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FILE: SRC 03 124 50294 Office: TEXAS SERVICE CENTER Date: JUL 23 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.

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 an importer of Indian goods that seeks to employ the beneficiary as a purchasing manager. 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.

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 purchasing manager. Evidence of the beneficiary's duties includes: the I-129 petition; the petitioner's March 25, 2003 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: establishing accounts; holding face-to-face meetings with potential clients; ensuring export compliance; establishing and implementing an inventory and quality control system; arranging for storage of stock; and handling marketing matters. The petitioner indicated that a qualified candidate for the job would possess a bachelor's degree in an unspecified field.

The director found that the proffered position was not a specialty occupation. The director concluded 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 that the proffered position is a "Job Zone 4" occupation (referring to the Department of Labor's *O*Net*), which requires a degree. Counsel adds that the *Dictionary of Occupational Titles (DOT)* designates the position as one that requires a degree. Counsel also contends that a degree requirement is an industry standard minimum for entry into the position of purchasing manager.

Upon review of the record, the petitioner has failed to establish the second criterion outlined in 8 C.F.R. § 214.2(h)(4)(iii)(A), which counsel raises on appeal, or any of the other three criteria described therein. Therefore, the proffered position is not a specialty occupation.

The AAO turns to counsel's assertion that that a degree requirement is common to the industry in parallel positions among similar organizations. First, the AAO notes that the petitioner did not state that the bachelor's degree must be in a specific specialty. Also, counsel's assertions about the relevance of information from *O*Net* and the *DOT* are not persuasive. Neither the *DOT's* SVP rating nor a Job Zone category indicates that a particular occupation requires the attainment of a baccalaureate or higher degree, or its equivalent, in a specific specialty as a minimum for entry into the occupation. An SVP rating and Job Zone category are meant to indicate only the total number of years of vocational preparation required for a particular position. Neither classification describes how those years are to be divided among training, formal education, and experience, nor specifies the particular type of degree, if any, that a position would require.

On appeal, the petitioner submits several Internet job postings for purchasing managers. The job postings do not require that the bachelor's degree be in a specific specialty. Some of the advertisements do not mention any specific college major, others require a degree in business, and one specifies a degree in electrical engineering. There is also no evidence to show that the employers issuing those postings are similar to the petitioner, or that the advertised positions are parallel to the instant position. Thus, the advertisements have little relevance.

Finally, the record 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)(2).

The evidence does not establish any of the other three criteria noted above, therefore, the proffered position cannot be considered to be a specialty occupation under 8 C.F.R. § 214.2(h)(4)(iii)(A). 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.