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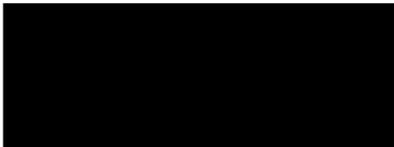
U.S. Department of Homeland Security

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Bureau of Citizenship and Immigration Services

*DA*

ADMINISTRATIVE APPEALS OFFICE  
425 Eye Street, N.W.  
BCIS, AAO, 20 Mass, 3/F  
Washington, D.C. 20536



SEP 04 2003

File: EAC-01-062-55686 Office: VERMONT SERVICE CENTER Date:

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 Director of the Vermont Service Center denied the nonimmigrant visa petition and the Administrative Appeals Office (AAO) dismissed a subsequent appeal. The matter is again before the AAO on a motion to reopen or reconsider. The motion will be granted. The previous decision shall be affirmed. The petition will be denied.

The petitioner is a wholesaler and retailer of leather garments with five employees and a gross annual income of \$650,101. It seeks to employ the beneficiary as an import manager 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 had provided additional information in support of the appeal.

The AAO dismissed the appeal reasoning that the proffered position, which combines the duties of a purchasing manager, buyer, and purchasing agent with those of a marketing manager, does not require a baccalaureate degree and therefore does not qualify as a specialty occupation. The AAO further found, beyond the decision of the director, that the petitioner had not submitted a certified labor condition application.

On motion, counsel submits an opinion from Robert P. Wolf, Diplomate, American Board of Vocational Experts, who states, in part, that the proffered position requires a baccalaureate degree. Counsel also submits a certified labor condition application.

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 in part for nonimmigrant classification to qualified aliens who are coming temporarily to the United States to perform services in a specialty occupation. Section 214(i)(1) of the Act, 8 U.S.C. § 1184(i)(1), defines a "specialty occupation" as an occupation that requires theoretical and practical application of a body of highly specialized knowledge, and 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.

Pursuant to section 214(i)(2) of the Act, 8 U.S.C. § 1184(i)(2), to qualify as an alien coming to perform services in a specialty occupation the beneficiary must hold full state licensure to practice in the occupation, if such licensure is required to practice in the occupation. In addition, the beneficiary must have completed the degree required for the occupation, or have

experience in the specialty equivalent to the completion of such degree and recognition of expertise in the specialty through progressively responsible positions relating to the specialty.

Pursuant to 8 C.F.R. § 214.2(h)(4)(iii)(B), the petitioner shall submit the following with an H-1B petition involving a specialty occupation:

1. A certification from the Secretary of Labor that the petitioner has filed a labor condition application with the Secretary,
2. A statement that it will comply with the terms of the labor condition application for the duration of the alien's authorized period of stay,
3. Evidence that the alien qualifies to perform services in the specialty occupation . . . .

The petitioner has provided a certified labor condition application. Therefore, the petitioner has overcome this portion of the AAO's objections.

Counsel's additional evidence submitted on motion to demonstrate that the proffered position is a specialty occupation, however, is 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 the initial I-129 petition, the petitioner described the duties of the offered position as follows:

The manager (import) will be in charge of all the import business which includes complete purchase management of corporate affairs. Her duties includes [sic] contract negotiation, review sales documents [sic], order merchandise from the best manufacturers and suppliers of leather garments [sic]. Beneficiary will evaluate the quality of merchandise and resolve defective goods issues. Beneficiary may have to travel to overseas [sic] to manage coordination from agreement to completion: negotiation for best deal, review agreement before signing, preparing of [sic] agreement; familiar with Custom [sic] Dept. Rules & Regulation [sic], clearance, tariffs, licenses and payment arrangement.

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.

First, the Bureau does not agree with counsel's assertion that the proffered position would normally require a bachelor's degree in international relations or an equivalent thereof. The proffered position is that of an import manager. In his advisory opinion, Mr. Wolf asserts that the proffered position is a specialty occupation because it has been assigned a specific SVP rating in the Department of Labor's (DOL) *Dictionary of Occupational Titles (DOT)* (4th Ed., Rev. 1991). However, the AAO does not consider the *DOT* 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 DOL 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 *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 DOL has assigned it a specific SVP rating in the *DOT*.

In his advisory opinion, Mr. Wolf compares the proffered position to the positions of sales manager, procurement services manager, and export manager. A review of the DOL's *Handbook*, 2002-2003 edition, at page 28 finds no requirement of a baccalaureate or higher degree in a specific specialty for employment in sales managerial jobs. A wide range of educational backgrounds is suitable, but many employers prefer those with experience in related occupations plus a broad liberal arts background. In addition, most sales management positions are filled by promoting experienced staff or related professional or technical personnel. In highly technical industries, such as computer and electronics manufacturing, a bachelor's degree in engineering or science, combined with a master's degree in business administration, is preferred.

A review of the DOL's *Handbook* at page 82 also finds no requirement of a baccalaureate or higher degree in a specific specialty for employment as a purchasing manager, buyer, and purchasing agent (positions similar to a procurement services manager and an export manager). 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 that a baccalaureate degree appears to be a preference by large distributors and stores rather than a requirement. It is also noted that the petitioner has only five 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. Thus, the petitioner has not shown that a bachelor's degree or its equivalent is required for the position being offered to the beneficiary.

Second, the petitioner has not demonstrated that it has, in the past, required the services of individuals with baccalaureate or higher degrees in a specific specialty such as international relations, for the offered position. Third, the petitioner did not present any documentary evidence that a baccalaureate degree in a specific specialty or its equivalent is common to the industry in parallel positions among organizations similar to the petitioner. The assertion by Mr. Wolf that baccalaureate and post-graduate degrees are the norm in today's marketplace is

noted. Mr. Wolf does not specify, however, whether such degrees must be in a specific specialty. Furthermore, Mr. Wolf does not provide evidence in support of his assertion. 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). Finally, the petitioner did not demonstrate 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.

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 decision of the AAO is affirmed. The petition is denied.