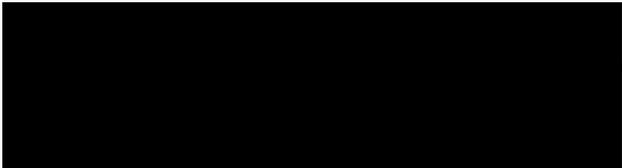


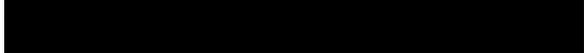
U.S. Citizenship
and Immigration
Services



Administrative Appeals Office

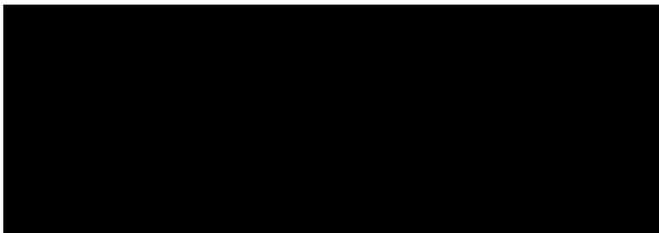
A large, stylized handwritten signature in black ink, appearing to be "M. Johnson", written over the seal and extending across the top of the page.A large black rectangular redaction box covering several lines of text at the top left of the page.

FILE: LIN 03 156 56619 Office: NEBRASKA SERVICE CENTER Date: JUN 15 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:

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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.

A handwritten signature in black ink, appearing to be "M. Johnson".

 Robert P. Wiemann, Director
Administrative Appeals Office

DISCUSSION: The director of the service center 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 highway safety products that seeks to employ the beneficiary as an international coordination specialist. The petitioner, therefore, 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 letter from the petitioner that states that the proffered position qualifies as a specialty occupation.

Section 214(i)(1) of the Immigration and Nationality Act (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 an international coordination specialist. Evidence of the beneficiary's duties includes, in part: the Form I-129; the attachments accompanying the Form I-129; and the petitioner's response to the director's request for evidence. According to this evidence, the beneficiary would assist in performing duties that entail, in part: developing product strategies and marketing programs, and planning and coordinating activities at international trade shows; ensuring the availability of literature about products and distributing publicity releases on products; collecting and maintaining information about competitors; maintaining files of international legal agreements; coordinating international distributor training programs; maintaining international price pages; responding to requests from customers for price quotations and order changes; ensuring that all customer matters are handled promptly; maintaining an international distributor database and handling international orders such as booking vessels or aircraft for shipments and confirming shipping dates; reviewing and tracking orders; obtaining credit approval, and assisting in revenue collection efforts. The petitioner stated that a candidate must have: (1) a B.S./B.A. degree; (2) at least one year of international business experience, preferably working with distributors; and (3) a working knowledge of the business procedures and cultural norms in Eastern Europe.

The director found that the proffered position was not a specialty occupation because the petitioner failed to establish any of the criteria found at 8 C.F.R. § 214.2(h)(4)(iii)(A). Referring to the Department of Labor's (DOL) *Occupational Outlook Handbook* (the *Handbook*), the director found that the duties of the proffered position parallel those performed by a production, planning, and expediting clerk, a position that does not require a bachelor's degree in a specific specialty. The director noted that some of the proposed duties are more complex than the duties of a production, planning, and expediting clerk; however, the director was not convinced that the duties required a candidate with a specific bachelor's degree. Finally, the director found that the petitioner's evidence did not demonstrate a pattern of hiring candidates with degrees in a specific field.

On appeal, the petitioner states that the proffered position qualifies as a specialty occupation and requires at least a bachelor's degree or higher in business, economics, or a related field. The position, the petitioner contends, requires knowledge in areas - such as international business practices, sales channels, and distributor networks - that is typically acquired through studies associated with bachelor's degrees in fields such as international business or economics. The position, the petitioner further contends, requires a theoretical and practical application of international business practices, especially as it relates to Eastern European countries. The petitioner claims that the candidate, with minimal supervision, is responsible for developing and implementing marketing projects. Finally, the petitioner asserts that the proffered position's duties are more complex than those of a typical production, planning, and expediting clerk.

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 first considers 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 *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)).

In determining whether a position qualifies as a specialty occupation, CIS looks beyond the title of the position and determines, from a review of the duties of the position and any supporting evidence, whether the position actually requires the theoretical and practical application of a body of highly specialized knowledge, and the attainment of a baccalaureate degree in a specific specialty as the minimum for entry into the occupation as required by the Act.

The AAO routinely consults the *Handbook* for its information about the duties and educational requirements of particular occupations. A careful review of the *Handbook* discloses that some of the duties of the proffered position more closely resemble those performed by cargo and freight agents instead of production, planning, and expediting clerks. The DOL reports that cargo and freight agents arrange for and track incoming and outgoing cargo and freight shipments in airline, train, or trucking terminals or on shipping docks. They expedite the movement of shipments by determining the route that shipments are to take and by preparing all necessary shipping documents. The agents take orders from customers and arrange for the pickup of freight or cargo for delivery to loading platforms. For imported or exported freight, they verify that the proper customs paperwork is in order. The DOL explains that a bachelor's degree is not required for this position.

