



U.S. Citizenship
and Immigration
Services

[REDACTED]

FILE: WAC 03 054 50632 Office: CALIFORNIA SERVICE CENTER Date: AUG 28 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 director of the 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 petition will be denied.

The petitioner is a B2B website that seeks to employ the beneficiary as a purchasing 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 states that the proffered position qualifies as a specialty occupation, and counsel submits additional evidence.

Section 214(i)(1) of 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 petitioner's December 2, 2002 letter; (3) the director's request for additional evidence; (4) the petitioner's

response to the director's request; (5) the director's denial letter; and (6) 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 a purchasing manager. Evidence of the beneficiary's duties includes, in part: the Form I-129; the attachments 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 setting up the overall strategy of target regions and countries; developing and expanding markets; supervising the management and maintenance of existing accounts and the analysis of profits in the off-line area; planning and executing strategies for purchasing goods and managing a purchasing team; and supervising three employers who are responsible for merchants in Korea, Japan, Europe, and the United States. The petitioner stated that a candidate must possess a bachelor's degree or its equivalent in business and management or personnel with experience in purchasing management.

The director found 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). Referring to the Department of Labor's (DOL) *Occupational Outlook Handbook* (the *Handbook*), the director stated that a baccalaureate degree is not required to perform the duties of a purchasing manager position, and furthermore, that such a degree is not the norm.

On appeal, counsel states that the proffered position qualifies as a specialty occupation.

Upon review of the record, 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 first considers 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 *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 elaborates on the duties of the proffered position on appeal. Counsel explains that a more detailed description of the position's duties includes performing market research analysis of industries involved in semiconductor manufacturing; researching the market as it relates to buying and pricing trends of the worldwide semiconductor market; examining stock prices, consumer expectations, interest rates, and vendors; determining demand and competition; engaging in qualitative and quantitative analysis of collected and given data to propose the direction for buying and marketing products; and observing the market share of chip manufacturers.

The elaborated duties, as stated by counsel, drastically modify the job description as presented in the initial petition. A petitioner may not make material changes to a petition in an effort to make a deficient petition conform to CIS requirements. *See Matter of Izummi*, 22 I&N Dec. 169, 176 (Assoc. Comm. 1998). Moreover, the assertions of counsel do not constitute evidence. *Matter of Obaigbena*, 19 I&N Dec. 533, 534 (BIA 1988); *Matter of Ramirez-Sanchez*, 17 I&N Dec. 503, 506 (BIA 1980). For these reasons, the AAO will disregard the job duties presented on appeal.

Counsel contends that the petitioner satisfies the first criterion at 8 C.F.R. § 214.2(h)(4)(iii)(A). According to counsel, the proffered position's duties are similar to those performed by purchasing managers or market research analysts – positions that require a bachelor's degree. According to counsel, the inherent nature of the job duties is closely related with those of a market research analyst who has the authority to purchase goods. Relying on the *Handbook*, evidence from the California Employment Development Department's Labor Market Information, and job postings, counsel avers that a market research analyst job qualifies as a specialty occupation. Counsel furthermore maintains that, contrary to the director's finding, a purchasing manager job in the context of the petitioner's business qualifies as a specialty occupation.

In determining whether a position qualifies as a specialty occupation, CIS looks beyond the title of the position and determines, from a review of the duties of the position and any supporting evidence, whether the position actually requires the theoretical and practical application of a body of highly specialized knowledge, and the attainment of a baccalaureate degree in a specific specialty as the minimum for entry into the occupation as required by the Act.

The AAO often turns to the *Handbook* to provide a comprehensive description of the nature of a particular occupation and the education, training, and experience normally required to enter into and advance within that occupation.

