

U.S. Citizenship  
and Immigration  
Services



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FILE: WAC 02 175 53909 Office: CALIFORNIA SERVICE CENTER Date: JUL 08 2004

IN RE: Petitioner:  
Beneficiary:

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.

*Mari Johnson*

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 manufacturer of children's clothing. It seeks to employ the beneficiary as a purchasing agent, and endeavors to classify her 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 and additional information stating that the proffered qualifies as a specialty occupation.

The issue to be discussed in this proceeding is whether the position offered to the beneficiary qualifies as a specialty occupation.

Section 101(a)(15)(H)(i)(b) of the Act, 8 U.S.C. § 1101(a)(15)(H)(i)(b), provides, in part, for the classification of qualified nonimmigrant aliens who are coming temporarily to the United States to perform services in a specialty occupation.

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.

The term "specialty occupation" is further defined at 8 C.F.R. § 214.2(h)(4)(ii) as:

[A]n occupation which requires theoretical and practical application of a body of highly specialized knowledge in field of human endeavor including, but not limited to, architecture, engineering, mathematics, physical sciences, social sciences, medicine and health, education, business specialties, accounting, law, theology, and the arts, and which requires the attainment of a bachelor's degree or higher in a 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 are 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 proceedings 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 with 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 agent. Evidence of the beneficiary’s duties was included with the I-129 petition and in response to the director’s request for evidence. According to this evidence the beneficiary would: participate in the formulation, development, and recommendation to management of a system or program by which purchase requests, including requests for quotes, bids, and proposals, are coordinated and reviewed, including receiving and evaluating proposals, quotations, and bids for required products from manufacturers, suppliers, and wholesalers (20 percent of the time); analyze, study, and be familiar with the products and items to be procured by the company through reading books, journals, brochures, publications and attending trade fairs/seminars sponsored by suppliers and wholesalers while paying special attention to price, materials, quality, quantity and the reputation of the manufacturer, supplier, and wholesaler (25 percent of the time); research, study, and assist in the development and recommendation of a program or policy involving the selection of cost effective shipping sources and identify the most efficient modes of transportation, including maintenance of communication with suppliers during the course of procurement to ensure timely delivery in compliance with the contract or sale agreement (15 percent of the time); ensure that the company is purchasing and buying products at the most competitive levels available while maintaining competitive bid or purchasing processes to ensure the most competitive pricing labels (10 percent of the time); participate in the drafting and execution of contracts/agreements with respect to procurement and purchase, and maintain/review contracts and agreements to ensure that the terms and stipulations are complied with (20 percent of the time); monitor and track customer feedback and reaction to the materials and items procured, and address customer complaints (5 percent of the time); and participate in the development of strategic plans in purchasing, budgeting, and forecasting while anticipating price/quality changes in the products and items to be procured or purchased (5 percent of the time). The petitioner requires a bachelor’s degree in any business field for entry into the offered position.

Upon review of the record, the petitioner has failed to establish that a baccalaureate or higher degree or its equivalent is normally the minimum requirement for entry into the offered position, or that a degree requirement is common to the industry in parallel positions among similar organizations. 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 an industry 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/Baker Corp. v. Slattery*, 764 F. Supp. 872, 1102 (S.D.N.Y. 1991).

The AAO routinely consults the *Handbook* for information about the duties and educational requirements of particular occupations. The duties of the proffered position are those noted for buyers, and are described in the *Handbook*, 2002-03 edition, as follows:

Purchasing managers, buyers and purchasing agents seek to obtain the highest quality merchandise at the lowest possible purchase cost for their employers. In general, *purchasers* buy goods and services for their company or organization, whereas *buyers* typically buy items for resale. Purchasers and buyers determine which commodities or services are best, choose the suppliers of the product or service, negotiate the lowest price, and award contracts that ensure that the correct amount of the product or service is received at the appropriate time. In order to accomplish these tasks successfully, purchasing managers, buyers, and purchasing agents study sales records and inventory levels of current stock, identify foreign and domestic suppliers, and keep abreast of changes affecting both the supply of and demand for needed products and materials.

Purchasing managers, buyers, and purchasing agents evaluate suppliers based upon price, quality, service support, availability, reliability, and selection. . . . They research the reputation and history of the suppliers and may advertise anticipated purchase actions in order to solicit bids. . . .

