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NOV 24 2004

FILE: WAC 03 212 53349 Office: CALIFORNIA 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 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 contractor of services and supplier of goods for the United States government, and seeks to employ the beneficiary as an accounting services bidding analyst. 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 is not a specialty occupation. On appeal, counsel submits a brief stating that the offered position qualifies as a specialty occupation.

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 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 proceedings before the AAO contains: (1) Form I-129 and supporting documentation; (2) the director’s notice of intent to deny; (3) the petitioner’s response to the director’s notice of intent to deny; (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 an accounting services bidding analyst. Evidence of the beneficiary’s duties includes the I-129 petition with attachment, and the petitioner’s response to the director’s notice of intent to deny. According to this evidence the beneficiary would: research and analyze computer accounting materials and products in the market; test, analyze, and evaluate products as to safety and performance to meet military and other federal government specification standards; perform cost comparisons and analysis; participate in the purchase of products through a bidding process; and communicate and coordinate with different manufacturers and suppliers. The petitioner described the duties of the proffered position in greater detail in its response to the director’s request for evidence. The petitioner requires a minimum of a bachelor’s degree in computer science for entry into the proffered position.

Upon review of the record, the petitioner has failed to establish that the offered position meets the requirements of the above cited regulatory criteria. 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)). Counsel cites the *Handbook*, 2002 – 2003 edition, at pp. 80 – 82 in support of the petitioner’s position that the proffered job is a specialty occupation. Those pages describe the job duties for purchasing managers, buyers and purchasing agents.

The AAO routinely consults the *Handbook* for information about the duties and educational requirements of particular occupations. The duties of the proffered position are those noted for buyers, and are described in the *Handbook* as follows:

Purchasing managers, buyers and purchasing agents seek to obtain the highest quality merchandise at the lowest possible purchase cost for their employers. In general, *purchasers* buy goods and services for their company or organization, whereas *buyers* typically buy items for resale. Purchasers and buyers determine which commodities or services are best,

choose the suppliers of the product or service, negotiate the lowest price, and award contracts that ensure that the correct amount of the product or service is received at the appropriate time. In order to accomplish these tasks successfully, purchasing managers, buyers, and purchasing agents 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.

Purchasing managers, buyers, and purchasing agents evaluate suppliers based upon price, quality, service support, availability, reliability, and selection. . . . They research the reputation and history of the suppliers and may advertise anticipated purchase actions in order to solicit bids. . . .

The duties associated with the proffered position are essentially those listed above. The *Handbook* further provides that qualified individuals for these positions may begin as trainees, purchasing clerks, expeditors, junior buyers, or assistant buyers. Retail and wholesale firms prefer to hire applicants with a college degree and familiarity with the products they sell, as well as wholesale and retail practices. It is also noted, however, that some retail firms promote qualified employees to assistant buyer positions, and that most employers use a combination of methods for filling these positions. Educational requirements tend to vary with the size of the organization. Large stores and distributors prefer applicants who have completed a bachelor's degree program with a business emphasis, and many manufacturing firms put a greater emphasis on formal training preferring applicants with a bachelor's or master's degree in engineering, business, economics, or one of the applied sciences. The fact remains, however, that while some employers prefer applicants with a bachelor's degree, a degree requirement in a specific specialty is not the minimum requirement for entry into the offered position. Many employers still fill buyer positions by promoting experienced employees who qualify for the position through work experience and training rather than a bachelor's level education in a specific specialty. As noted above, educational requirements for buyers in the manufacturing industry, in companies that require formal education, range from degrees in business to engineering, or one of the applied sciences. The petitioner has failed to satisfy the criterion at 8 C.F.R. § 214.2(h)(4)(iii)(A)(1).

The petitioner does not assert that a degree requirement is common to the industry in parallel positions among similar organizations, or that it normally requires a degree in a specific specialty for entry into the offered position, and offers no evidence in this regard. 8 C.F.R. §§ 214.2(h)(4)(iii)(A)(2) and (3).

Finally, the duties of the proffered position are not so specialized and 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 they so complex or unique that they can be performed only by an individual with a degree in a specific specialty. The duties of the proffered position are routinely performed in the industry by purchasing agents/buyers. The petitioner has not satisfied the referenced criteria at 8 C.F.R. §§ 214.2(h)(4)(iii)(A)(2) or (4).

The proffered position does not meet any of the requirements of 8 C.F.R. § 214.2(h)(4)(iii)(A). Accordingly, the director's denial of the petition shall not be disturbed.

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.