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U.S. Department of Homeland Security
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: WAC 01 215 54119 Office: CALIFORNIA SERVICE CENTER Date: OCT 14 2003

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)

ON BEHALF OF PETITIONER:



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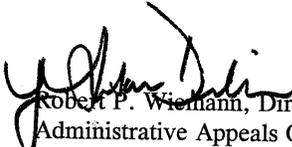
INSTRUCTIONS:

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 visa petition 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 wholesaler. It has an undisclosed number of employees and an undisclosed gross annual income. It seeks to temporarily employ the beneficiary as a purchasing agent 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 proffered position is a specialized and complex job. Counsel submits further documentation from the petitioner, as well as excerpts from the Department of Labor's (DOL) *Occupational Outlook Handbook (Handbook)* and the DOL *Dictionary of Occupational Titles (DOT)*.

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 June 12, 2001, the petitioner described the duties of the proffered position as follows: "Coordinating activities in purchasing goods and supplies; review requisitions; discuss with suppliers to obtain product information, such as price, availability, and delivery schedule; estimate values according to knowledge of market price; and maintain computerized procurement records."

On August 21, 2001, the director requested further evidence with regard to whether the proffered position was a specialty occupation. In particular, the director requested more evidence with regard to the first three criteria of 8 C.F.R. § 214.2(h)(4)(iii)(A). The director also requested a copy of the petitioner's present and past job announcements or classified advertisements for the proffered position.

In response, the petitioner submitted an excerpt from the 1996-1997 edition of the DOL *Handbook* that examined the purchasing agent position. The petitioner submitted no job vacancy announcements to address whether a baccalaureate degree was common throughout the purchasing agent field. With regard to whether the petitioner had required a baccalaureate degree for previous purchasing agent hires, counsel stated that the president of the company had previously been performing the duties of a purchasing agent; however, the volume of business mandated the use of the temporary professional services of another employee. In a letter submitted by counsel, the petitioner stated that the president of the company had a bachelor of arts degree with a major in international business and a master's degree in business administration from U.S. universities. Counsel provided copies of the president's academic credentials. In addition, the petitioner added the following information with regard to the job responsibilities of the proffered position:

The [p]urchasing [a]gent must be able to analyze the technical data in suppliers' proposals, make buying decisions and spend large amounts of money. He/she has

to determine which commodities are best, choose the suppliers of the product, negotiate the lowest price and award contracts to ensure that the correct amount of product is received at the appropriate price and time. In order to obtain competitive prices from suppliers in China and Taiwan, he/she also needs to analyze vendors['] operations, determine the factors that affect prices, be able to do cost analysis and data research, and to negotiate with suppliers, shipping companies and customer[s.]

Counsel also submitted excerpts from the DOT with regard to the purchasing agent classification that indicated a specific vocational preparation (SVP) rating of 7 for the classification. Finally counsel submitted a document entitled "Job Opening" which reiterated the same duties for the proffered position that were contained in the original petition. The job posting also stated that the educational qualifications for the job were "bachelor['s] degree, or its equivalency."

On December 3, 2001, the director denied the petition. The director stated that the *Handbook's* description of the academic credentials for the purchasing managers, buyers, and purchasing agents classification did not indicate that a baccalaureate degree was required for entry into the job. The director did not find that the petitioner had established any of the remaining criteria of 8 C.F.R. 214.2(h)(4)(iii)(A).

On appeal, counsel affirms that the duties of the proffered position are specialized and complex enough to require the services of an employee with a baccalaureate degree or its equivalent. Counsel resubmits the letter written by the petitioner as to the necessary academic preparation for the job, as well as excerpts from the *Handbook* and the DOT. He submits, for the first time, the following breakdown of the beneficiary's duties along with the percentage of time to be spent performing the duties:

Analyze the technical data in suppliers' proposals to make buying decisions and determine which commodities are best. (30 percent)

Do cost analysis, data research, negotiate with suppliers and shipping companies to obtain the lowest price, and award contracts to suppliers. (30 percent)

Identify foreign and domestic suppliers and keep abreast of changes affecting both supply and demand. (15 percent)

Study sales, records and inventory levels to ensure that the correct amount of goods is ordered and maintain an adequate inventory level. (15 percent)

Maintain computerized procurement records[.] (10 percent)

The breakdown of job duties also states the following with regard to the minimum qualifications/experience for the position: "Bachelor['s] degree in any major, with four years experience in purchasing goods and related procedures."