The duties associated with the proffered position are essentially those listed above. The *Handbook* further provides that qualified individuals for these positions may begin as trainees, purchasing clerks, expeditors, junior buyers, or assistant buyers. Retail and wholesale firms prefer to hire applicants with a college degree and familiarity with the products they sell, as well as wholesale and retail practices. It is also noted, however, that some retail firms promote qualified employees to assistant buyer positions, and that most employers use a combination of methods for filling these positions. *Id.* at 82. Educational requirements tend to vary with the size of the organization. Large stores and distributors prefer applicants who have completed a bachelors degree program with a business emphasis, and many manufacturing firms put 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. The fact remains, however, that while some employers prefer applicants with a bachelor’s degree, a degree requirement in a specific specialty is not the minimum requirement for entry into the offered position. Many employers still fill buyer positions by promoting experienced employees who qualify for the position through work experience and training rather than a bachelor’s level education in a specific specialty. As noted above, educational requirements for buyers in the manufacturing industry, in company’s that require formal education, find acceptable degrees ranging from business to engineering, or one of the applied sciences. The petitioner has failed to satisfy the criterion at 8 C.F.R. § 214.2(h)(4)(iii)(A)(I).

The petitioner asserts that a degree requirement is common to the industry in parallel positions among similar organizations, and that the duties of the offered position are so complex or unique that they can only be performed by an individual with a degree. 8 C.F.R. § 214.2(h)(4)(iii)(A)(2). In support of this assertion, the petitioner submitted opinion letters and copies of job advertisements. Opinion letters from the following individuals/entities were submitted:

[REDACTED]

Six of the 7 opinions state merely that a bachelor's degree in the field is required by their organization, without designating a specific specialty for the proffered position. Only [REDACTED] that a bachelor's degree in business or a related field is required for entry into the position of purchasing agent. The opinions of these individuals are consistent with the findings noted in the job advertisements submitted by the petitioner in an effort to establish an industry educational standard for the proffered position. Of the 16 advertisements submitted, five noted that a bachelor's degree in business was required, one required a degree in business or engineering, one *desired* (but did not require) a degree in mechanical engineering, one required a degree in business administration and/or engineering, one noted that a bachelor's degree in an unspecified field was required *or* a two year technical degree with management experience. The remaining seven advertisements noted that a degree was required but did not specify a degree in any particular discipline. The job advertisements and opinions submitted are consistent with the findings noted in the *Handbook* in that acceptable degrees range from business to engineering, or other undesignated disciplines. There is no industry wide requirement for a degree in a specific specialty.

In further support of its proposition that a degree requirement is common to the industry in parallel positions among similar organizations and that a degree requirement is normally the minimum requirement for entry into the proffered position, the petitioner makes reference to: the Department of Labor's *Dictionary of Occupational Titles (DOT)* SVP rating for the offered position; America's Career Infonet; and the Institute for Supply Management, an association of purchasing and supply management officials. First, the petitioner's assertions regarding the *DOT's* SVP rating for the offered position are unpersuasive. An SVP rating is meant to indicate only the total number of years of vocational preparation required for a particular position. The SVP classification does not describe how those years are to be divided among training, formal education, and experience, nor does it specify the particular type of degree, if any, that a position would require. Second, the referenced America's Career Infonet occupation report notes only that a bachelor's degree is the typical educational/training level for the position of purchasing agents. It does not state that a degree in any particular specialty is required for entry into the position. Finally, the petitioner asserts that membership in the Institute for Supply Management, an organization of purchasing practitioners, requires a minimum of a bachelor's degree for membership in the association. Such is not the case. Membership is open to students enrolled in universities or community colleges, individuals involved in purchasing or materials processing, editors, secretaries, or business managers employed by affiliated associations, consultants, etc. The association does not have a minimum education requirement for membership purposes. The petitioner has not established that a degree requirement, in a particular specialty, is common in the industry for entry into the offered position. 8 C.F.R. § 214.2(h)(4)(iii)(A)(2).

The petitioner has not established that it normally requires a degree or its equivalent for entry into the proffered position as this is a new position for the petitioner. 8 C.F.R. § 214.2(h)(4)(iii)(A)(3). Assuming arguendo that this is the case, the proffered position still does not qualify as a specialty occupation. The performance of the duties of the position must still involve the theoretical and practical application of a body of highly specialized knowledge. *Cf. Defensor v. Meissner*, 201 F.3d 388 (5<sup>th</sup> Cir. 2000). This position does not. As noted above, the duties of the position are routinely performed in the industry by individuals with educational backgrounds in a wide range of educational disciplines. There is no requirement that the education come from any particular specialty.

Finally, the duties of the proffered position are routine for buyers and purchasing agents in the industry. They are not so complex or unique that they can be performed only by an individual with a degree in a specific specialty. Nor are they 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. 8 C.F.R. § 214.2(h)(4)(iii)(A)(2) and (4).

The petitioner has failed to establish that any of the four factors enumerated above are present in this proceeding. It is, therefore, concluded that the petitioner has not demonstrated that the offered position is a specialty occupation within the meaning of the regulations.

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 and the appeal shall accordingly be dismissed.

**ORDER:** The appeal is dismissed. The petition is denied.