



U.S. Citizenship
and Immigration
Services



FILE: EAC 02 141 54289 Office: VERMONT SERVICE CENTER Date: 11/14/04

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:

SELF-REPRESENTED

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.

A handwritten signature in black ink, appearing to read "Robert P. Wiemann".

Robert P. Wiemann, Director
Administrative Appeals Office

DISCUSSION: The director of the service center 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 an importer of Georgian wine that seeks to employ the beneficiary as a sales representative/brand manager. 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. On appeal, the petitioner states that the proffered position qualifies as 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.

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; and (5) 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 sales representative/brand manager. Evidence of the beneficiary's duties includes: the Form I-129; the attachments accompanying the Form I-129; and the petitioner's response to the director's request for evidence. According to this evidence, the beneficiary would perform duties that entail supporting sales, managing the national brand and promotion campaigns, and serving as the liaison to U.S. distributors, Georgian vintagers, and bottlers to understand consumer demand. The petitioner implied that a candidate must possess a bachelor's degree in business administration and be fluent in the Russian, English, and Georgian languages.

The director found that the proffered position was not a specialty occupation because the petitioner failed to establish any of the criteria found at 8 C.F.R. § 214.2(h)(4)(iii)(A). Referring to the Department of Labor's (DOL) *Occupational Outlook Handbook* (the *Handbook*), the director found that the duties of the proffered position resemble those performed by a sales representative, a position that does not require a bachelor's degree in a specific specialty. In addition, the director found that it seemed unlikely that a small import business, such as the petitioning entity, would require the services of an employee devoted to marketing duties given that the petitioner already employed an analyst who analyzed, researched, and forecasted the ethnic spirits market. The director noted that the submitted evidence did not demonstrate that the petitioner had office space to conduct its business.

On appeal, the petitioner states that the beneficiary possesses the requisite educational and professional experience. The petitioner mentions a baccalaureate degree may not be the industry-wide standard for wine importers in general, though it is becoming one for niche wine. The petitioner claims that only companies with established brands and operations lower their standards for education, skills, experience, and business acumen.

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 first considers 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)).

In determining whether a position qualifies as a specialty occupation, CIS looks beyond the title of the position and determines, from a review of the duties of the position and any supporting evidence, whether the

position actually requires the theoretical and practical application of a body of highly specialized knowledge, and the attainment of a baccalaureate degree in a specific specialty as the minimum for entry into the occupation as required by the Act. The AAO routinely consults the *Handbook* for its information about the duties and educational requirements of particular occupations.

As previously mentioned, 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. In the November 27, 2002 letter, the petitioner implied that a candidate must possess a bachelor's degree in business administration and be fluent in the Russian, English, and Georgian languages.

This fails to establish that the proffered position qualifies as a specialty occupation. A petitioner must establish that the proffered position realistically requires knowledge, both theoretical and applied, which is almost exclusively obtained through studies at an institution of higher learning. The depth of knowledge and length of studies required are best typified by a degree granted by such institution at the baccalaureate level. It must be demonstrated that the position requires a precise and specific course of study relating directly and closely to the position in question. Since there must be a close corollary between the required specialized studies and the position, the requirement of a degree of generalized title, such as business administration or liberal arts, without further specification, does not establish eligibility. *See Matter of Micheal Hertz Ass'n, 19 I&N Dec. 558, 560 (Comm. 1988).*

Because the petitioner merely requires a bachelor's degree in business administration, without further specification, it fails to establish that the proffered position qualifies as a specialty occupation under the first criterion at 8 C.F.R. § 214.2(h)(4)(iii)(A).

The second criterion at 8 C.F.R. § 214.2(h)(4)(iii)(A) requires that the petitioner show that its degree requirement is common to the industry in parallel positions among similar organizations or, in the alternative, that the position is so complex or unique that it can be performed only by an individual with a degree in a specific specialty. As previously discussed, the record reveals that the petitioner does not require a bachelor's degree in a specific specialty. Accordingly, the petitioner will not be able to establish that it has a degree requirement that is common to the industry or that its position is so complex or unique that it can be performed only by an individual with a degree in a specific specialty.

The third criterion requires that the employer establish that it normally requires a degree or its equivalent for the position. As discussed, because the record discloses that the petitioner does not require a bachelor's degree in a specific specialty, it fails to establish the third criterion at 8 C.F.R. § 214.2(h)(4)(iii)(A).

The fourth criterion requires that the petitioner show that the nature of the specific duties is so specialized and complex that the knowledge required to perform the duties is usually associated with the attainment of a baccalaureate or higher degree in a specific specialty. The record evinces that the petitioner has not established this criterion because the knowledge required to perform the duties of the position is not associated with the attainment of a baccalaureate or higher degree in a specific specialty. Again, the petitioner does not require that a candidate possess a bachelor's degree in a specific specialty to perform the duties of the offered position.

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.