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U.S. Department of Homeland Security
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Washington, DC 20536



U.S. Citizenship and Immigration Services

[Redacted]

FILE: EAC 02 097 54821 Office: VERMONT SERVICE CENTER Date: **MAR 15 2004**

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

PETITION: Petition for a Nonimmigrant Worker Pursuant to Section 101(a)(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.

Robert P. Wiemann
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 a company engaged in the jewelry and gemology business that seeks to employ the beneficiary as an appraiser of gemstones, diamonds, jewelry and watches. 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 he found that the petitioner had failed to establish that the proffered position is a specialty occupation under any of the qualifying criteria of 8 C.F.R. § 214.2(h)(4)(iii)(A). On appeal, counsel files a cover letter and a Form I-290B in which counsel asserts that, contrary to the director's decision, the proffered position is "the archtypical 'specialty occupation' which is extremely responsible in nature; involves years of education, training and experience; and should be considered appropriate for H1B status."

The record of proceeding before the AAO contains: (1) the petitioner's Form I-129 and supporting documentation; (2) the director's request for additional evidence (RFE); (3) the petitioner's response to the RFE, with documentation; (4) the director's denial letter; and (5) the matters submitted on appeal, including the Form I-290B, which counsel has annotated with the reasons for the appeal. The AAO reviewed the record in its entirety before issuing its decision.

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 fields 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 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.

Upon review of the entire record and all of counsel’s assertions on appeal, the AAO has determined that 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.

In analyzing the evidence, the AAO first applied the criterion at 8 C.F.R. § 214.2 (h)(4)(iii)(A)(I): a baccalaureate or higher degree or its equivalent is the normal minimum requirement for entry into the particular position. The petitioner has not met this criterion.

The appendix to the petitioner’s Form I-129 describes the petitioner’s proposed duties as follows:

This position involves responsibility for appraisal of gemstones, diamonds, jewelry and watches for an international clientele in accordance with industry standards. This entails recording of certifications; substantiating values for estate administration; conduct of liquidation appraisals; record keeping [;] as well as maintenance of appropriate security.

CIS recognizes the Department of Labor’s *Occupational Outlook Handbook (Handbook)* as an authoritative source of information about the duties and performance requirements of a wide variety of occupations. The duties described in the record comport with those of the gemologist occupation, as addressed in the “Jewelers and Precious Stone and Metal Workers” section of the 2002-2003 edition of the *Handbook*. The *Handbook* indicates that employers do not normally require that their entry-level gemologists have a baccalaureate or higher degree or its equivalent in any specific specialty. Rather, the *Handbook* indicates that the basic skills for entry-level gemologist positions can be gained through vocational courses, particularly through the Gemological Institute of America (GIA), which, according to the *Handbook*, offers classroom programs lasting about six months and correspondence courses that may last longer.

The petitioner provided no evidence that rebuts the *Handbook* information. Accordingly, the criterion at 8 C.F.R. § 214.2 (h)(4)(iii)(A)(I) is not satisfied.

Next, the petitioner has not presented evidence that would qualify the proffered position under either section of 8 C.F.R. § 214.2 (h)(4)(iii)(A)(2).

First, the evidence of record has not satisfied the first prong of 8 C.F.R. § 214.2 (h)(4)(iii)(A)(2) by establishing that a degree requirement is common to the industry in parallel positions among similar organizations.

In determining whether a degree requirement is common to the industry in parallel positions among similar organizations, factors often considered by CIS 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)).

As just discussed, the *Handbook* does not report that the proffered position requires a baccalaureate or higher degree in a specific specialty. Also, there are no submissions from professional associations in the petitioner's industry.

There is one letter from a firm that, like the petitioner, is engaged in the jewelry business. The president of Accessories reports that he is a Certified Appraiser with a degree in business and a Graduate Gemologist degree. He reports that, in the past 20 years in the retail jewelry business, it has been his practice "to employ and acknowledge appraisers that have an associate[']s or bachelor[']s degree along with a Graduate Gemologist degree to do the retail replacement appraisals for my company." (As the *Handbook* indicates, the Graduate Gemologist degree is a non-college degree awarded by GIA.) This document clearly does not establish an industry-wide practice of requiring baccalaureate or higher degrees for appraiser positions such as the one proffered here.

The AAO accorded no evidentiary value to the petitioner's vice president's assertions, in his letter of reply to the RFE, that as an industry standard, the proffered position requires "at a minimum the attainment of a baccalaureate degree or its equivalent in business"; and that "Higher education in marketing or its equivalent is essential." The evidence of record does not substantiate these assertions. 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).

For the reasons identified above, the first prong of 8 C.F.R. § 214.2 (h)(4)(iii)(A)(2) is not satisfied.

The AAO also found that the evidence of record does not qualify the proffered position under the second prong of 8 C.F.R. § 214.2 (h)(4)(iii)(A)(2), which provides that "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."

The evidence of record does not convey how this particular proffered position is so complex or unique as to be distinguishable from jewelry appraiser positions that persons can perform without a baccalaureate or higher degree in a specific specialty.

For the reasons just discussed, the petitioner has not satisfied either of the specialty occupation qualifying criteria at 8 C.F.R. § 214.2 (h)(4)(iii)(A)(2).

Next, the petitioner did not satisfy the criterion at 8 C.F.R. § 214.2(h)(4)(iii)(A)(3) – the employer normally requires a degree or its equivalent for the position. The evidence of record does not provide a meaningful history

of the petitioner's hiring history for appraisers. For a company whose letterhead states that it has been in business since 1912, the Vice President's letter only cites the educational background of its three currently employed appraisers. Furthermore, for two of these three, the only degree cited is a GIA degree, which the Vice President characterizes as an associate degree.

Finally, the AAO turns to the criterion at 8 C.F.R. § 214.2(h)(iii)(A)(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.

To meet this criterion, it must be evident that the specific duties are too complex and specialized to be performed by someone who does not possess the type of specialized knowledge that is usually associated with a baccalaureate or higher degree in a specific specialty.

To the extent that the duties are described in the record, it appears that GIA vocational training courses are adequate preparation for the technical demands of the appraiser position proffered here. Therefore, the evidence does not establish that the proffered position is a specialty occupation under 8 C.F.R. § 214.2(h)(4)(iii)(A)(4).

As related in the discussion above, the petitioner has failed to establish that the proffered position is a specialty occupation. For this reason, 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.