Although briefly described by the petitioner, the AAO considers the duties of the proffered description to resemble those performed by a purchasing manager/purchasing specialist. The *Handbook* states that purchasing managers, buyers, and purchasing agents evaluate suppliers on the basis of price, quality, service support, availability, reliability, and selection. According to the *Handbook*:

Purchasing specialists who buy finished goods for resale are employed by wholesale and retail establishments, where they commonly are known as buyers or merchandise managers. Wholesale buyers purchase goods directly from manufacturers or from other wholesale firms for resale to retail firms, commercial establishments, institutions, and other organizations. In retail firms, buyers purchase goods from wholesale firms or directly from manufacturers for resale to the public. Buyers largely determine which products their establishment will sell. Therefore, it is essential that they have the ability to predict what will appeal to consumers. They must constantly stay informed of the latest trends, because failure to do so could jeopardize profits and the reputation of their company. Buyers also follow ads in newspapers and other media to check competitors' sales activities, and they watch general economic conditions to anticipate consumer buying patterns.

Based on the *Handbook's* description, the beneficiary would perform duties similar to a purchasing manager/purchasing specialist because the beneficiary is concerned with planning and executing strategies for purchasing goods and managing a purchasing team.

According to the *Handbook*, a bachelor's degree in a specific specialty is not required for a purchasing manager/purchasing specialist job. 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, although not in a specific specialty, and who 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. Many manufacturing firms put yet a greater emphasis on formal training, preferring applicants with a bachelor's or master's degree in engineering, business, economics, or one of the applied sciences. A master's degree is essential for advancement to many top-level purchasing manager jobs.

Given the nature of the petitioning entity, a B2B website, the *Handbook* conveys that a candidate for the proffered position would not be required to hold a specific bachelor's degree.

The proffered position is plainly dissimilar from a market research analyst job. The *Handbook* states:

Market, or marketing research analysts are concerned with the potential sales of a product or service. They analyze statistical data on past sales to predict future sales. They gather data on competitors and analyze prices, sales, and methods of marketing and distribution. Market research analysts devise methods and procedures for obtaining the data they need. They often design telephone, mail, or Internet surveys to assess consumer preferences. Some surveys are conducted as personal interviews by going door-to-door, leading focus group discussions, or setting up booths in public places such as shopping malls. Trained interviewers, under the market research analyst's direction, usually conduct the surveys.

After compiling the data, market research analysts evaluate them and make recommendations to their client or employer based upon their findings. They provide a company's management with information needed to make decisions on the promotion, distribution, design, and pricing of products or services. The information may also be used to determine the advisability of adding new lines of merchandise, opening new branches, or otherwise diversifying the company's operations. Market research analysts might also develop advertising brochures and commercials, sales plans, and product promotions such as rebates and giveaways.

None of the beneficiary's duties entails designing surveys, developing brochures, commercials, product promotions, or training interviewers. No other evidence in the record - the petitioner's business overview, financial projections, DE-6 Forms, Articles of Incorporation, seller's permit, information from the California Employment Development Department, and job postings - suggests that the proffered position is similar to a market research analyst. The market research analyst in the California Employment Development Department job description will primarily plan, design, implement and analyze survey results. As previously discussed, the beneficiary will not perform this duty.

In addition, the *Handbook* describes the industries that employ the largest number of market research analysts which are management, scientific, and technical consulting firms, insurance carriers, computer systems design and related firms, software publishers, securities and commodities brokers, and advertising and related firms. The petitioning entity's industry is very different from these.

Counsel relies upon the job postings to aver that the duties of the proffered position parallel those of a market research analyst. However, the primary duties in the 17 market research analyst postings involve designing surveys, performing research, or analyzing the market using qualitative and quantitative research methodologies. According to the petitioner's job description, the beneficiary will not perform such duties.

The postings reveal that Guidant Corporation sought candidates to perform qualitative and quantitative research methodologies and multivariate analysis; Market Fact's job primarily involved developing program questionnaires and collecting and tabulating data from the questionnaires; United Health Group sought persons to collect and interpret information and analyze markets, industry trends, competitors, and products and services; Spherion's position was focused on research and analysis; Peapod's job involved analyzing and testing marketing promotional programs; ██████████ sought candidates to support market research in gathering and analyzing primary and secondary research and information; the market research analyst position located in Los Angeles, California, entailed performing marketing research analysis and developing and implementing surveys, marketing and promotional strategies, and new product information; The Marketing Link job entailed the design of quantitative and qualitative market research studies; Med World sought a worker to obtain and analyze market information; Anthem Insurance Corporation's marketing research analyst position involved collecting data from primary and secondary sources and analyzing and interpreting qualitative and quantitative data; Automated Wagering International's job entailed designing, implementing, and managing qualitative and quantitative marketing research projects; Encad, Inc. required candidates to perform market research, analyze statistics, and assist in planning and designing new products; Anthem Insurance Corporation's senior marketing research analyst was to plan and implement research; PBI Media - Info Tech's job entailed researching and creating market analysis reports; Dey, L.P. sought candidates to conduct marketing research using surveys and other methods; and the B.Braun position involved sales, marketing analysis, and market research.

