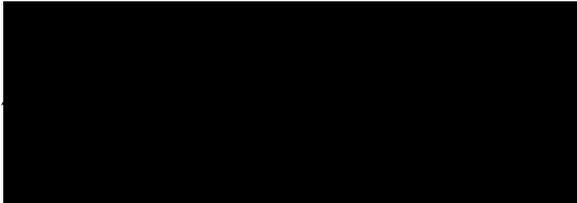


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**U.S. Citizenship
and Immigration
Services**



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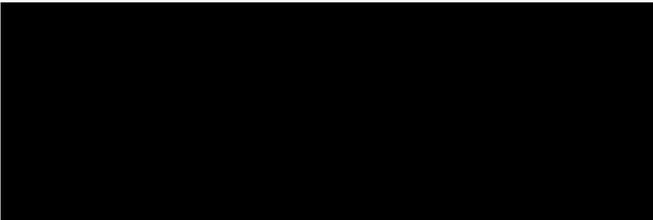
FILE: SRC 03 090 53117 Office: TEXAS SERVICE CENTER Date: JUN 30 2004

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 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 kitchen and interior designer that seeks to employ the beneficiary as a contract manager. 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 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 a contract manager. 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 perform duties that entail, in part: reviewing agreements for conformity with company rates, rules, and regulations; analyzing contracts and conferring with management about contract ambiguities, omissions, and conflicts; recommending and writing contract modifications; directing workers involved in analyzing business reports; analyzing, evaluating, and approving the implementation of recommendations; planning and directing the compilation and updating of cost and control records; and coordinating personnel studying filing and retrieval systems. Although not explicitly stated, the petitioner seeks to hire the beneficiary who possesses a foreign degree deemed to be the equivalent of a U.S. bachelor's degree in jurisprudence.

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). The director stated that the evidence, as it related to the petitioner's organization and the industry, did not establish that a baccalaureate or higher degree or its equivalent is normally the minimum requirement for entry into the proffered position. The director further stated that, because the petitioner was dissimilar from the companies in the submitted job advertisements, the evidence failed to demonstrate that similar organizations require a bachelor's degree. Referring to the Department of Labor's (DOL) *Occupational Outlook Handbook* (the *Handbook*), the director found that the educational requirements of contract manager positions varied widely. According to the director, the totality of the evidence and its relationship to the petitioning entity, and the duties of the proffered position and how they relate to the petitioning entity, failed to establish that the proffered position qualified as a specialty occupation.

On appeal, counsel states that the proffered position qualifies as a specialty occupation. Counsel contends that the legal analysis of contracts falls within the regulatory definition of "law" as it pertains to a specialty occupation, and counsel refers to an unpublished case to maintain that, because the proffered position involves the field of "law," it qualifies as a specialty occupation. According to counsel, the petitioner is a large organization that is a distributor, wholesaler, and retailer and has foreign import/export transactions, U.S. branch offices, and a complex network of contracts and sales. Counsel contends that it shares a similarity in nature to the employers in submitted job advertisements and avers that the evidence shows that large distributors and wholesalers prefer bachelor's degrees, particularly a law degree. Citing *Young China Daily v. Chappell*, 742 F. Supp. 552 (N.D. Cal. 1989), counsel mentions that whether the position is professional in nature is unrelated to the size of the company. Counsel states that the petitioner's gross revenue is based on contract sales that require the services of a contracts manager with a bachelor's degree. Counsel states that empirical evidence from the U.S. Department of Labor, the State of Florida, as well as listings and bulletin boards prove that the position requires a bachelor's degree. Finally, counsel mentions that the beneficiary holds a law degree from Colombia that is equivalent to a U.S. bachelor's degree in law.

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 2004-2005 edition of the *Handbook* for its information about the duties and educational requirements of particular occupations. A careful review of the *Handbook* discloses that the proffered position's duties are performed by purchasing specialists. Based on the information in the *Handbook*, purchasing specialists who buy finished goods for resale are employed by wholesale and retail establishments, where they commonly are known as buyers or merchandise managers. Wholesale and retail buyers are an integral part of a complex system of distribution and merchandising that caters to the vast array of consumer needs and desires. Wholesale buyers purchase goods directly from manufacturers or from other wholesale firms for resale to retail firms, commercial establishments, institutions, and other organizations. In retail firms, buyers purchase goods from wholesale firms or directly from manufacturers for resale to the public. Buyers working for large and medium-sized firms usually specialize in acquiring one or two lines of merchandise, whereas buyers working for small stores may purchase the establishment's complete inventory.