Counsel also affirms that the beneficiary is qualified for the proffered position due to her years of work experience in the purchasing field. He submits a letter from FIX Enterprise Company, Taipei, Taiwan, that describes the work done by the beneficiary in the company from July 1994 to June 1998. The letter states that the beneficiary first worked as a business assistant and then was promoted in October 1995 to business officer with responsibilities for purchasing goods and related procedures.

Pursuant to 8 C.F.R. § 214.2(h)(4)(iii)(A)(1), namely that a baccalaureate or higher degree or its equivalent is normally the minimum requirement for entry into the purchasing agent position, the Department of Labor's (DOL) *Occupational Outlook Handbook*, (*Handbook*) 2002-2003 Edition, on page 80, states the following with regard to the hiring practices for purchasing managers, buyers and purchasing agents:

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 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.

The actual size of the petitioner in terms of staff or gross annual income of the petitioner has not been identified in the instant petition. Based on documents submitted to the record, it appears that the petitioner's business would not be viewed as a large store or distributor. Federal Form 941, Employer's

Quarterly Federal Tax Return, indicates that the petitioner has five employees with total wages paid out for the quarter as \$11,127.12. In addition, the *Handbook* states that large stores or distributors prefer applicants who have completed a bachelor's degree with a business emphasis, which is not the case in the instant petition. Based on the general description of educational requirements for purchasing agents outlined in the *Handbook*, it does not appear that a baccalaureate degree is required for entry into the proffered position. Accordingly the petitioner has not established the first criterion of 8 C.F.R. § 214.2(h)(4)(iii)(A).

In addition, a basic distinction can be made between the reasoning underlying the director's decision and the petitioner's assertions. The critical element is not the title of the position or an employer's self-imposed standards, but whether the position actually requires the theoretical and practical application of a body of highly specialized knowledge, and the attainment of a bachelor's degree in the specific specialty as the minimum for entry into the occupation as required by the Act.¹ As stated previously, the statute establishes that the petitioner must show that the proffered position requires a baccalaureate degree or higher, or the equivalent, in a specific specialty. (Emphasis added.) To interpret the criteria in 8 C.F.R. 214.2(h)(4)(iii)(A) as solely requiring a bachelor's degree in any field is an incorrect interpretation. Accordingly, the evidence does not support a finding that a baccalaureate or higher degree or its equivalent is normally the minimum requirement for entry into the proffered position.

With regard to the remaining criteria of 8 C.F.R. § 214.2(h)(4)(iii)(A), the petitioner submitted no further documentation with regard to the second criterion. With regard to the third criterion, namely, that the employer normally requires a baccalaureate degree or its equivalent for the proffered position, the petitioner stated that the president of the company had previously performed the purchasing job responsibilities, and he had both a bachelor's degree and a master's degree in business. Nevertheless, the petitioner, in both its job posting submitted in response to the director's request for further evidence and in the materials submitted on appeal, clearly established that it only requires a baccalaureate degree, not a baccalaureate degree in a specific specialty, for the proffered position. Without more persuasive evidence, the petitioner has not established the third criterion of 8 C.F.R. § 214.2(h)(4)(iii)(A).

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

With regard to the fourth criterion of 8 C.F.R. § 214.2(h)(4)(iii)(A), the petitioner submits a breakdown of the job duties for the proffered position along with the percentage of time that the beneficiary will spend on the various duties. The submitted list of duties is generic in nature and provides no further detail as to the specialized or complex nature of the proffered position. This breakdown is not viewed as sufficient to establish that the proffered position is more specialized or unique than other purchasing agent positions within the wholesale distribution industry. Without more persuasive evidence as to the specialized or complex nature of the purchasing agent 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 proffered position is a specialty occupation within the meaning of the regulations.

Beyond the decision of the director, the petitioner has not established that the beneficiary is qualified to perform the duties of the proffered position. The transcript of the beneficiary's studies at Azusa Pacific College in Azusa, California, identifies one course for two college credits in the field of business management. This course appears to be transfer credit for a course taken at a college identified as Christ's College. This one course, in combination with the three years of work experience as a business officer for the FIX company in Taipei, Taiwan, would not be sufficient to establish the beneficiary's qualifications to perform the proffered position, pursuant to 8 C.F.R. § 214.2(h)(4)(iii)(D). Since the petition will be dismissed on other grounds, 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.