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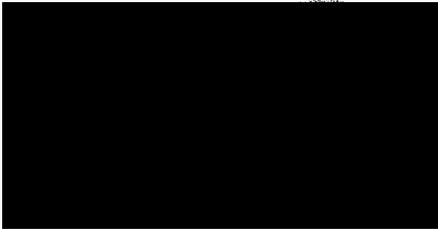
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FILE: SRC 02 186 50820 Office: TEXAS SERVICE CENTER Date: **APR 27 2004**

IN RE: Petitioner:
Beneficiary:

PETITION: Petition for a Nonimmigrant Worker Pursuant to Section 101(a)(H)(i)(b) of the Immigration and Nationality Act, 8 U.S.C. § 1101(a)(H)(i)(b)

ON BEHALF OF PETITIONER:



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 furniture importer that is currently in the start-up phase of its business. In order to employ the beneficiary as a market research analyst, the petitioner 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 petitioner had failed to establish that the proffered position is a specialty occupation. On appeal, counsel submits a brief and additional evidence.

The AAO has determined that the director's decision to deny the petition was correct, because the petitioner has not presented an adequate evidentiary basis for classifying the proffered position as a specialty occupation in accordance with any criterion at 8 C.F.R. § 214.2(h)(4)(iii)(A).

In reaching its decision, the AAO considered the entire record of proceeding, including: (1) the petitioner's Form I-129 and supporting documentation; (2) the director's request for additional evidence (RFE); (3) the matters submitted in response to the RFE; (4) the director's denial letter; and (5) the Form I-290B, counsel's brief, and the documentary evidence submitted with the 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 criterion at 8 C.F.R. § 214.2(h)(4)(iii)(A)(I) is satisfied where the evidence establishes that a baccalaureate or higher degree, or its equivalent, in a specific specialty is the normal minimum requirement for entry into the particular position. The evidence of record here does not reach this threshold.

Counsel correctly notes, “In determining whether a position is of H-1B caliber, the **duties**, not the title, control.” (Emphasis in the original.)

The AAO recognizes the Department of Labor’s (DOL) *Occupational Outlook Handbook (Handbook)* as an authoritative source on the duties and educational requirements of a wide variety of occupations. The *Handbook’s* section on “Economists and Market and Survey Researchers” indicates that market research analysis is an occupation which employs quantitative skills in areas such as mathematics, statistics, econometrics, sampling theory, and survey design.

In its May 15, 2002 letter of support, submitted with the Form I-129, the petitioner described the proposed duties as follows:

[P]erforming market research to determine potential sales, analyzing sales and financial data, formulating promotional strategies, ordering products, determining new products to promote and solving organizational, operational, and distribution problems. He will need to travel to China on a regular basis to negotiate contracts for the importation of furniture, and will also serve as translator/interpreter.

While the duties are further discussed on appeal and elsewhere in the record, the information about market research functions remains on the same general, conclusory level as above. There are no concrete details about the specific, practical tasks that would engage the beneficiary in this area, nor are there any details about the particular analytic tools that the beneficiary would employ. Also, there is no meaningful evidence as to the amount of work time that the beneficiary would devote to market research and analysis. Accordingly, the evidence of record is insufficient to establish that the beneficiary actually would be employed as a market research analyst.

To the general extent that it is described in the record, the position here is an amalgam of duties from the market manager, sales manager, and translator/interpreter occupations as described in the *Handbook*. The *Handbook* indicates that none of these occupations normally require a baccalaureate or higher degree, or its equivalent, in a specific specialty. Therefore, the AAO has determined that the evidence has not satisfied section (I) of 8 C.F.R. § 214.2(h)(4)(iii)(A).

In reaching this determination, the AAO did not agree with counsel’s assertion that, in themselves, the translating/interpreting skills required for the proffered position qualify the position as a specialty occupation. The record does not indicate that translation or interpretation would involve highly specialized language skills such as may be involved in accurately interpreting scientific or highly technical matters. Also, the excerpt from *Furniture Today*, while relevant, is of little evidentiary value. It establishes only that, to head its new import program, one employer in the petitioner’s business has hired a person who is fluent in Mandarin and

Cantonese and holds an MBA. This does not establish that a specific specialty degree is normally required for the proffered position.

Next, the petitioner has not presented evidence that would qualify the proffered position under either prong of 8 C.F.R. § 214.2(h)(4)(iii)(A)(2).

The evidence of record has not satisfied the first prong of 8 C.F.R. § 214.2(h)(4)(iii)(A)(2) by establishing that a degree requirement is common to the industry in parallel positions among similar organizations.

In determining whether there is such a common degree requirement, factors often considered by CIS include: whether 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)).

As just discussed, the *Handbook* does not report that the proffered position requires a degree in a specific specialty. Also, there are no submissions from individuals, other firms, or professional associations in the petitioner's industry.

Contrary to counsel's contention, the *Furniture Today* article does not indicate that a "business degree, experience working overseas [sic], and fluency in a foreign language" are "customary qualifications for a business position that involves overseeing the importation of furniture." One article that focuses exclusively on one hiring action by one firm does not establish an industry-wide practice.

Furthermore, even a universal requirement for a generalized business degree would not establish the type of industry-wide standard required by the first prong of 8 C.F.R. § 214.2(h)(4)(iii)(A)(2), namely, a baccalaureate or higher degree that is in a specific specialty that directly relates to specialized requirements of the position. A petitioner must demonstrate that the proffered 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 with a generalized title, such as business administration or liberal arts, without further specification, does not establish the position as a specialty occupation. *Matter of Michael Hertz Associates*, 19 I&N Dec. 558 (Comm. 1988).

Next, the evidence of record does not qualify the proffered position under the second prong of 8 C.F.R. § 214.2(h)(4)(iii)(A)(2), which provides that "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." The evidence of record does not indicate that the job proposed here would be either so unique or so technically demanding as to require a bachelor's or higher degree in any specific specialty.

The criterion at 8 C.F.R. § 214.2(h)(4)(iii)(A)(3) – the employer normally requires a degree or its equivalent for the position – is not a factor in this proceeding, as the position is being offered for the first time.

To the general extent to which it is depicted in the record, the proposed position does not appear any more complex and specialized as what would normally be expected from a business manager operating without a bachelor's degree or equivalent in any specific specialty. Therefore, the evidence does not satisfy the criterion

at 8 C.F.R. § 214.2(h)(iii)(A)(4) – the nature of the specific duties is so specialized and complex that knowledge required to perform them is usually associated with the attainment of a baccalaureate or higher degree.

Because the petitioner has failed to establish that the proffered position is a specialty occupation within the meaning of any criterion of 8 C.F.R. § 214.2(h)(4)(iii)(A), 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.