The DOL relates that educational requirements vary greatly, especially with the size of the organization. Qualified persons may begin as trainees, purchasing clerks, expeditors, junior buyers, or assistant buyers. Retail and wholesale firms prefer to hire applicants who have a college degree and who are familiar with the merchandise they sell and with wholesaling and retailing practices. Some retail firms promote qualified employees to assistant buyer positions; others recruit and train college graduates as assistant buyers. Most employers use a combination of methods. Large stores and distributors, especially those in wholesale and retail trade, prefer applicants who have completed a bachelor's degree program with a business emphasis.

Based on the information in the *Handbook*, the petitioner would not require a bachelor's degree in a specific specialty. Large stores and distributions, particularly those in wholesale and retail trade, merely prefer – they do not require – a specific bachelor's degree. Although counsel alleges that the petitioner is a large

organization that is a distributor, wholesaler, and retailer, no evidence in the record supports this allegation: in the initial petition, the petitioner indicated that it is a kitchen and interior designer employing only 19 employees and earning a gross annual income of \$2 million. No evidence substantiates counsel's contention that the petitioner has U.S. branch offices and a complex network of contracts and sales. The record merely contains brochures of kitchen brands that are sold by the petitioner; this evidence falls woefully short in establishing the first criterion.

The *Handbook* describes some administrative services managers as charged with "highly complex services." Again, the duties of the proffered position are performed by purchasing specialists – not administrative services managers. In addition, because the petitioner's job description lacks specificity, the AAO cannot conclude that the proposed services are "highly complex" in nature.

Counsel's May 13, 2003 letter asserted that the proffered position is a specialty occupation because it has been assigned a specific SVP rating in the DOL's *Dictionary of Occupational Titles (DOT)* (4th Ed., Rev. 1991). However, the *DOT* is not a persuasive source of information regarding whether a particular job requires the attainment of a baccalaureate or higher degree in a specific specialty, or its equivalent, as a minimum for entry into the occupation. The DOL replaced the *DOT* with the *Occupational Information Network (O*Net)*. Both the *DOT* and *O*Net* provide only general information regarding the tasks and work activities associated with a particular occupation, as well as the education, training, and experience required to perform the duties of that occupation. The *Handbook* provides a more comprehensive description of the nature of a particular occupation and the education, training, and experience normally required to enter into and advance within the occupation. For this reason, CIS is not persuaded by a claim that the proffered position is a specialty occupation simply because the DOL has assigned it a specific SVP rating in the *DOT*. To establish the second criterion - that a degree requirement is common to the industry in parallel positions among similar organizations - counsel states that empirical evidence confirms that the position requires a specific bachelor's degree.

Counsel's evidence is insufficient to establish the second criterion. As already discussed, the *Handbook's* information about purchasing managers, buyers, and purchasing agents demonstrates that employers do not require a specific bachelor's degree. In addition, the evidence from the *Occupational Outlook Quarterly* merely points out that a bachelor's or higher degree is common for a purchasing manager position; it does not state that a degree in a specific specialty is required.

Evidence from America's Career Infonet states that a bachelor's or higher degree is required for a purchasing manager position. This plainly demonstrates that employers do not require a bachelor's degree in a specific specialty. Of the three postings from America's Job Bank, two require a specific bachelor's degree. However, none of the three companies are parallel to the petitioner in nature: the Maryland Department of Labor is a government entity; Top Echelon Network is a manufacturer; and Honeywell's position is in avionics. Although counsel claims that the size of a company is irrelevant in determining whether a position is professional in nature, the second criterion requires that the petitioner establish that a specific degree requirement is common to the industry in parallel positions among *similar* organizations. Thus, the size and nature of a company are relevant.

Finally, the relevancy of the letter from [REDACTED] is evident: the letter explains that [REDACTED] employs a candidate who holds a bachelor's degree in jurisprudence in a contract manager position. However, the letter fails to offer documentary evidence to substantiate this assertion and the claim that a bachelor's degree is common in the industry. Simply going on record without supporting documentary evidence is not sufficient for the purpose of meeting the burden of proof in these proceedings. *Matter of Treasure Craft of California*, 14 I&N Dec. 190 (Reg. Comm. 1972). Consequently, the evidentiary value of the assertions is diminished.

No evidence is in the record that would show the proffered position is so complex or unique that it can be performed only by an individual with a degree. Nor is there evidence 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. As already discussed in detail, the duties of the proffered position are similar to those performed by purchasing specialists, a position that does not require a specific bachelor's degree.

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.

Beyond the decision of the director, the record contains an uncertified labor condition application (LCA). Regulations at 8 C.F.R. § 214.2(h)(4)(iii)(B)(1) provide that, before filing a petition for H-1B classification, the petitioner shall obtain a certification from the DOL that it has filed a LCA. Based on the evidence in this record, this has not occurred; accordingly, the petition shall be denied for this additional reason.

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.