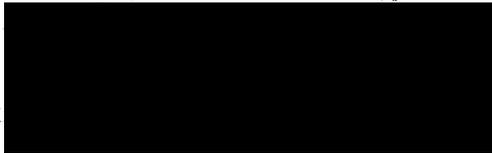




U.S. Citizenship  
and Immigration  
Services

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FILE: EAC 03 076 53488 Office: VERMONT SERVICE CENTER

Date: **OCT 27 2004**

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

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identifying data deleted to  
prevent identity and warranted  
invasion of personal privacy

**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 wholesale distributor of giftware. It seeks to employ the beneficiary as an international trade manager, and endeavors to classify her 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 additional information and states that the proffered 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 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 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 international trade manager. Evidence of the beneficiary's duties was included with the I-129 petition and in response to the director's request for evidence. According to this evidence the beneficiary would: converse with overseas manufacturers about goods to be purchased, and the quantity and quality thereof; interact with domestic purchasers who sell the petitioner's products; plan for future season purchases; analyze the economic outlook of the company; collect statistical data to analyze the economic outlook of the company and suggest changes in employees and their duties based upon the data analyzed; converse with management to execute changes in company job assignments; and search for sellers with cheap labor costs and recommend changes in purchases based thereon. The petitioner states that it requires a bachelor's degree in economics and/or international trade for entry into the offered position.

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. 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, though somewhat vaguely described, are essentially those noted for buyers or purchasing managers, and are described in the *Handbook*, 2004-05 edition at p. 61, 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 on the basis of 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. On appeal, the petitioner submits letters from business associates in support of the petitioner's need for an international trade manager. Those letters essentially indicate that the petitioner needs a person in the position who is fluent in Chinese and who can discuss technical and sensitive business matters. The letters do not establish the beneficiary's job duties will be those of an international trade manager as described in the *Handbook*. The *Handbook* provides that qualified individuals for purchasing managers, buyers and purchasing agents 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, while others recruit and train college graduates. Most employers use a combination of methods for filling these positions. *Id.* at 62. Educational requirements tend to vary with the size of the organization. Large stores and distributors prefer applicants who have completed a bachelors 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, find acceptable degrees ranging from 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 asserts that a degree requirement is common to the industry in parallel positions among similar organizations, and that the duties of the offered position are so complex or unique that they can only be performed by an individual with a degree. 8 C.F.R. § 214.2(h)(4)(iii)(A)(2). In support of this assertion, the petitioner submitted a list of employees from a company it deals with in China indicating that all but one of its employees held a college degree. First, proof that one company in the industry requires a degree for its export

manager is insufficient in scope to establish an educational standard for the industry. Second, the documentation presented does not detail the duties of the employees presented or state what educational discipline the employees' degrees are in. Nor did the petitioner present proof of the degrees in the form of diplomas or other documentation. The petitioner also states that the duties of the proffered position have previously been performed by its office manager who holds a three-year degree in international trade from Ming Chuan College. There is no indication, however, that said degree is equivalent to a baccalaureate degree from an accredited college or university in the United States. Furthermore, though somewhat vaguely described, the duties of the proffered position appear to be routine for buyers or purchasing managers. They are not so complex or unique that they can only be performed by somewhat with a degree in a specific specialty. The petitioner has failed to establish the criterion at 8 C.F.R. § 214.2(h)(4)(iii)(A)(2).

In further support of its proposition that a degree requirement is common to the industry in parallel positions among similar organizations and that a degree requirement is normally the minimum requirement for entry into the proffered position, the petitioner makes reference to the Department of Labor's *Dictionary of Occupational Titles (DOT)* SVP rating for the offered position. The petitioner's assertions regarding the *DOT's* SVP rating for the offered position are unpersuasive. An SVP rating is meant to indicate only the total number of years of vocational preparation required for a particular position. The SVP classification does not describe how those years are to be divided among training, formal education, and experience, nor does it specify the particular type of degree, if any, that a position would require.

The petitioner has not established that it normally requires a degree or its equivalent for entry into the proffered position as this is a new position for the petitioner. 8 C.F.R. § 214.2(h)(4)(iii)(A)(3). As previously stated the duties of the position were previously performed by the petitioner's office manager who holds a three year degree from a college in China. That degree, however, has not been shown to be equivalent to a baccalaureate level education in the United States. Even if the petitioner normally required a degree or its equivalent for the proffered position, the position still does not qualify as a specialty occupation. The performance of the duties of the position must still involve the theoretical and practical application of a body of highly specialized knowledge. *Cf. Defensor v. Meissner*, 201 F.3d 388 (5<sup>th</sup> Cir. 2000). This position does not. As noted above, the duties of the position are routinely performed in the industry by individuals with educational backgrounds in a wide range of educational disciplines. There is no requirement that the education come from any particular specialty.

Finally, as previously noted, the duties of the proffered position appear to be routine for buyers and purchasing managers in the industry. They 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. 8 C.F.R. § 214.2(h)(4)(iii)(A)(4). On appeal, the petitioner presented statements from four companies with whom it does business. The companies essentially state that the duties of the proffered position are of such complexity that they require a college degree and someone that speaks the Chinese language. Those companies do not state, however, that the duties of the position require a degree in any particular specialty and are, therefore, of little evidentiary value.

The petitioner has failed to establish that any of the four factors enumerated above are present in this proceeding. It is, therefore, concluded that the petitioner has not demonstrated that the offered position is a specialty

occupation within the meaning of the regulations.

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 and the appeal shall accordingly be dismissed.

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