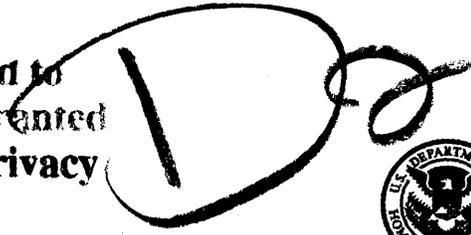


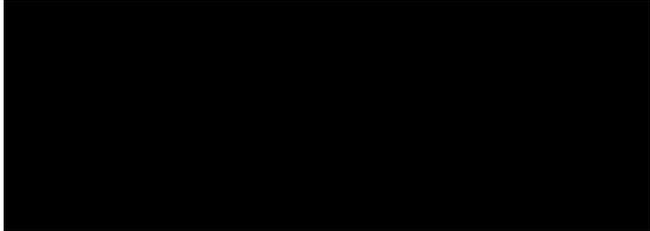
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U.S. Department of Homeland Security
20 Mass, Rm. A3042, 425 I Street, N.W.
Washington, DC 20536

**U.S. Citizenship
and Immigration
Services**



FILE: SRC 02 105 52381 Office: TEXAS SERVICE CENTER Date: APR 07 2004

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:
[Redacted]

INSTRUCTIONS:

This is the decision of the Administrative Appeals Office 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.


Robert P. Wiemann, Director
Administrative Appeals Office

DISCUSSION: The service center director denied the nonimmigrant visa petition and the matter is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed. The petition will be denied.

The petitioner is a freight forwarding, shipping, and distribution firm that seeks to employ the beneficiary as an export manager. The petitioner, therefore, endeavors to classify the beneficiary as a nonimmigrant worker in a specialty occupation pursuant to 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).

The director denied the petition because the proffered position is not a specialty occupation. On appeal, counsel submits a brief.

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.

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.

Citizenship and Immigration Services (CIS) interprets the term "degree" in the criteria at 8 C.F.R. § 214.2(h)(4)(iii)(A) to mean not just any baccalaureate or higher degree, but one in a specific specialty that is directly related to the proffered position.

The record of proceeding before the AAO contains: (1) Form I-129 and supporting documentation; (2) the director's request for additional evidence; (3) the petitioner's response to the director's request; (4) the director's denial letter; and (5) Form I-290B and supporting documentation. The AAO reviewed the record in its entirety before issuing its decision.

The petitioner is seeking the beneficiary's services as an export manager. Evidence of the beneficiary's duties includes: the Form I-129; the letter accompanying the Form I-129; and the petitioner's response to the

director's request for evidence. According to this evidence, the beneficiary would perform duties that entail, in part: directing sales and negotiating contracts with overseas clients; arranging shipping details such as export licenses, customs declarations, and packing, shipping, and coordinating shipments. The petitioner expressed that a qualified candidate for the job would possess a bachelor's degree in business administration or management.

After reciting the submitted evidence, the director stated that the proffered position was not a specialty occupation because the petitioner failed to establish any of the criteria found at 8 C.F.R. § 214.2(h)(4)(iii)(A).

On appeal, counsel contends that the petitioner has satisfied three of the four criteria under 8 C.F.R. § 214.2(h)(4)(iii)(A). Counsel states, in part, that the director ignored evidence that explicitly demonstrates that a candidate must possess a baccalaureate degree to perform the responsibilities of an export manager, and furthermore, that the director departed from precedent decisions and the Department of Labor's (DOL) guidelines by concluding that an export manager position is not a specialty occupation.

Upon review of the record, however, the petitioner has established none of the four criteria outlined in 8 C.F.R. § 214.2(h)(4)(iii)(A). Therefore, the proffered position is not a specialty occupation.

The AAO turns first to the criteria at 8 C.F.R. § 214.2 (h)(4)(iii)(A)(1) and (2): a baccalaureate or higher degree or its equivalent is the normal minimum requirement for entry into the particular position; a degree requirement is common to the industry in parallel positions among similar organizations; or a particular position is so complex or unique that it can be performed only by an individual with a degree. Factors often considered by CIS when determining these criteria include: whether the DOL's *Occupational Outlook Handbook* (the *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." See *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)).

Counsel claims that the petitioner satisfies the first criterion at 8 C.F.R. § 214.2(h)(4)(iii)(A). Counsel maintains that in the DOL's *Dictionary of Occupational Titles* (DOT) an export manager has an SVP of 8. And this classification, counsel states, represents that a position, historically, has been considered a specialty occupation. Finally, counsel claims that in the past decade his petitions for export manager positions have been approved; in the absence of regulatory changes, counsel maintains that the position continues to be a specialty occupation.

