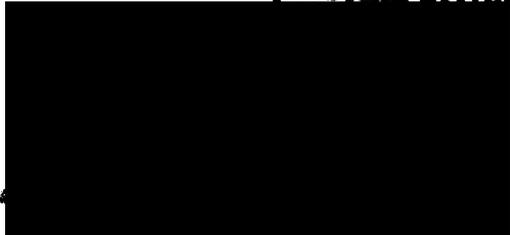




U.S. Citizenship  
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invasion of personal privacy



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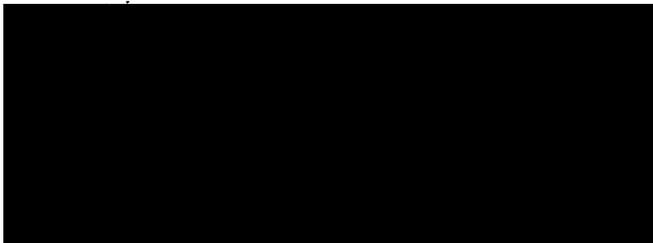
NOV 03 2004

FILE: EAC 03 086 53193 Office: VERMONT SERVICE CENTER Date:

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:



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, 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 clothing company that seeks to employ the beneficiary as an international trade 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 brief and additional evidence.

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.

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 trade specialist. Evidence of the beneficiary's duties includes: the Form I-129; the attachments accompanying the Form I-129; the company support letter; and the petitioner's response to the director's request for evidence. According to this evidence, the beneficiary would perform duties that entail importing merchandise for sale to merchants and consumers; arranging for the purchase and transportation of imports; reviewing and verifying import processing transaction documents; coordinating and directing foreign manufacturers to produce the company's products; preparing, reviewing, and adjusting operating schedules; drafting a budget and reviewing financial statements; maintaining communication with foreign merchants and domestic buyers; managing the product portfolio and leading the new product development process with regard to foreign procurement; developing and evaluating foreign suppliers based on price, quality, service support, availability, reliability, and selection; reviewing catalogues, industry and company publications, directories, and trade journals; examining imported products and services and managing clearance through customs; and managing logistics. The petitioner stated that a candidate for the proffered position must possess a bachelor's degree or its equivalent in international finance and trade or a related field and have knowledge of the Korean language.

The director determined that the proffered position was not a specialty occupation. The director found that the duties of the proffered position are not performed by a purchasing manager, buyer, or purchasing agent, and that the Department of Labor's *Occupational Outlook Handbook* (the *Handbook*) explains that these occupations do not require a bachelor's degree in a specific specialty. The director stated that the duties of the proffered position are performed by an import-export agent as described in the *Dictionary of Occupational Titles* (*DOT*), and that based on its SVP rating, the occupation would not require a bachelor's degree as a minimum requirement for entry into the job. The director found the submitted job postings unpersuasive; they did not establish an industry standard to hire a person with a bachelor's degree for a purchasing specialist or importer job because the director could not determine whether the companies were similar to the petitioner or whether the job duties were parallel to the beneficiary's duties.

On appeal, counsel states that the director misinterpreted the SVP rating in the *DOT*; it shows that a bachelor's degree can be a minimum entry requirement for a purchasing manager, buyer, purchasing agent, or import-export agent. Counsel points to the beneficiary's prior H-1B approvals and job postings from a job bank to demonstrate that the proffered position is a specialty occupation. Counsel states that CIS is unreasonable to request that the petitioner submit information about the companies in the posting. According to counsel, the industry requires a bachelor's degree for the proffered position because of complex trade-related issues which must be researched and analyzed.

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.

Counsel noted that CIS approved other petitions that had been previously filed on behalf of the beneficiary. The director's decision does not indicate whether he reviewed the prior approvals of the other nonimmigrant

petitions. If the previous nonimmigrant petitions were approved based on the same evidence that is contained in the current record, the approvals would constitute material and gross error on the part of the director. The AAO is not required to approve applications or petitions where eligibility has not been demonstrated, merely because of prior approvals that may have been erroneous. *See, e.g. Matter of Church Scientology International*, 19 I&N Dec. 593, 597 (Comm. 1988). It would be absurd to suggest that CIS or any agency must treat acknowledged errors as binding precedent. *Sussex Engg. Ltd. v. Montgomery*, 825 F.2d 1084, 1090 (6th Cir. 1987), *cert. denied*, 485 U.S. 1008 (1988)

Furthermore, the AAO's authority over the service centers is comparable to the relationship between a court of appeals and a district court. Even if a service center director had approved the nonimmigrant petitions on behalf of the beneficiary, the AAO would not be bound to follow the contradictory decision of a service center. *Louisiana Philharmonic Orchestra v. INS*, 2000 WL 282785 (E.D. La.), *aff'd*, 248 F.3d 1139 (5th Cir. 2001), *cert. denied*, 122 S.Ct. 51 (2001).

