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FILE: EAC 03 031 53921 Office: VERMONT SERVICE CENTER Date: APR 27 2004

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

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.

*for*   
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 corporation engaged in trading, processing, and distributing consumer products, including clothing products for consumer markets. In order to employ the beneficiary as a business analyst, the petitioner endeavors to classify him 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.

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 and counsel's 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.

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 in a specific specialty or its equivalent is the normal minimum requirement for entry into the particular position. The evidence of record here does not reach this threshold.

As described in the letter of support filed by the petitioner's president with the Form I-129, the primary responsibilities associated with the proffered position are:

1. Conduct studies towards the analysis of market conditions relating to consumer and clothing and dye products and components of our company;
2. Determine and devise appropriate marketing sales strategies aimed at the penetration of the consumer and clothing and dye products and components market segments;
3. Develop marketing and sales analysis reports relating to the consumer and clothing and dye products and components market segments for management;
4. Aid in the development of a sales plans towards the international market arena for consumer and clothing and dye products and components [;]
5. Preparation of marketing reports to management[.]

The record establishes that the proffered position is presently, though temporarily, held by the petitioner's president, a person with a bachelor's degree in engineering and ten years experience in the petitioner's business. Also, the president, in his letter of support filed with the Form I-129 and in his letter of reply to the RFE, indicated his assessment that the proffered position requires a minimum of a bachelor's degree in business administration or "the business discipline." Likewise, on appeal, counsel asserts that the "capabilities" required by the proffered position "can only be acquired through a rigorous and structured training, which, we submit is provided for in a normal business program leading to a bachelor degree in business administration."

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. 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).

To qualify as a specialty occupation because of its business knowledge requirements, a position must require the specialized type of knowledge associated with a baccalaureate or higher degree or equivalent in a specific business specialty, such as marketing. The generalized business knowledge associated with a degree or equivalent in business administration will not suffice.

Furthermore, the totality of evidence on the proffered position does not comport with any particular occupation addressed in the Department of Labor's (DOL) *Occupational Outlook Handbook (Handbook)*, which the AAO

recognizes as an authoritative source on the duties and educational requirements of a wide variety of occupations. Rather, the evidence indicates a position with generalized marketing and sales analysis responsibilities that are below those of a marketing manager, sales manager, or market research analyst. The need for a baccalaureate or higher degree in a specific specialty or its equivalent is not apparent in the record.

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 described in the record, the proffered position does not align with any occupation for which the *Handbook* reports a degree requirement in a specific specialty. Also, there are no submissions from individuals, other firms, or professional associations in the petitioner's industry.

The AAO also found that 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 position is either so unique or so technically demanding as to require a bachelor's or higher degree in a specific specialty. The position is presently held by a person without a degree relating to marketing or business analysis, and the petitioner's assessment is that attainment of a business administration degree would equip a person with the requisite knowledge for the position.

Next, 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 satisfied. As discussed earlier, the required degree must be in a specific specialty related to the requirements of the position. The person presently performing the duties of the proffered position does not hold such a degree, and the record indicates the petitioner's assessment that a generalized bachelor's degree in business – which is not a degree in a specific specialty – would suffice. Also, the petitioner maintained that baccalaureate degrees have been required in the past, but did not establish that any of those degrees were in a particular business specialty.

Finally, 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 in a specific specialty. The totality of the record indicates that the position requires no more than the general business knowledge and analytical skills acquired with the generalized course of business studies leading to a bachelor's degree in business administration.

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.