



U.S. Citizenship
and Immigration
Services

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FILE: WAC 02 224 50306 Office: CALIFORNIA SERVICE CENTER Date: **MAR 15 2004**

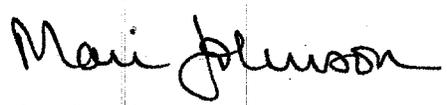
IN RE: Petitioner: [Redacted]
Beneficiary: [Redacted]

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:
[Redacted]

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

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prevent clearly unwarranted
invasion of personal privacy

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 the sale, repair, and restoration of antique clocks and watches. It seeks to employ the beneficiary as an antique clock and watch repairer, 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 and additional information stating that the proffered position qualifies as a specialty occupation.

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 an antique clock and watch repairer. 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: remove clock and watch mechanisms from their casings and examine them for defective parts or accumulation of foreign matter; repair or replace damaged or worn parts using specialized tools; make replacement parts as necessary for the proper restoration of antique clocks using clockmaker tools and machinery; replace or repair available broken parts, such as mainsprings, hairspring escape wheels, stems, and pinions using shop tools; assemble cleaned mechanisms and oil moving parts; place watches in demagnetizing machine to automatically remove magnetic properties from mechanisms; replace mechanisms in casings and test assembled instruments for accuracy; adjust the balance wheel speed regulator to synchronize reading of instruments and regulate clocks; and instruct qualified workers in all operations concerning the art of antique clock repair and watch restoration, such as the handling of minute parts, machine shop tools, and proper restoration methods. The petitioner does not require a degree in a specific specialty for entry into the proffered position as no baccalaureate level degree exists for this position. The petitioner does, however, require a minimum of 20 years of experience in the industry and extensive knowledge of the overhaul of mechanical antique clock movements, the ability to polish and replace pivots when necessary, and the ability to use Bergeon and/or KWM brushing tools.

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 and additional information 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 precision instrument and equipment repairers. They are not akin to those of museum curators as asserted by counsel. Watch and clock repairers work almost exclusively on expensive and antique timepieces, such as those primarily repaired and restored by the petitioner, as moderately priced timepieces are cheaper to replace than to repair. The *Handbook* notes that training varies for watch and clock repairers. Certifications are available, with some being obtained in a few months, and others requiring 3,000 hours, over two years, of classroom time in technical institutes or colleges. Some repairers opt to learn through assisting a master watch or clock repairer. Developing proficiency in watch or clock repair requires several years of education and experience. It is, therefore, apparent that a baccalaureate or higher degree in a specific specialty is not normally the minimum requirement for entry into the proffered position. The petitioner has failed to establish the first criterion of 8 C.F.R. § 214.2(h)(4)(iii)(A).

The petitioner does not assert that a baccalaureate level education in a specific specialty is common to the industry in parallel positions among similar organizations, or that it normally requires a degree in a specific specialty for entry into the proffered position. 8 C.F.R. § 214.2(h)(4)(iii)(A)(2) and (3). Furthermore, the duties of the proffered position are routine in the industry for those who repair and restore antique clocks and watches. While the duties of the position obviously require the talents of highly skilled craftsmen who are in short supply, they are not so complex or unique that they can be performed only by individuals with a bachelor's 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).

Finally, counsel's assertions regarding the *Dictionary of Occupational Titles (DOT)* SVP rating for the offered position are also unpersuasive. An SVP rating is meant to indicate only the total number of years of vocational preparation required for a particular position. The SVP classification does not describe how those years are to be divided among training, formal education, and experience, nor does it specify the particular type of degree, if any, that a position would require.

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.