The prior approvals do not preclude CIS from denying an extension of the original visa petition based on a reassessment of the petitioner's qualifications. *Texas A&M Univ. v. Upchurch*, 99 Fed. Appx. 556, 2004 WL 1240482 (5<sup>th</sup> Cir. 2004).

The AAO next 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.

In the denial, the director stated that the duties of the proffered position are similar to an import-export agent as described in the *DOT*, and that based on the SVP rating of an import-export manager the proffered position would not require a bachelor's degree. Counsel asserts that the director misinterpreted the SVP rating because it shows that a bachelor's degree would be required for an import-export manager. 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 has 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 DOL's *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 it has a specific SVP rating in the *DOT*.

A thorough review of the *Handbook* discloses that the duties of the proffered position are performed by buyers who typically buy items for resale and cargo and freight agents. Purchasers and buyers determine which commodities are best, choose the suppliers of the product or service, negotiate the lowest price, and award contracts. In order to accomplish these tasks successfully, they study sales records and inventory levels of current stock, identify foreign and domestic suppliers, and keep abreast of changes affecting both the supply of, and demand for, needed products and materials. The *Handbook* mentions that buyers and purchasing agents evaluate suppliers on price, quality, service support, availability, reliability, and selection, and they review catalogs, industry and company publications, directories, and trade journals to find suppliers.

The *Handbook* reports:

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.

Educational requirements tend to vary with the size of the organization. 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.

The petitioner fails to establish the first criterion because the *Handbook* states that large stores and distributors prefer, but do not require, applicants with bachelor's degrees with a business emphasis and that retail and wholesale firms prefer, but do not require, applicants who have a college degree, though not necessarily in a specific specialty. Accordingly, the petitioner cannot establish that a baccalaureate or higher degree or its equivalent in a specific specialty is the normal minimum requirement for entry into the proffered position.

According to the *Handbook*:

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. Cargo and freight agents may

keep records of the properties of the cargo, such as its amount, type, weight, and dimensions. They keep a tally of missing items, record the conditions of damaged items, and document any excess supplies.

Cargo and freight agents arrange cargo according to its destination. They also determine the shipping rates and other charges that can sometimes apply to the freight. For imported or exported freight, they verify that the proper customs paperwork is in order.

Like the beneficiary who will arrange for the transportation of imports, manage logistics, verify import documents, and examine imported products, cargo and freight agents determine the route that shipments are to take, and verify that customs paperwork is in order. The *Handbook* explains that a bachelor's degree is not required for a cargo and freight agent job. The petitioner, therefore, cannot establish that a baccalaureate or higher degree or its equivalent in a specific specialty is the normal minimum requirement for entry into the proffered position.

To establish the second criterion - that a specific degree requirement is common to the industry in parallel positions among similar organizations - counsel relies on job postings, and states that the director is unreasonable to request that the petitioner submit information about the companies in the posting.

Counsel's statement that the director's request for information is unreasonable is not convincing. The regulation at 8 C.F.R. §§ 214.2(h)(4)(iii)(A)(2) plainly states that the petitioner must establish that a specific degree requirement is common to the industry in parallel positions among similar organizations. The petitioner, therefore, must demonstrate that organizations similar to itself have positions that are parallel to its position and furthermore that their position has the same degree requirement. The postings are not persuasive for various reasons. Scholastic Book Fairs, Newstrans Worldwide Inc., and Union Planters Bank are dissimilar in nature from the petitioner. The posting does not describe the nature of BAX Global or Edwards Systems Technology; thus, the AAO cannot determine whether they are similar to the petitioner. The duties of the postings from Union Planters Bank and BAX Global's job differ from those of the proffered position. The import/export specialist job in Kenmore does not require a bachelor's degree in a specific specialty. Although the duties of the posting from PGT Enterprises, Inc. seem similar to the proffered position, the posting does not describe the nature of PGT Enterprises, Inc; consequently, the AAO cannot conclude that the company is similar to the petitioner. The job postings fail to establish that a specific degree requirement is common to the industry in parallel positions among similar organizations.

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. Again, the *Handbook* reveals that the proffered position is performed by buyers and cargo and freight agents, positions which do not require a bachelor's degree in a specific specialty.

Nor is there evidence in the record 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. Once again, the *Handbook* reveals that the proffered position is performed by buyers and cargo and freight agents, occupations not requiring 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.