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.

The director denied the petition because the petitioner failed to establish that the performance of the proffered position's duties requires at least a four-year baccalaureate degree. On appeal, counsel argues that the offered job is a specialty occupation because it requires at least a bachelor's degree in business, economics, or technical training such as engineering, or one of the applied sciences. Counsel asserts that this argument is supported by the educational requirements listed for purchasing manager, buyer, and purchasing agent positions in the Department of Labor's (DOL) *Occupational Outlook Handbook (Handbook)*.

Counsel's statements on appeal are not persuasive. The Bureau does not use a title, by itself, when determining whether a particular job qualifies as a specialty occupation. The specific duties of the offered position combined with the nature of the petitioning entity's business operations are factors that the Bureau considers. In a separate attachment to the initial I-129 petition, the petitioner described the duties of the beneficiary in the offered position as follows:

Conduct research and feasibility studies in cost, price and profit, using regress analysis, Access and Excel to

obtain products from the Philippines. Compile information about price and trends for different types of products. Compile information from trade journals, catalogs and other sources to keep informed on price trends for different types of products, spares and related projects. Conduct cost analysis studies to determine cost.

In response to a subsequent Service (now the Bureau) request for additional information relating to the proffered position, counsel submitted the following revised description of the duties for the position of purchase price analyst:

Conduct research and feasibility studies on the costs and profits in importing specialized goods from the Philippines including artifacts, antiques, spices and related products. Collect data on the Philippine population in the greater Los Angeles area in order to determine the demand for the products. Assess the competition. Forecast demand on a five-year cycle with the use of statistical techniques including correlation and regression analysis, [A]ccess and [E]xcel. Conduct a micro study of individual products to assess the relationship between price and demand. Determine optical [sic] prices with a view to maximizing profits. Compile a list of supplie[r]s in the Philippines and enter into purchase price contracts. Maintain relationships with suppliers. Study trade journals and catalogs to monitor price trends. Modify contracts and renegotiate as required. Assess cost saving possibilities including optimizing distribution channels.

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 petitioner has not met any of the above requirements to classify the offered position as a specialty occupation.

Counsel contends that the proffered position is a specialty occupation because it has been assigned a particular Specific Vocational Preparation (SVP) code in the DOL's *Dictionary of Occupational Titles*, (DOT) (4th Ed., Rev. 1991). However, the Bureau does not consider the DOT a persuasive source of information regarding whether a particular job requires the attainment of a bachelor's degree 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 DOL's *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 offered position is a specialty occupation simply because the DOL has assigned it a specific SVP rating in the DOT.

The Bureau does not agree with counsel's argument that the proffered position of purchase price analyst would normally require a bachelor's degree in business, economics, or technical training such as engineering or one of the applied sciences. The proffered position appears to combine the duties of a purchasing manager, buyer, and purchasing agent with those of a marketing manager. The *Handbook*, 2002-2003 edition, at pages 80-83, states the following regarding 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 some *buyers* buy items for resale. They determine which commodities or services are best, choose the suppliers of the product or service, negotiate the lowest price, and award contracts that ensure 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 of and demand for products and materials for which they are responsible.

The *Handbook* finds no requirement of a baccalaureate or higher degree in a specific specialty for employment as a purchasing manager, buyer, and purchasing agent. Educational requirements tend to vary according to the size of the organization. Large distributors and stores, especially those in wholesale and retail trade, prefer applicants who have completed a bachelor's degree program with a business emphasis. (Emphasis added.) It is noted here that a baccalaureate degree appears to be a preference by large distributors and stores rather than a requirement. It is further noted that the petitioner has only ten employees. Regardless of their academic preparation, new employees must learn the specifics of their employers' business. Training periods vary in length, with most lasting 1 to 5 years.

Counsel's assertion that the *Handbook* indicates at least a bachelor's degree in business, economics, or technical training such as engineering or one of the applied sciences is necessary for employment as a purchasing manager, buyer, and purchasing agent positions is not persuasive. While the *Handbook* specifies that "many manufacturing firms" require a degree in one of these listed specialties, the *Handbook* provides no indication such a degree requirement is applicable to any other classification of employer. Clearly, the petitioner cannot be considered to be a manufacturing firm as it does not manufacture anything, but rather it is an importer, wholesaler, and retailer of products such as "artifacts, antiques, spices and related products" manufactured in the Philippines.

A further review of the *Handbook* also finds no requirement of a baccalaureate degree in a specific specialty for employment as a marketing manager. A wide range of educational backgrounds are considered suitable for entry into marketing managerial positions. Some employers prefer degrees in business administration but bachelor's degrees in various liberal arts fields are also acceptable. Certain personal qualities and participation in in-house training programs are often considered as significant as the beneficiary's specific educational background. Thus, the petitioner has not shown that a bachelor's degree in a specific specialty or its equivalent is required for the position being offered to the beneficiary.

Counsel and the petitioner both claim that the petitioner has always required that individuals employed in the proffered position possess a bachelor's degree in business administration. However, the petitioner has not submitted any documents such as diplomas or transcripts to corroborate the claim that it has required such a degree. Simply going on record without supporting documentary

evidence is not sufficient to meet the burden of proof in this proceeding. *Matter of Treasure Craft of California*, 14 I. & N. Dec. 190 (Reg. Comm. 1972). This same reasoning also applies to counsel's unsupported claim that the proffered position requires an individual who holds a bachelor's degree in any specific specialty. It was held in *Matter of Obaigbena*, 19 I. & N. Dec. 533, 534 (BIA 1988) and *Matter of Ramirez-Sanchez*, 17 I. & N. Dec. 503 (BIA 1980), that the assertions of counsel do not constitute evidence. Therefore, it cannot be concluded that the petitioner has established that it has, in the past, required the services of individuals with baccalaureate or higher degrees in a specific specialty for the offered position.

The petitioner did not present any documentary evidence that businesses similar to the petitioner in their type of operations, number of employees, and amount of gross annual income, require the services of individuals with a baccalaureate degree in a specific specialty for parallel positions.

The petitioner has not demonstrated that the nature of the beneficiary's proposed duties is so specialized and complex that the knowledge required to perform the duties is usually associated with the attainment of a baccalaureate or higher degree in a specific specialty.

The petitioner has failed to establish that any of the four factors 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.

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.