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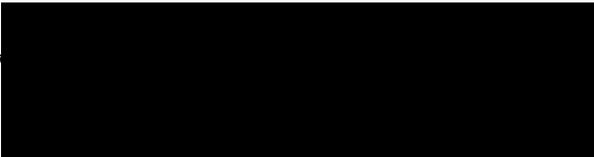
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FILE: LIN 04 054 52198 Office: NEBRASKA SERVICE CENTER Date: **AUG 09 2005**

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

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 Japanese petitioner, Yamamoto Corporation, imports housing construction materials for the Japanese housing market from the United States. It states in its undated cover letter that, due to the complexity of such trade, it will open a branch office, named YMT Corp., in Woodburn, Oregon. It seeks to employ the beneficiary as the export manager of this branch office. The petitioner endeavors to classify the beneficiary as a nonimmigrant worker in a specialty occupation pursuant to § 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 a brief and copies of previously submitted supporting 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 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 an export manager. Evidence of the beneficiary's duties includes: the I-129 petition; the petitioner's undated letter in support of the petition; and the petitioner's response to the director's request for evidence. According to the petitioner's undated cover letter, the beneficiary would perform duties that entail: directing the petitioner's foreign sales; negotiating purchasing contracts; directing clerical staff; and handling shipping activities. The petitioner indicated that a qualified candidate for the job would possess a bachelor's degree in business, economics, or finance.

The director found that the proffered position, which combines the duties of purchasing managers, buyers, purchasing agents, and cargo and freight agents, was not a specialty occupation. Citing to the Department of Labor's (DOL) *Occupational Outlook Handbook (Handbook)*, the director noted that the minimum requirement for entry into the position was not a baccalaureate degree or its equivalent 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, in part, that the proffered position is that of a sales and import/export manager. Counsel states further that, according to the DOL's *O*Net* and *Dictionary of Occupational Titles (DOT)*, the proffered position corresponds to advertising, marketing, promotions, public relations, and sales manager positions, as described in the *Handbook*. Counsel also states that the proffered position combines the duties of purchasing managers, buyers, and purchasing agents with those of marketing managers, all of which require a bachelor's degree. Counsel submits copies of previously submitted supporting documentation, including an academic opinion.

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

The AAO routinely consults the *Handbook* for its information about the duties and educational requirements of particular occupations. The AAO does not concur with counsel that the proffered position is a specialty occupation. A review of the *Handbook*, 2004-2005 edition, at page 63, finds that educational requirements for purchasing managers, buyers, and purchasing agents tend to vary with the size of the organization. Large stores and distributors, especially those in wholesale and retail trade, prefer individuals who have completed a bachelor's program with a business emphasis. In this case, information on the petition indicates that the petitioner has only 35 employees and, therefore, is not a large store or distributor. Furthermore, the *Handbook* indicates that a bachelor's degree with a business emphasis is preferred, rather than required, by large stores and distributors. No evidence in the *Handbook* indicates that a baccalaureate or higher degree, or its equivalent, is required for a purchaser or purchasing agent as described in the instant petition. Moreover, no evidence in the

Handbook indicates that a baccalaureate or higher degree, or its equivalent, is required for a purchasing manager, buyer, or purchasing agent job. It is additionally noted that the exact nature of the petitioner's branch office is unclear.¹

The record contains an opinion from a dean of an accredited U.S. university, who asserts that positions such as the proffered position require a bachelor's degree in business administration. The writer, however, does not provide evidence in support of his assertion. Going on record without supporting documentary evidence, however, is not sufficient for purposes of meeting the burden of proof in these proceedings. *Matter of Soffici*, 22 I&N Dec. 158, 165 (Comm. 1998) (citing *Matter of Treasure Craft of California*, 14 I&N Dec. 190 (Reg. Comm. 1972)).

It is additionally noted that the field of business administration is not a specialized field of study. *See Matter of Michael Hertz Associates*, 19 I&N Dec. 558 (Comm. 1988).

The record also contains a copy of the publication, *Marketing and Distribution, 10 Career Information Center, Eighth Edition*, which, according to counsel, shows that a bachelor's degree is usually the minimum requirement for entry into the occupation. A review of this publication, however, finds that, while many employers prefer applicants who have a college degree in law, engineering, or accounting, a liberal arts degree may also be acceptable. No evidence in this publication, however, indicates that a baccalaureate degree in a specific specialty is required for the proffered position.

The record also contains a copy of the publication, *2000 Chronicle Guidance Publications, Inc. Export-Import Specialists*, which, according to counsel, shows that a college education is required for an export manager position. A review of this publication, however, finds that, while college may be the best way to prepare for most import-export management work, no evidence in the publication indicates that such college preparation is required.

Regarding parallel positions in the petitioner's industry, the petitioner submitted Internet job postings for positions related to export managers. There is no evidence, however, to show that the employers issuing those postings are similar to the petitioner, or that the advertised positions are parallel to the instant position. The advertisements are for export managers in unrelated industries such as aerospace, aviation, defense, and heavy equipment manufacturing. Thus, the advertisements have no relevance.

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, therefore, has 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. As counsel does not address this issue on appeal, it will not be discussed further.

¹ An Internet search of the address that is listed on the petition for the petitioner's branch office [REDACTED] brings up the website of the beneficiary's former employer, Universal Forest Products. The record, however, contains no explanation of the relationship between these two businesses.

Finally, the AAO turns to the criterion at 8 C.F.R. § 214.2(h)(4)(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 do not appear so specialized and complex as to require the highly specialized knowledge associated with a baccalaureate or higher degree, or its equivalent, in a specific specialty. Therefore, the evidence does not establish that the proffered position is a specialty occupation under 8 C.F.R. § 214.2(h)(4)(iii)(A)(4).

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.