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U.S. Citizenship
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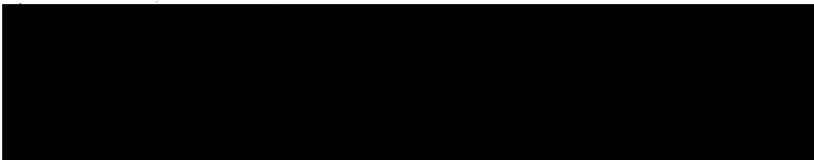
DA
NOV 23 2004

FILE: WAC 02 263 51207 Office: CALIFORNIA SERVICE CENTER Date:

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

DISCUSSION: The service center director denied the nonimmigrant visa petition. 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 that manufactures and sells wave riding and related sports equipment, accessories, and fashions. It seeks to employ the beneficiary as a purchasing agent. 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. Counsel states that the petitioner submitted sufficient evidence to establish the position is a specialty occupation. Counsel resubmits documentation.

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 petitioner's letter of support; (3) the director's request for additional evidence, dated March 2, 2003; (4) the petitioner's letter that responds to the director's request, dated May 23, 2003; (5) the director's denial letter;

and (6) 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 a purchasing agent. The petitioner stated that this position was in its Hawaii store and is a supervised part-time position. Evidence of the beneficiary's duties includes: the I-129 petition; the petitioner's letter of support; and counsel's letter in response to the director's request for further evidence. According to the petitioner's letter of support, the beneficiary would confer with vendors to obtain product and/or service information; study and monitor the market, products and vendors to become familiar with the best merchandise and services for the petitioner's customers; select products for purchase; maintain records of her activities and vendor performance; work with Japanese-speaking distributors; and sample, demonstrate, and test equipment and other merchandise to determine whether the petitioner should buy it. Finally, the beneficiary might suggest to vendors how they may improve their products for the petitioner's markets. The petitioner indicated that the position would require an individual with a bachelor's degree in physical education or a related field.

The director denied the petition and referred to the Department of Labor's (DOL) *Occupational Outlook Handbook (Handbook)* classification of purchasing agent. The director stated that this classification did not require a baccalaureate degree in a specific specialty for entry into the position. The director found further that the petitioner failed to establish any of the criteria found at 8 C.F.R. § 214.2(h)(4)(iii)(A).

On appeal, counsel states that the petitioner had established three of the four criteria outlined in 8 C.F.R. § 214.2(h)(4)(iii)(A). Counsel also states that CIS applied an incorrect standard in its analysis of the fourth criterion of 8 C.F.R. § 214.2(h)(4)(iii)(A). According to counsel, when the director stated that the proposed duties and stated level of responsibility do not indicate a complexity or authority which is *beyond that normally encountered* in the occupational field, he established a higher standard than required. (Emphasis in original.) Counsel also resubmits the following documentation with regard to whether the position is a specialty occupation:

Expert Opinion Evaluation from [REDACTED] Mercy College, Dobbs Ferry, New York. [REDACTED] states that the position of sports purchasing agent requires that the candidate have at least a bachelor's degree in sports merchandising, physical education or a related field.

An article dated March 25, 1999 from the website Purchasing.com. The article, written by Lisa van der Pool, states that for purchasing jobs, a college degree has become a given.

An article from *Purchasing* magazine written by Agatha Ciancarelli dated December 10, 1998 and entitled "Purchasing Careers Get Redefined." This article states that purchasing has become more sophisticated and demands new qualities from job candidates.

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.

The AAO turns first to 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)).

The AAO routinely consults the *Handbook* for its information about the duties and educational requirements of particular occupations. As described by the petitioner, the position is an entry-level purchasing agent position with a sports manufacturing company. In the 2004-2005 edition of the *Handbook*, it states: "Retail and wholesale firms prefer to hire applicants who have a college degree and who are familiar with the merchandise they see 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." Thus, the *Handbook* does not establish that employers require a baccalaureate degree in a specific specialty for entry into the position. As previously noted, 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.

With regard to parallel positions in similar businesses, counsel provided two letters from sports manufacturers or sports equipment companies. The presidents and owners of Brave New World, and Groovetube identified their companies as the petitioner's competitors. They both stated that a bachelor's degree is a common requirement in the retail sports equipment and accessories industry. These letters are not sufficient evidence to establish this criterion. First, the letters contain identical language except for the location of the respective businesses and the years that each company has been in business. This diminishes the weight to be given to such letters. Second, both letter writers simply state that a college degree is required for entry into the position. As previously stated, 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.

While Dr. Jelen's position evaluation does provide some rationale for a sports purchasing agent to have a baccalaureate degree in a specific specialty, his letter by itself does not establish an industry standard. The petitioner did not provide documentation from professional associations or individuals in the industry as to whether a baccalaureate degree in a specific specialty is required for entry into the profession. Neither of the articles submitted by the petitioner from *Purchasing* magazine and *Purchasing.com* states that a baccalaureate degree in a specific specialty is required for entry into the position. The petitioner also did not provide sufficient documentation to support the complexity or uniqueness of the proffered position. The petitioner has, thus, not established the criteria set forth at 8 C.F.R. § 214.2(h)(4)(iii)(A)(1) or (2).

The AAO now turns to 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 petitioner provided no documentary evidence with regard to current or previous purchasing agents, and their academic credentials. Therefore the petitioner cannot meet this criterion.

Finally, the AAO turns to the criterion at 8 C.F.R. § 214.2(h)(4)(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. With regard to counsel's assertion as to the correct interpretation of this criterion, each criterion is a separate route to establishing that the proffered position is a specialty occupation. The fourth criterion examines whether the specific duties of a proffered job, which may not necessarily require a baccalaureate degree in a specific specialty, are nevertheless viewed as so specialized and complex that their performance equates to the knowledge and skills inherent in a baccalaureate degree. The director did not suggest that the duties had to be beyond those performed by an employee with a bachelor's degree. To the extent that they are depicted in the record, the majority of the duties of the position are not specialized or complex. Duties include such activities as: confer with vendors, maintain records, work with Japanese distributors, and sample and demonstrate possible new sale items. Without more persuasive evidence, the petitioner has not established the fourth criterion of 8 C.F.R. § 214.2(h)(4)(iii)(A).

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.