The proffered position's administrative duties that relate specifically to marketing are comparable to those performed by a secretary and administrative assistant – positions that do not require a bachelor's degree. The DOL mentions that secretaries and administrative assistants are responsible for a variety of administrative and clerical duties necessary to run an organization efficiently. They serve as an information manager for an office, plan and schedule meetings and appointments, organize and maintain paper and electronic files, manage projects, conduct research, and provide information by using the telephone, postal mail, and e-mail. This is similar to the proffered position's duties of ensuring the availability of literature about products; distributing publicity releases on products; collecting and maintaining information about competitors; maintaining files of international legal agreements; coordinating international distributor training programs; and maintaining international price pages and an international distributor database.

Next, the AAO finds that the petitioner fails to elaborate with any specificity on the proffered position's duties of assisting senior executives in the development of product strategies and marketing programs. Given this significant deficiency, the AAO cannot conclude that a baccalaureate or higher degree or its equivalent would be required to perform these duties.

The AAO wishes to note that in its response to the request for evidence, the petitioner mentions that the beneficiary would “[d]evelop a comprehension and understanding of highway safety procedures, standards[,] and typical sales channels in Eastern Europe” and would “[c]ooperate with the QTS-Europe General Manager to locate and appoint appropriate sales channels in selected Eastern European countries.” These job duties were not alluded to in the initial petition. The purpose of the request for evidence is to elicit further information that clarifies whether eligibility for the benefit sought has been established. 8 C.F.R. § 103.2(b)(8). When responding to a request for evidence, a petitioner cannot offer a new position to the beneficiary, or materially change a position’s title or its associated job responsibilities. The petitioner must establish that the position offered to the beneficiary is a specialty occupation. *See Matter of Michelin Tire Corp.*, 17 I&N Dec. 248, 249 (Reg. Comm. 1978). If significant changes are made to the initial request for approval, the petitioner must file a new petition rather than seek approval of a petition that is not supported by the facts in the record. Given that the petitioner never implicitly referred to these duties in the initial petition, the AAO will not consider them in the instant proceeding.

Based on the information in the *Handbook* and the evidence in the record, the petitioner fails to establish that a baccalaureate or higher degree or its equivalent is the normal minimum requirement for entry into the proffered position.

There is no evidence in the record that would establish the second criterion - that a degree requirement is common to the industry in parallel positions among similar organizations or that the proffered position is so complex or unique that it can be performed only by an individual with a degree.

Although the petitioner’s May 5, 2003 letter averred a past practice of hiring two candidates with a bachelor’s degree in a specific specialty, there is no evidence in the record to corroborate this claim. The AAO concurs with the director’s observation about the deficiency in the submitted resume for an alleged employee. Moreover, the AAO wishes to note that the petitioner’s creation of a position with a perfunctory bachelor’s degree requirement will not mask the fact that the position is not a specialty occupation. CIS must examine the ultimate employment of the alien, and determine whether the position qualifies as a specialty occupation. *Cf. Defensor v. Meissner*, 201 F. 3d 384 (5th Cir. 2000). The critical element is not the title of the position or an employer’s self-imposed standards, but whether the position actually requires the theoretical and practical application of a body of highly specialized knowledge, and the attainment of a baccalaureate or higher degree in the specific specialty as the minimum for entry into the occupation as required by the Act.¹ To interpret the regulations any other way would lead to absurd results: if CIS were limited to reviewing a petitioner’s self-imposed employment requirements, then any alien with a bachelor’s degree could be brought into the United States to perform a menial, non-professional, or an otherwise non-specialty occupation, so long as the employer required all such employees to have baccalaureate or higher degrees. *See id.* at 388. Thus, the

¹ The court in *Defensor v. Meissner* observed that the four criteria at 8 C.F.R. § 214.2(h)(4)(iii)(A) present certain ambiguities when compared to the statutory definition, and “might also be read as merely an additional requirement that a position must meet, in addition to the statutory and regulatory definition.” *See id.* at 387.

petitioner fails to establish the third criterion at 8 C.F.R. § 214.2(h)(4)(iii)(A): that the petitioner normally requires a degree or its equivalent for the position.

The fourth criterion at 8 C.F.R. § 214.2(h)(4)(iii)(A) requires that the petitioner establish that the nature of the specific duties is so specialized and complex that the knowledge required to perform the duties is usually associated with the attainment of a baccalaureate or higher degree. No evidence in the record demonstrates that the proffered position's duties are so complex as to require a bachelor's degree in a specific duty. Again, many of the proffered position's duties are an amalgam of those performed by cargo and freight agents and secretaries and administrative assistants, and according to the DOL these positions do not require a bachelor's 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.

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