



U.S. Citizenship
and Immigration
Services

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FILE: EAC 02 231 51367 Office: VERMONT SERVICE CENTER Date: AUG 31 2004

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

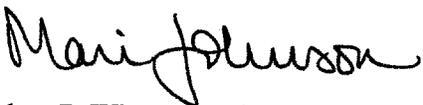
PETITION: Petition for a Nonimmigrant Worker Pursuant to Section 101(a)(15)(H)(i)(b) of the
Immigration and Nationality Act, 8 U.S.C. § 1101(a)(15)(H)(i)(b)

ON BEHALF OF PETITIONER:



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

Identifying data deleted to
prevent clearly unwarranted
invasion of personal privacy
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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 imports fashion garments and textiles. It seeks to employ the beneficiary as a product sourcing and purchasing agent. The petitioner endeavors to classify the beneficiary as a nonimmigrant worker in a specialty occupation pursuant to § 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 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 a product sourcing and purchasing agent. Evidence of the beneficiary's duties includes: the I-129 petition; the petitioner's June 25, 2002 letter in support of the

petition; and the petitioner's response to the director's request for evidence. According to this evidence, the beneficiary would perform duties that entail: determining the petitioner's production, import, and supply needs and ensuring coordination of production abroad with such needs; studying market trends and consumer preferences to evaluate new product opportunities; assisting in planning and implementing sales strategies; attending conferences, exhibitions, and trade shows; conducting research on suppliers; negotiating prices and awarding contracts to suppliers; overseeing delivery schedules, price listings, and inventory levels; and providing weekly reports to management. The petitioner indicated that a qualified candidate for the job would possess a bachelor's degree.

The director found that the proffered position was not a specialty occupation because the job does not require a baccalaureate degree in a specific specialty. The director found further that the petitioner failed to establish any of the criteria found at 8 C.F.R. § 214.2(h)(4)(iii)(A).

On appeal, counsel states, in part, that the director misunderstood the proposed duties, which entail product sourcing and purchasing from the South African region. Counsel further states that the proffered position is not that of a market research analyst, as the petitioner already has a full-time market research analyst. Counsel additionally states that the record contains an expert opinion that demonstrates that the proffered position is a specialty occupation, and a baccalaureate degree in marketing is the standard minimum industry requirement.

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 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 Department of Labor's *Occupational Outlook Handbook (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)).

The AAO routinely consults the *Handbook* for its information about the duties and educational requirements of particular occupations. The AAO does not concur with counsel that the proffered position is that of a specialty occupation. The proffered position combines the duties of a purchasing manager, a buyer, and a purchasing agent. No evidence in the *Handbook*, 2004-2005 edition, indicates that a baccalaureate or higher degree in a specific specialty, or its equivalent, is required for these jobs.

The record contains an opinion from Mark Green, Professor of Business Management, Simpson College, Indianola, Iowa, who asserts, in part, that a relevant baccalaureate-level degree is required for the proffered position. It is noted that, although Professor Green indicates that a relevant baccalaureate-level degree is required, he does not specify what constitutes such a degree. Furthermore, Professor Green does not provide any 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).

Counsel's statement that the petitioner already employs a full-time market research analyst is also noted. The record contains a copy of the petitioner's 2001 U.S. Corporation Income Tax Return, which indicates that only \$15,198 was paid in salaries and wages. Yet, information on the petition and provided by counsel indicate that the petitioner has five employees, including a full-time market research analyst. The record does not contain any explanation for the inconsistency. Doubt cast on any aspect of the petitioner's proof may, of course, lead to a reevaluation of the reliability and sufficiency of the remaining evidence offered in support of the visa petition. It is incumbent upon the petitioner to resolve any inconsistencies in the record by independent objective evidence, and attempts to explain or reconcile such inconsistencies, absent competent objective evidence pointing to where the truth, in fact, lies, will not suffice. *Matter of Ho*, 19 I&N Dec. 582, 591-92 (BIA 1988).

Regarding parallel positions in the petitioner's industry, the petitioner submitted Internet job postings for purchasing agents. There is no evidence, however, to show that the employers issuing those postings are similar to the petitioner, or that the advertised positions are parallel to the instant position. The majority of the advertisements are for purchasing agents in the manufacturing industry. The petitioner's industry, however, is not in manufacturing. Thus, the advertisements have little relevance.

The record also does not include any evidence from professional associations regarding an industry standard, or documentation to support the complexity or uniqueness of the proffered position. The petitioner has, thus, not established the criteria set forth at 8 C.F.R. § 214.2(h)(4)(iii)(A)(1) or (2).

The AAO now turns to 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. Counsel does not address this issue on appeal. Furthermore, the record does not contain any evidence of the petitioner's past hiring practices and therefore, the petitioner has not met its burden of proof in this regard. See *Matter of Treasure Craft of California, supra*.

Finally, the AAO turns to the criterion at 8 C.F.R. § 214.2(h)(4)(iii)(A)(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.

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. 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.