The AAO notes that the job description of the Management Science Associates, Inc. posting is too brief to evaluate, and the labor market information from California stated that a market research analyst plans, designs, implements, and survey results. None of the beneficiary's responsibilities correspond to these duties.

The duties in the postings seeking candidates for purchasing manager, senior sourcing consultant, and senior buyer postings somewhat parallel those of the proffered position. Nonetheless, important differences do exist. For example, the purchasing manager in Saudi Arabia would prepare market analysis reports and evaluate and negotiate vendor quotations. Yet, the petitioner's job description did not allude to these duties. Jim Bowen sought a senior buyer who understood blueprints and specifications and had in-depth knowledge of Federal Acquisitions Regulations (FAR) and Defense Acquisition Regulations (DAR). None of the beneficiary's duties require this knowledge. The posting that sought candidates for the position of senior sourcing consultant indicated that one task involved taking responsibility for functional Oracle team integration and project management. Again, this does not mirror any of the beneficiary's duties. The beneficiary would not negotiate contracts for a manufacturing facility, the duty described in the Island Search Group, Inc. posting. The purchasing manager for the company located in Akron, Ohio, mentioned that the candidate would oversee, plan, organize, and coordinate all procurement activities ("MRO" and "Production"). None of these tasks are defined in the posting with specificity; thus, the AAO cannot determine whether they parallel the proffered position. Last, Norcent does not provide a job description for its purchasing manager.

Another one of counsel's assertions is that, contrary to the director's determination, a purchasing manager job in the context of the petitioner's business is a specialty occupation because the position requires a bachelor's degree. Counsel asserts that the director's reliance on the *Handbook* is unjust since it does not reflect specific establishments or locations but merely provides a general, composite description of jobs.

These assertions are weak. The DOL indicates that the *Handbook* provides a:

general, composite description of jobs and cannot be expected to reflect work situations in specific establishments or localities. The *Handbook*, therefore, is not intended and should not be used as a guide for determining wages, hours of work, the right of a particular union to represent workers, appropriate bargaining units, or formal job evaluation systems. Nor should earnings data in the *Handbook* be used to compute future loss of earnings in adjudication proceedings involving work injuries or accidental deaths.

CIS often looks to the *Handbook* when determining whether a baccalaureate or higher degree or its equivalent is normally the minimum requirement for entry into a particular position. The *Handbook* provides a comprehensive description of the nature of a particular occupation and the education, training, and experience normally required to enter into and advance within the occupation. CIS does not rely on the *Handbook* as a guide for wages, hours of work, union rights, bargaining units, formal job evaluation systems, or computing future loss of earnings in adjudication proceedings. Therefore, CIS' routine review of the *Handbook* is in keeping with the DOL's intent to furnish the *Handbook* as a source of information about the education and training requirements of occupations and for avenues for advancement.

As previously discussed, the petitioner's job description does resemble that of a purchasing manager/purchasing specialist. In the context of the petitioner's organization, a B2B website, the position would not require a specific bachelor's degree.

The submitted job postings and the labor market information from California fail to establish the second criterion - that a degree requirement is common to the industry in parallel positions among similar organizations. The AAO has already discussed the shortcomings in the job postings.

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 specific degree.

There is no evidence in the record to establish the third criterion at 8 C.F.R. § 214.2(h)(4)(iii)(A): that the petitioner normally requires a specific degree or its equivalent for the position.

The fourth criterion at 8 C.F.R. § 214.2(h)(4)(iii)(A) requires that the petitioner establish 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. As already discussed, the duties of the proffered position resemble those performed by a purchasing manager/purchasing specialist, positions that do not require a specific bachelor's degree. Thus, the fourth criterion is not established.

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.