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U.S. Citizenship
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Services

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DA

FILE: EAC 02 246 52450 Office: VERMONT SERVICE CENTER Date: **11 12 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

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 in the business of antique furniture restoration and reproduction. It seeks to employ the beneficiary as a furniture reproducer, and 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 on the basis that the proffered position was not a specialty occupation. On appeal, counsel submits a brief.

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) the 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 furniture reproducer. Evidence of the beneficiary's duties includes the I-129 petition with attachment and the petitioner's response to the director's request for evidence. According to this evidence the beneficiary would: prepare working drawings and templates of antique or custom furniture to facilitate reproduction; make drawings from pictures when models are not available; measure furniture pieces with rules and calipers and noted dimensions of drawings; develop models of alternate processing methods; recommend implementation of improved procedures; research and analyze data such as customer design proposals and specifications to determine the feasibility of design or application; make detailed drawings of joints, carvings, and milled sections; and trace or draw outlines to make templates. The petitioner requires a bachelor's degree in Applied Arts or at least 12 years of related experience for entry into the proffered position.

The director found that the offered position did not qualify as a specialty occupation and failed to meet any of the criteria of 8 C.F.R. § 214.2(h)(4)(iii)(A). On appeal, counsel submits a brief stating that the proffered position qualifies as a specialty occupation.

Upon review of the record, the petitioner has failed to establish that the offered position meets the requirements of the above cited regulatory criteria. 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 essentially those noted for woodworkers, as described in the *Handbook*. The *Handbook* notes that most woodworkers are trained on the job, picking up skills informally from experienced workers. While some workers acquire skills through vocational education, or attend colleges or universities that offer training in areas including wood technology, furniture manufacturing, wood engineering, and production management, a degree in a specific specialty is not normally the minimum requirement for entry into the occupation. The beneficiary 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. In support of this proposition the petitioner submitted opinion letters from [REDACTED]

and Ivan [REDACTED]

All three opinions state that individuals performing high quality antique woodworking, restoration and reproduction should possess, at a minimum, 12 years experience and/or a bachelor's degree in applied arts. Three opinion letters are insufficient in scope, however, to establish that a degree in a specific specialty is common to the industry as a whole. The petitioner has, therefore, failed to establish the criterion at 8 C.F.R. § 214.2(h)(4)(iii)(A)(2).

The petitioner states that it normally requires a degree or its equivalent for entry into the proffered position. In support of that assertion the petitioner indicated that it employed two other furniture reproducers, and that both had the equivalent of a baccalaureate degree in applied arts. The petitioner did not, however, submit documentary evidence to corroborate this assertion. The petitioner must do more than simply make unsupported assertions on the record in order to meet its burden of proof in these proceedings. *See Matter of Treasure Craft of California*, 14 I&N Dec. 190 (Reg. Comm. 1972). Assuming arguendo, however, that the petitioner does normally require a degree or its equivalent for entry into the proffered position, the 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 (5th Cir. 2000). This position does not. As noted above, the duties of the position are routinely performed in the industry by individuals with less than a baccalaureate level education.

Finally, the duties of the proffered position are routine in the industry for those who restore and/or reproduce antique furniture. While the duties of the proffered position obviously require the talents of highly skilled craftsmen, they are not so complex or unique that they can be performed only by individuals with a degree in a specific specialty. Nor are the duties 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 petitioner has failed to establish the criteria at 8 C.F.R. § 214.2(h)(4)(iii)(A)(2) and (4).

The petitioner has failed to establish any of the abovementioned regulatory criteria for classifying the offered position as a specialty occupation. Accordingly, the director's decision will not be disturbed.

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.