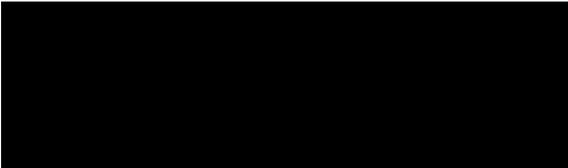




U.S. Citizenship
and Immigration
Services



FILE: WAC 03 214 51310 Office: CALIFORNIA 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:
[Redacted]

INSTRUCTIONS:

This is the decision of the Administrative Appeals Office in your case. All materials 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 unwarranted
invasion of personal privacy

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DISCUSSION: The service center director denied the nonimmigrant visa petition. The matter is now on appeal before the Administrative Appeals Office (AAO). The appeal will be dismissed. The petition will be denied.

The petitioner is a Turkish language broadcasting company that seeks to employ the beneficiary as an international purchasing manager. 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 on the ground that the proffered position is not a specialty occupation. On appeal counsel submits a brief arguing that the subject position, based on its educational requirements and the complexity of its duties, qualifies as a specialty occupation.

Section 214(i)(1) of the Immigration and Nationality Act (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 director's request for additional evidence; (3) the petitioner's response to the director's request; (4) the

director's denial letter; (5) the petitioner's appeal, Form I-290B, and (6) the petitioner's appeal brief. The AAO reviewed the record in its entirety before issuing its decision.

The petitioner is seeking the beneficiary's services as an international purchasing manager. Evidence of the beneficiary's duties includes: the Form I-129 petition filed in July 2003; the petitioner's letter in support of the petition; and the petitioner's response to the director's request for evidence. According to this evidence the beneficiary would be responsible for the procurement of Turkish language television programs for broadcast by the petitioner throughout North America. Specific tasks include reviewing requisitions of specific programs; communicating with vendors and distributors to negotiate price, availability, delivery schedules and broadcast rights; reviewing films to assess their quality and market appeal; estimating target audiences in the United States, determining the best and most cost-effective method of procurement, preparing purchase orders or bid requests and negotiating the terms of purchase agreements with private or public entities in Turkey; preparing market trend ratings and survey analysis reports; attending trade shows, exhibitions and meetings in Turkey; maintaining records of product delivery, costs, quality and popularity of individual programs; taking corrective action with respect to poorly performing programs; approving invoices for payment; as well as consulting with the marketing department on future programming. The petitioner asserted that a qualified candidate for the job must have at least a bachelor's degree in business administration and be fluent in the Turkish language. The beneficiary, a native of Turkey with a Master of Business Administration (MBA) from California State University, Dominguez Hills, has both of these qualifications. He was hired by the petitioner to fill the position of assistant purchasing manager in August 2002, the same month he received his MBA.

The director found that the position offered to the beneficiary – "international purchasing manager" – is not a specialty occupation. Citing to the Department of Labor's *Occupational Outlook Handbook (Handbook)*, 2002-2003 edition – which Citizenship and Immigration Services (CIS) routinely consults as an authoritative source of information about the duties and educational requirements of particular occupations – the director concluded that a baccalaureate level of training is not an industry-wide requirement for entry into the occupation of purchasing manager. Based on the evidence of record the director also concluded that the petitioner failed to establish that it normally requires applicants for the subject position to possess baccalaureate or higher level degrees in the field, and that the position did not involve a level of authority or complexity of duties beyond that normally encountered in the field.

In determining whether a position qualifies as a specialty occupation, in accordance with the statutory and regulatory criteria set forth in section 214(i)(1) of the Act and 8 C.F.R. § 214.2(h)(4)(iii)(A), CIS typically considers whether the *Handbook* indicates a degree is required by the industry; 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.Minn. 1999) (quoting *Hird/Blaker Corp. v. Slattery*, 764 F.Supp. 872, 1102 (S.D.N.Y. 1991)). CIS also scrutinizes the specific duties and complexity of the position at issue, with the *Handbook's* occupational descriptions as a reference, as well as the petitioner's past hiring practices for the position.

