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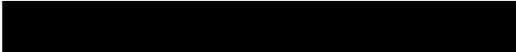
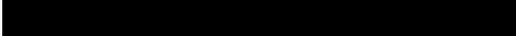
U.S. Department of Homeland Security
20 Mass. Ave., N.W., Rm. A3042
Washington, DC 20529



U.S. Citizenship
and Immigration
Services



FILE: SRC 03 028 53648 Office: TEXAS SERVICE CENTER Date: **NOV 20 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.

Robert P. Wiemann, Director
Administrative Appeals Office

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prevent clearly unwarranted
invasion of personal privacy**

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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 international marketer and distributor of chemicals and plastics that seeks to employ the beneficiary as a chemical shipping 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 because the proffered position does not qualify as a specialty occupation. On appeal, the petitioner submits a brief and additional information stating that the offered position qualifies as a specialty occupation.

The issue to be discussed in this proceeding is whether the proffered position 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 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 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 proceeding before the AAO contains: (1) the 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 a chemical shipping specialist. Evidence of the beneficiary’s duties includes the Form I-129 petition with attachment and the petitioner’s response to the director’s request for evidence. According to this evidence the beneficiary would: manage the shipping and distribution of chemical and petrochemical products; use knowledge of shipping markets and products to mitigate risks involved with transportation; facilitate trader and support staff compliance with procedures; use operational and logistics analysis to provide expertise concerning finance, documentation, shipment, clearance, and delivery in the international chemicals trade; monitor transactional integrity of chemicals trading activity and monitor regulatory compliance; identify and mitigate risks that could affect profitability; and use knowledge of chemicals and their interaction in different shipment configurations to avoid hazardous or commercially untenable conditions. The petitioner requires a degree in a related field and/or progressively responsible related work experience to enter into the proffered position. The petitioner does not state that the degree must be in any particular discipline.

Upon review of the record, the petitioner has failed to establish that a baccalaureate or higher degree or its equivalent is normally the minimum requirement for entry into the offered position, or that a degree requirement is common to the industry in parallel positions among similar organizations, as asserted by the petitioner. 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 fall within those noted for transportation, storage, and distribution managers. The *Handbook* notes that detailed occupational information was not developed for these particular positions, but that the most significant source of training is work experience in a related occupation. The petitioner makes reference to the Department of Labor’s *Occupational Information Network*

(*O-Net*) and the information provided for transportation, storage, and distribution managers. According to the *O-Net*, most of these occupations require a four-year bachelor's degree, but some do not. The information provided does not indicate, however, for positions that actually require a degree, that the degree need be in any particular educational discipline. The petitioner has failed to establish that a baccalaureate or higher degree in a specific specialty, or its equivalent, is 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 has also failed to establish that a degree requirement, in a specific specialty, 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 this assertion the petitioner submitted numerous copies of job advertisements. Those advertisements indicate that some positions in the industry require a college degree, but degrees in a wide range of educational disciplines appear to meet the educational requirements for similar positions. For example, the advertisements indicate that degrees in the following disciplines are acceptable: logistics; supply chain management; transportation; engineering; business; industrial management; and MIS. Thus, the advertisements do not establish, for positions that actually require a degree, that a degree in a specific specialty is a minimum requirement for entry into the position. Degrees in a number of unrelated fields (i.e., engineering, business, logistics) will suffice. Furthermore, not all of the advertisements submitted indicate that a college degree is actually required for the position. Many state that a degree, in an unspecified discipline, is preferred, but not required. Some of the advertisements state that a high school diploma is required, but that a bachelor's degree is preferred. The advertisements clearly do not establish that a degree in a specific educational discipline is common to the industry in parallel positions among similar organizations.

The petitioner states that it normally requires a degree or its equivalent for the offered position. In support of that assertion the petitioner lists four employees who it states perform similar duties to those offered to the beneficiary. Those employees are said to hold degrees in commerce, economics, marketing/trade and accounting. The petitioner does not, however, present documentary evidence to establish the degrees held by these individuals. Simply going on the record without supporting documentary evidence is not sufficient for the purpose of meeting the burden of proof in these proceedings. *See Matter of Treasure Craft of California*, 14 I&N Dec. 190 (Reg. Comm. 1972). The evidence presented does not established the criterion at 8 C.F.R. § 214.2(h)(4)(iii)(A)(3). Furthermore, the information tendered by the petitioner about the degrees of its current employees would indicate, if established, that a degree in a specific specialty is not required for the offered position. As noted above the present employees are said to have degrees in business and trade. The beneficiary is being offered a similar position and his degree is in chemistry. The petitioner's own hiring practices, if proved, would indicate that the position does not require a degree in a specific specialty.

Finally, the duties to be performed by the beneficiary are not 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. Nor are the duties so complex or unique that they can be performed only by an individual with a degree in a specific specialty. The duties are routine for the position in the industry and regularly performed by individuals with education ranging from a high school diploma to a baccalaureate level education in a number of disciplines. The petitioner has failed to establish the criteria at 8 C.F.R. §§ 214.2(h)(4)(iii)(A)(2) or (4).

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 failed to sustain that burden and the appeal shall accordingly be dismissed.

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