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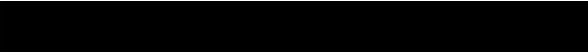
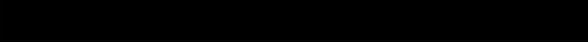
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**U.S. Citizenship
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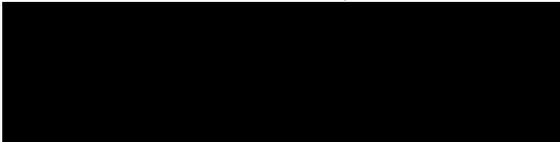


FILE: WAC 02 226 51789 Office: CALIFORNIA SERVICE CENTER Date: **MAY 17 2004**

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.

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/exporter and distributor of silver jewelry and related fashion products who seeks to employ the beneficiary as an import/export specialist. 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 on the basis that the proffered position was not a specialty occupation. On appeal, counsel submits a brief and additional information.

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 Immigration and Nationality Act (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 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.

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 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) the Form I-290B with counsel's brief. The AAO reviewed the record in its entirety before issuing its decision.

The petitioner is seeking the beneficiary's services as an import/export specialist. 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's duties are varied, but essentially the beneficiary would: develop and implement specific managerial initiatives, policies, and procedures to attain import/export objectives and properly execute international business functions; handle the direction and administration of all import/export activities, including the negotiation of contracts for goods and services; service, administer, and translate existing contracts; formulate contractual modifications; structure overseas transactions; apply foreign tax credits to import/export operations; coordinate overseas shipments and delivery schedules; cultivate business relationships with suppliers and vendors; optimize existing business relationships; establish letters of credit; inspect imported goods applying quality control standards; oversee distribution of products to commercial clients; perform marketing functions with responsibility for creating and implementing promotional strategies; develop sales forecasts; apply budgetary restraints to manufacturing schedules; and coordinate operations with other department heads. These duties were described in greater detail in the petitioner's response to the director's request for evidence dated August 9, 2002. The petitioner requires a bachelor's degree in business administration, international relations, or related areas for entry into the offered position.

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, stating that the proffered position qualifies as a specialty occupation as it meets the criteria set forth at 8 C.F.R. § 214.2(h)(4)(iii)(A).

The AAO routinely consults the Department of Labor's *Occupational Outlook Handbook (Handbook)* for information about the duties and educational requirements of particular occupations. The duties of the proffered position are varied, but essentially those noted for top executives/general and operations managers. The *Handbook* notes that the formal education and experience of top executives varies as widely as the nature of their responsibilities. Many top executives have a bachelor's or higher degree in business administration or liberal arts. Other executive positions, however, are filled by promoting experienced, lower level managers. Thus, it is possible to obtain a position as a general or operations manager without a college degree by promotion from within the organization based upon performance alone. It is apparent from the *Handbook* that a baccalaureate or higher degree, in a specific specialty, is not the minimum requirement for entry into the offered position. The petitioner has failed to establish the first criterion of 8 C.F.R. § 214.2(h)(4)(iii)(A).

The petitioner asserts that a degree requirement is common to the industry in parallel positions among similar organizations. 8 C.F.R. § 214.2(h)(4)(iii)(A)(2). In support of that assertion the petitioner submitted a position evaluation from Dr. [REDACTED] Chairman of the Department of Marketing at Seton Hall University. It was Dr. [REDACTED] opinion that the proffered position is a specialty occupation that requires bachelor's level training and/or professional experience in business administration, management, or a related field. He further opined that it was a general, industry standard for a business pursuing growth and expansion in the international market to hire an import/export specialist with a baccalaureate level education, and/or professional background in business administration, management, or a related field. The AAO does not find, however, that appropriate training for the offered position is limited to the fields of business administration, management, or related areas as stated by Dr. [REDACTED]. The *Handbook* notes that general and operations managers/top executives are employed with degrees ranging from business administration to the liberal arts, or less than a baccalaureate level education for those promoted through the ranks based upon experience and performance. Indeed, the petitioner itself noted in its response to the director's request for evidence that it found acceptable a degree in business administration, or international relations, as well as other related fields. It is, therefore, apparent that a degree in a specific specialty for the offered position is not an industry standard. It should further be noted that the statement of [REDACTED] President of Le Cadeau (involved in the importation and distribution of jewelry) is not sufficient in scope or detail to establish an industry standard. Mr. [REDACTED] states simply that it is the policy of his company to hire an import/export specialist with a bachelor's degree in business administration, commerce or international relations. The single job advertisement tendered by the petitioner for a contract specialist/import/export further indicates that a degree in a specific specialty is not required of this type of position as the advertisement does not specify a degree in any particular discipline. A degree in any number of disciplines will suffice for the proffered position.

The petitioner has not established that it normally requires a degree or its equivalent in a specific specialty for the offered position. 8 C.F.R. § 214.2(h)(4)(iii)(A)(3). Even if this were the case, the proffered position still does not qualify as a specialty occupation. The performance of the duties of the position must involve the theoretical and practical application of a body of highly specialized knowledge. *Defensor v. Meissner*, 201 F.3d 388 (5th Cir. 2000). This position does not. As noted above, the duties of the position are routinely performed in the industry by individuals with educational backgrounds in a wide range of educational disciplines, as well as by those with no college degree at all. There is no requirement of a degree in any specific specialty.

Finally, the petitioner has not established that the duties of the offered position are so complex or unique that they can only be performed by an individual with a degree in a specific specialty, or that the duties are so specialized or complex that knowledge required to perform them is usually associated with the attainment of a baccalaureate or higher degree in a specific specialty. 8 C.F.R. § 214.2(h)(4)(iii)(A)(2) and (4). The duties are routinely performed by general and operations managers/top executives.

The petitioner has failed to establish that the offered position meets any of the criteria listed at 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 and the appeal shall accordingly be dismissed.

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