On appeal counsel asserts that the *Handbook* explicitly states that the education required for a "purchasing manager" position includes a college education and, in many cases, a master's degree. The pertinent excerpt from the *Handbook*, as cited by counsel, reads as follows: "Government agencies and larger companies usually require a master's degree in business or public administration for top-level

purchasing positions.” (Emphasis added.) The AAO notes that the petitioner is a private broadcasting company with 18 employees and a gross annual income of \$3.67 million. As such, it does not fall within the purview of businesses described in the *Handbook* that would usually require a master’s degree as a minimum requirement for entry into the position of purchasing manager. Indeed, the *Handbook* describes other possible routes to enter this position, such as promotion through the ranks after initial employment at lower positions that did not require a degree. Thus, the petitioner has not established that a baccalaureate or higher degree is the minimum requirement for entry into its purchasing manager position, as required under the first alternative criterion of a “specialty occupation” set forth in 8 C.F.R. § 214.2(h)(4)(iii)(A)(1). Nor has the petitioner submitted any evidence that a “degree requirement is common to the industry in parallel positions among similar organizations,” as required to qualify its “international purchasing manager” position as a “specialty occupation” under the second alternative criterion set forth in 8 C.F.R. § 214.2(h)(4)(iii)(A)(2).

With respect to the third alternative criterion to establish a “specialty occupation” set forth in 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 has provided no evidence as to (1) who, if anybody, has filled the position of international purchasing manager since the company was founded in November 1998, and (2) the degree qualifications of such individual.

In the appeal brief counsel contends that the international purchasing manager is not a position “of merely purchasing retail goods but of assisting in the negotiation of complex international licensing agreements” ranging in value from \$150,000 to \$1 million. “It is not possible for someone with a high-school level education to come on board as an assistant buyer,” counsel continues. “The reports and legal negotiations that this purchasing manager must execute demand a university level education. . . . The proffered position is NOT an entry level position. The employer needs a competent, educated, experienced manager NOW.” Counsel quotes the following excerpt from the *Handbook*: “Purchasing managers usually handle the more complex or critical purchases . . . An experienced purchasing agent or buyer may become an assistant purchasing manager . . . before advancing to purchasing manager.” Counsel asserts that the petitioner “needs someone who is already at the top levels, not a trainee.” Counsel goes on to explain that “the broadcast industry deals with intellectual property and licensing rights. The purchasing manager will work with the legal department and serve as a liaison between the petitioner’s legal department and the distributors, governments and production companies. That, in itself, is a level of complexity that demands the service of someone with a baccalaureate degree or higher.”

The AAO is not persuaded that the proffered position and its specific duties fit the alternative criteria of a specialty occupation set forth in 8 C.F.R. § 214.2(h)(4)(iii)(A)(2) or (4). The position of “international purchasing manager” does not appear to be so complex or unique, and the specific duties described by the petitioner do not appear to be so specialized or complex, as to require “theoretical and practical application of a body of highly specialized knowledge” associated with “a bachelor’s or higher degree in the specific specialty,” within the meaning of section 214(i)(1) of the Act. It is clear from the job description in the record that the purchasing manager, in addition to being fluent in Turkish, requires knowledge of the Turkish broadcasting industry, Turkish culture, and the Turkish-American community in the United States. These attributes were acquired by the beneficiary in the course of growing up in Turkey, however, not as a body of specialized knowledge associated with earning a baccalaureate or higher degree. Nor do the specific tasks of the purchasing manager – such as communicating with vendors and distributors and attending business forums in Turkey, reviewing film products, handling

procurement, doing market assessments, and paying invoices – require highly specialized knowledge associated with a baccalaureate or higher degree. Indeed, these tasks dovetail closely with the *Handbook*'s description of a purchasing manager's duties – *i.e.*, “evaluat[ing] suppliers based upon price, quality, service support, availability, reliability, and selection review[ing] catalogs, industry and company publications, directories, and trade journals . . . research[ing] the reputation and history of the suppliers and solicit[ing] bids examin[ing] products and services, assess[ing] a supplier's production and distribution capabilities . . . [placing] orders and [awarding] contracts” – the performance of which, according to the *Handbook*, do not require a baccalaureate or higher degree for a company on the petitioner's scale.

For the reasons discussed above, the petitioner has failed to establish that the “international purchasing manager” position proffered to the beneficiary meets any of the four criteria of a “specialty occupation” outlined in 8 C.F.R. § 214.2(h)(4)(iii)(A).

The petitioner bears the burden of proof in these proceedings. *See* section 291 of the Act, 8 U.S.C. § 1361. The petitioner has not sustained that burden. Accordingly, the AAO will not disturb the director's decision denying the petition.

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