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U.S. Citizenship
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Services

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FILE: WAC 03 008 51704 Office: CALIFORNIA SERVICE CENTER Date **JUL 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.

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 engaged in the design and wholesale of jewelry products, and seeks to employ the beneficiary as a contract administrator. The petitioner 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 submits a brief and additional information.

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 contract administrator. 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: direct activities concerning contracts or agreements for the purchase and resale of jewelry products; examine performance requirements, delivery schedules, and estimates of cost of material, equipment, and production to ensure completeness and accuracy; prepare bids or price quotations, process specifications, test and progress reports or other documents that may be required; review bids or price quotations from other firms for conformity to contract requirements and determine acceptable bids or price quotations; negotiate contracts or agreements with jewelry manufacturers, retailers, and agents; request or approve amendments to or extensions of contracts or agreements; compile data for preparing estimates; coordinate work of the sales department with jewelry manufacturers and shipping companies to ensure fulfillment of contracts; act as liaison between the company and jewelry manufacturers, retailers, and agents; and maintain knowledge of current trends, innovations, and developments in the field of contract administration by reading trade journals, professional literature, and attending seminars/training programs. The petitioner requires a minimum of a bachelor's degree in business management or any equivalent business degree 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 meets the requirements of 8 C.F.R. § 214.2(h)(4)(iii)(A).

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 contract specialists

and managers, discussed under the heading of “purchasing managers, buyers, and purchasing agents” in the *Handbook*. Contract specialists and managers award contracts for an array of items and services. They oversee contract execution, review bids/proposals to award contracts, and establish negotiated agreements for products and services. 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. A college degree, however, is not a requirement. Some retail firms promote qualified employees to assistant buyer positions, and most employers use a combination of methods for filling these positions. The educational requirements for these positions (whether they be purchasers, buyers, or contract specialists) vary, depending on the size and complexity of the organization. In smaller organizations, job experience alone qualifies an applicant for entry into the position. In larger organizations, formal education and experience are preferred, but not required. It is clear from the *Handbook*, however, that a degree requirement in a specific specialty is not a minimum industry requirement for entry into the offered position. 8 C.F.R. § 214.2(h)(4)(iii)(A)(1).

The petitioner has also failed to establish that the proffered position meets the requirements of 8 C.F.R. § 214.2(h)(4)(iii)(A)(2). In support of this proposition, the petitioner submitted 13 job advertisements for contract administrator positions. None of the advertisements, however, were from employers similar in size or function to that of the petitioner. Furthermore, some of the advertisements simply noted that a college degree was required, but did not require a degree in any particular discipline. The advertisements designating degrees in particular disciplines noted that the following educational disciplines were acceptable: management; business administration; marketing; liberal arts; social sciences; purchasing; accounting; finance; pre-law; contracts/acquisition; education; and financial management. Thus, the advertisements confirm the findings noted in the *Handbook*, that a minimum of a bachelor’s degree in a specific specialty is not a requirement for entry into the offered position. The duties of the proffered position are performed by those with less than a baccalaureate level education, as well as individuals holding degrees in a wide range of educational disciplines. It should further be noted that the duties of the proffered position are rather routine in the industry. They are not so complex or unique that they can be performed only by an individual with a degree. The petitioner does not allege that it normally requires a degree or its equivalent for the offered position. 8 C.F.R. § 214.2(h)(4)(iii)(A)(3).

Finally, the petitioner has not satisfied the criterion at 8 C.F.R. § 214.2(h)(4)(iii)(A)(4). As previously noted, the duties of the offered position are routine for contract administrator duties in the industry. They are not so specialized or complex that knowledge required to perform them is usually associated with the attainment of a baccalaureate or higher degree in a specific specialty.

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 and the appeal shall accordingly be dismissed.

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