



U.S. Citizenship  
and Immigration  
Services

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FILE: EAC 03 084 53831 Office: VERMONT SERVICE CENTER

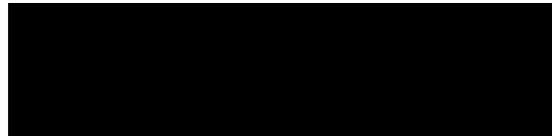
Date: OCT 11 2004

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 disclosure of uncorroborated  
information and to prevent  
invasion of personal privacy

**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 jewelry import and sales company that seeks to employ the beneficiary as a wholesaler. 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 he determined that the proffered position is not a specialty occupation. On appeal, counsel states that Citizenship and Immigration Services (CIS) ignored certain job duties, and erred in its classification of the position. Counsel submits no further 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 January 31, 2003; (4) the petitioner's letter that responds to the director's request; (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 wholesaler. 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 job description submitted by the petitioner, the beneficiary's duties would involve managing the importing, purchasing, wholesaling and distributing of jewelry, precious and semiprecious gems, and stones. Other duties would include estimating stock requirements based on sales orders, inventory, projected volume of sales and current economic conditions; directing the storage of merchandise by workers, the filling of orders, and the distribution of goods to customers; advising management, employees and customers on current and future market conditions and availability of merchandise; and conducting market research and analysis. In its response to the director's request for further evidence on its business operation, the petitioner provided documentation on three kiosks that it operates in shopping malls. The petitioner also stated that it was in the process of acquiring craftspersons in India and Indonesia, as well as a local designer, to create its own line of high-end silver and gold jewelry. The petitioner stated that to achieve this goal, it was necessary to have a qualified professional wholesaler on the staff. The petitioner stated that it required a candidate for the position to have a bachelor's degree in economics or a related field.

The director denied the petition and referred to the Department of Labor's (DOL) *Occupational Outlook Handbook (Handbook)* classification of sales worker supervisor. The director determined that the *Handbook* did not establish that a baccalaureate in a specific specialty was required for entry into sales worker supervisor positions. The director also noted that industry data did not find that positions such as importers or purchasers normally required a baccalaureate degree in a specific specialty. 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 proffered position is not a sales worker supervisor, but rather a wholesaler. Counsel states that CIS ignored job duties such as importing, conducting market research, and advising management, employees and customers on market and availability conditions. Counsel states that such duties are the core of the wholesaler position.

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. The proffered position appears to combine supervision of staff, as well as

responsibilities for importing goods and doing market research and analysis. As correctly noted by the director, neither the *Handbook* nor industry data indicates that employers of either sales worker supervisors, or importers and purchasers normally require a baccalaureate degree in a specific specialty.

The critical element in examining whether the proffered position is a specialty occupation is not the title of the position or an employer's self-imposed standards, but whether the position actually requires the theoretical and practical application of a body of highly specialized knowledge, and the attainment of a bachelor's degree in the specific specialty as the minimum for entry into the occupation as required by the Act. The petitioner has not established that its business operations, which appear to consist primarily of three kiosks in shopping malls, requires the services of an individual with a baccalaureate degree in a specific specialty.

With regard to parallel positions in jewelry sales companies, the petitioner submitted six job vacancy announcements to the record. These announcements are for a variety of positions, including an import and inventory manager for a leading gourmet food importer, a wholesale/liquidation manager for a Fortune 500 company, and a purchasing manager in the purchasing department for a national food company. The six positions require baccalaureate degrees ranging from food sciences, marketing, to business or logistics. Neither the job duties nor the required academic preparation for entry into the jobs appear analogous to the proffered position. The record also does not include any evidence from professional associations regarding an industry standard, or 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 stated in its letter of support that the position was a new one. Therefore the petitioner cannot meet this criterion.

Finally, the AAO turns to the criterion at 8 C.F.R. § 214.2(h)(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. To the extent that they are depicted in the record, the duties of the position appear routine to any job that entails the import and sale of goods. The petitioner provided no further detail as to any specialized or complex duties that the beneficiary would perform as a wholesaler. 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.