

identifying data deleted to
prevent disclosure of information
invasion of personal privacy



U.S. Citizenship
and Immigration
Services

PUBLIC COPY

DA

APR 11 2005

FILE: WAC 04 036 50418 Office: CALIFORNIA SERVICE CENTER Date:

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

Robert P. Wiemann, Director
Administrative Appeals Office

DISCUSSION: The director of the service center denied the nonimmigrant visa petition and the Administrative Appeals Office (AAO) summarily dismissed a subsequent appeal. The matter is now before the AAO on motion. The motion will be granted. The appeal will be dismissed. The petition will be denied.

The petitioner is a packaging company that seeks to employ the beneficiary as a purchasing 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. The AAO summarily dismissed an appeal filed by the petitioner for failing to specifically identify any erroneous statement of fact or conclusion of law in the director's decision. On motion, the petitioner submits evidence that the AAO had previously failed to consider with the appeal. Thus the motion to reopen and reconsider will be granted. On appeal, counsel submits a brief and additional evidence.

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 documents. The AAO reviewed the record in its entirety before issuing its decision.

The petitioner is seeking the beneficiary's services as a purchasing manager. Evidence of the beneficiary's duties includes: the Form I-129; the attachments accompanying the Form I-129; the company support letter; and the petitioner's response to the director's request for evidence. According to this evidence, the beneficiary would perform duties that entail arranging selection of vendors, purchases, and expeditious arrival of all packaging materials, products and services; generating most customer sales orders and maintains detailed records of all related purchase orders; seeking vendors that offer a combination of quality products and services at an acceptable and competitive price level by making inquiries that are entirely detailed and specific; maintaining a well-documented quotation file so that a system of follow up can be readily accomplished; arranging for the purchase of materials to fill the needs of those orders that are based upon forecasted requirements; providing detailed and accurate communications with vendors, managers, and customers in terms of any changes that may impact cost, service, quality and quantities; maintaining highly organized files that relate to purchases of materials that are ordered for the customers; writing and communicating notes of communication between the vendor, the customer, and the president of the petitioner in an intelligent manner; communicating and articulating all shipping requirements; handling all communications with the trucking company to ensure promised date of arrival; generating sales order and checking for pricing, shipping requirements and overall accuracy; maintaining receiving documents and status of all open orders; matching invoices against purchase orders for accuracy and then given to proper personnel for payment; communicating to manager and other office personnel to ensure customer needs and all types of potential problems; preparing an accurate weekly sales order report that is forwarded to the president of the company, and any other personnel needing this information.

The petitioner stated that the minimum requirement for the position is a bachelor's degree in Business Administration.

The director determined that the proffered position was not a specialty occupation. The director found that the proposed duties, and stated level of responsibility do not indicate a complexity or authority which is beyond that normally encountered in the occupational field. The duties of the proffered position are performed by a purchasing manager, buyer, or purchasing agent, and the Department of Labor's *Occupational Outlook Handbook* (the *Handbook*) explains that these occupations do not require a bachelor's degree in a specific specialty. The director concluded that industry organizations prefer rather than require a bachelor's degree in a related specialty for the position of purchasing manager.

On appeal, counsel states that the petitioner requires a minimum of a four year degree for the proffered position due to the complexity of the duties required in order to plan, manage and control the flow of orders or transactions. Counsel contends that the position requires knowledge, both theoretical and applied, which is almost exclusively obtained through studies at an institution of higher learning. Counsel maintains that the petitioner has always required a minimum of a bachelor's degree for the purchasing manager position. Finally, counsel asserts that the degree requirement is common to the industry and submits internet job postings for "parallel positions."

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 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.Minn 1999)(quoting *Hird/Blaker Corp. v. Sava*, 712 F. Supp. 1095, 1102 (S.D.N.Y. 1989)).

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.