Counsel's claims are not persuasive. In the first place, it is important to note that the petitioner's requirement of a bachelor's degree in business administration or management does not satisfy CIS's interpretation of the term "degree" in the criteria at 8 C.F.R. § 214.2(h)(4)(iii)(A). As previously stated, the term "degree" means not just any baccalaureate or higher degree, but one in a specific specialty that is directly related to the proffered position. Moreover, a petitioner must establish that the position realistically requires knowledge, both theoretical and applied, which is almost exclusively obtained through studies at an institution of higher learning. The depth of knowledge and length of studies required are best typified by a degree granted by such institution at the baccalaureate level. It must be demonstrated that the position requires a precise and specific course of study that relates directly and closely to the position in question. Since there must be a

close corollary between the required specialized studies and the position, the requirement of a degree of generalized title, such as business administration, without further specification, does not establish eligibility. See *Matter of Michael Hertz Associates*, 19 I&N Dec. 558, 560 (Comm. 1972). Here, the petitioner's degree requirement of a bachelor's in business administration or management fails to demonstrate that a specific course of study is required for the proffered position.

Second, counsel asserts that the proffered position is a specialty occupation because it has been assigned a specific SVP rating in the DOL's *DOT* (4th Ed., Rev. 1991). However, the *DOT* is not a persuasive source of information regarding whether a particular job requires the attainment of a baccalaureate or higher degree 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 *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, CIS 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*.

Finally, the AAO disagrees with counsel's assertion that the duties of the proffered position are performed by export managers. A review of the *Handbook* reveals that the duties of the proffered position correspond to those of cargo and freight agents, and shipping, receiving, and traffic clerks. The *Handbook*, furthermore, reveals that a baccalaureate or higher degree or its equivalent in a specific specialty is not required for entry into these occupations. Thus, the petitioner fails to establish the first criterion.

To establish the second criterion - that a degree requirement is common to the industry in parallel positions among similar organizations - counsel refers to the purported expert opinion letter from Dr. Carl Obermiller, Ph.D., Professor of Marketing at Seattle University. Counsel claims that the submitted letter, Internet job postings, and press releases - all ignored by the director - clearly demonstrate that the industry requires a bachelor's degree in business for the proffered position.

In asserting that the proffered position qualifies as a specialty occupation, the opinion letter from Dr. Carl Obermiller stated that on various websites the positions that are parallel to the proffered position all require a bachelor's degree in business, and their specialization is usually in international business, marketing, or operations.

The AAO finds Dr. Obermiller's statement unpersuasive. The record does not contain the website information viewed by Dr. Obermiller. Nor does it contain copies of the referenced texts and other documents relied upon by Dr. Obermiller in his letter. 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). In making a determination of statutory eligibility, CIS is limited to the information contained in the record of proceeding. See 8 C.F.R. § 103.2(b)(16)(ii). Consequently, Dr. Obermiller's reference to the websites, texts and other documents is without merit.

With respect to the submitted Internet job postings and press releases, they fail to establish that the industry requires a bachelor's degree in a specific specialty. For example, the export manager at Lillbacka Powerco

possesses a bachelor's degree in engineering; the export manager at Classic Foods, Inc. holds a bachelor's degree in international business and trade; Frederic Bouisset, the former export/import manager for IBM-France, possesses a French MBA in Management; and the import/export manager sought for code #1114 requires a bachelor's degree in electrical engineering or business. Consequently, the submitted evidence evinces that there is no industry-wide requirement of a bachelor's degree in a specific specialty.

No evidence is in the record that would show the proffered position is so complex or unique that it can be performed only by an individual with a degree.

Counsel states that the third criterion at 8 C.F.R. § 214.2(h)(4)(iii)(A) is not applicable because the proffered position is newly created. Thus, the petitioner cannot establish this criterion.

Another of counsel's claims is that the nature of the specific 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. To the extent that they are depicted in the record, the duties do not appear so specialized and complex as to require the highly specialized knowledge associated with a baccalaureate or higher degree, or its equivalent, in a specific specialty. As previously discussed, the *Handbook* reveals that the duties of the proffered position reflect those performed by cargo and freight agents, and shipping, receiving, and traffic clerks. Therefore, the evidence does not establish that the proffered position is a specialty occupation under 8 C.F.R. § 214.2(h)(4)(iii)(A)(4).

As related in the discussion above, the petitioner has failed to establish that the proffered position is a specialty occupation. Accordingly, the AAO shall not disturb the director's denial of the petition.

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. The petition is denied.