A thorough review of the *Handbook* discloses that the duties of the proffered position are performed by purchasing managers, buyers and purchasing agents. Purchasing managers, buyers and purchasing agents seek to obtain the highest quality merchandise at the lowest possible purchase cost for their employers. The *Handbook* states that purchasing managers, buyers, and purchasing agents evaluate supplies on the basis of price, quality, service support, availability, reliability, and selection. Purchasers and buyers determine which commodities are best, choose the suppliers of the product or service, negotiate the lowest price, and award contracts. In order to accomplish these tasks successfully, they 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. The *Handbook* mentions that buyers and purchasing agents evaluate suppliers on price, quality, service support, availability, reliability, and selection, and they review catalogs, industry and company publications, directories, and trade journals to find suppliers.

According to the *Handbook*:

These workers acquire materials, parts, machines, supplies, services and other inputs to the production of a final product.

Similarly, the beneficiary will participate in arranging for the purchase of materials to fill the needs of those orders that are based upon forecasted requirements.

The *Handbook* reports:

Qualified persons may begin as trainees, purchasing clerks, expeditors, junior buyers, or assistant buyers. Retail and wholesale firms prefer to hire applicants who have a college degree and who are familiar with the merchandise they sell and with wholesaling and retailing practices. Some retail firms promote qualified employees to assistant buyer positions; others recruit and train college graduates as assistant buyers. Most employers use a combination of methods.

Educational requirements tend to vary with the size of the organization. Large stores and distributors, especially those in wholesale and retail trade, prefer applicants who have completed a bachelor's degree program with a business emphasis.

The petitioner fails to establish the first criterion because the *Handbook* states that large stores and distributors prefer, but do not require, applicants with bachelor's degrees with a business emphasis and that retail and wholesale firms prefer, but do not require, applicants who have a college degree, though not necessarily in a specific specialty. The *Handbook* explains that a bachelor's degree is not required for a purchasing manager position. Accordingly, the petitioner cannot establish that a baccalaureate or higher degree or its equivalent in a specific specialty is the normal minimum requirement for entry into the proffered position.

To establish the second criterion - that a specific degree requirement is common to the industry in parallel positions among similar organizations - counsel submits internet job postings from a wide variety of companies which include a manufacturer of irrigation products, a food processing plant, and city management.

This evidence fails to establish that a specific baccalaureate degree is common to the industry in parallel positions among similar organizations. Some postings state that the positions require a bachelor's degree and other postings indicate that equivalent experience is sufficient. Another deficiency in the postings is that the companies are dissimilar to the petitioner. For example, the City of Fullerton is a city government; and Hunter Industries makes irrigation products. Moreover, most of the advertised job descriptions are dissimilar to the proffered position. For instance, MRI of Sandias' posting requires a minimum of three years experience in a homebuilding related industry, the food processing plant position requires managing a small team responsible for day-to-day activities and prefers CPM or APICS certification. Consequently, the postings fail to establish that there is a specific baccalaureate degree as a common industry-wide requirement.

No evidence is in the record that would show the proffered position is so complex or unique that it can be performed only by an individual with a degree. Again, the *Handbook* reveals that the proffered position is performed by purchasing managers, positions that do not require a bachelor's degree in a specific specialty.

Nor is there evidence in the record to establish the third criterion at 8 C.F.R. § 214.2(h)(4)(iii)(A): that the petitioner normally requires a degree or its equivalent for the position. Counsel contends that two submitted resumes of the petitioner's other employees hired for the purchasing manager job position evidence the minimum bachelor's degree requirement. However, the petitioner has not established that these persons were employees of the petitioner in the position of purchasing manager. The petitioner has not supplied payroll documents, employment contracts or degrees as evidence. Going on record without supporting documentary evidence is not sufficient for purposes of meeting the burden of proof in these proceedings. *Matter of Treasure Craft of California*, 14 I&N Dec. 190 (Reg. Comm. 1972).

The fourth criterion at 8 C.F.R. § 214.2(h)(4)(iii)(A) requires that the petitioner establish 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. Counsel asserts that the "petitioner requires a minimum of a four year degree for the proffered position due to the complexity of the duties required in order to plan, manage and control the flow of orders or transactions at [sic] the utmost

professional manner.” The petitioner has not described the specific duties and responsibilities to be performed by the beneficiary in relation to its particular business interests. It cannot be concluded 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. Once again, the *Handbook* reveals that the proffered position is performed by purchasing managers, occupations not requiring a bachelor’s degree in a specific specialty.

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.