

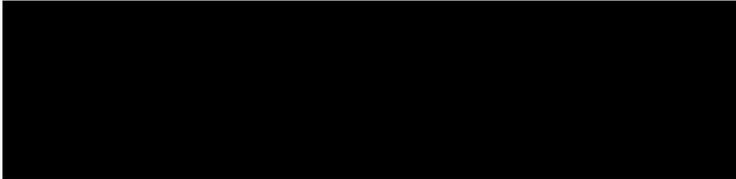
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U.S. Citizenship
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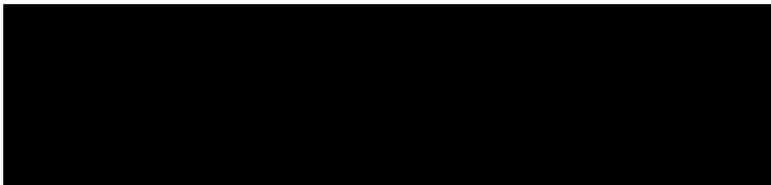


FILE: WAC 03 073 54178 Office: CALIFORNIA SERVICE CENTER Date: AUG 10 2005

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 director of the California 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 a supplier of goods and services to the Federal Government, with 36 employees. It seeks to employ the beneficiary as a bidding analyst 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 based on his determination that the proffered position was not a specialty occupation.

The record of proceeding before the AAO contains: (1) Form I-129 and supporting documentation; (2) the director's request for evidence; (3) the petitioner's response to the director's request for evidence; (3) the director's denial letter; and (4) Form I-290B, with counsel's brief. The AAO reviewed the record in its entirety before reaching its decision.

The issue before the AAO is whether the petitioner's proffered position qualifies as a specialty occupation. To meet its burden of proof in this regard, a petitioner must establish that the job it is offering to the beneficiary meets the following statutory and regulatory requirements.

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 one 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:

An 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 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 above criteria to mean not just any baccalaureate or higher degree, but one in a specific specialty that is directly related to the proffered position.

To determine whether a particular job qualifies as a specialty occupation, CIS does not simply rely on a position's title. The specific duties of the proffered position, combined with the nature of the petitioning entity's business operations, are factors to be considered. CIS must examine the ultimate employment of the alien, and determine whether the position qualifies as a specialty occupation. *Cf. Defensor v. Meissner*, 201 F.3d 384 (5th Cir. 2000). The critical element is not the title of the position nor an employer's self-imposed standards, but whether the position actually requires the theoretical and practical application of a body of highly specialized knowledge, and the attainment of a baccalaureate or higher degree in the specific specialty as the minimum for entry into the occupation, as required by the Act.

The petitioner states that it is seeking the beneficiary's services as a bidding analyst. Evidence of the beneficiary's duties includes: the Form I-129; a December 12, 2002 letter of support from the petitioner submitted at the time of filing; and the petitioner's September 29, 2003 response to the director's request for evidence.

At the time of filing, the petitioner indicated that the beneficiary would generally perform supply and bidding analysis for medical, health and nutritional products and would specifically be required to:

- Apply field knowledge on related health, nutritional and medical products published on CBDisk and screen the orders by federal agencies;
- Refer the order from the [REDACTED] collect and organize information from supplier or source, which of them could make the delivery of the order made by the federal agency;
- Analyze the cost for the petitioner to purchase the goods or services which will be the basis of the bidding;
- Analyze bidding competitors and each of their conditions, gathering information to perform an in-depth analysis on possible quality deviation and production time-line estimation; and
- Follow up to ensure product specifications and other conditions of the federal agency's order are met.

To determine whether the duties just described are those of 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; and 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 considered by the AAO when determining these criteria include: whether the Department of Labor's (DOL) *Occupational Outlook Handbook (Handbook)*, on which the AAO routinely relies for the educational requirements of particular occupations, 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 his denial, the director identified the proffered position as being closely aligned to the occupation of cost estimator, as described in the 2002-2003 edition of the DOL *Handbook*. On appeal, counsel contends that the director erred in reaching such a conclusion, that the duties of a cost estimator are unrelated to those of a bidding analyst. The AAO agrees. Based on its own reading of the *Handbook*, it does not find the proffered position to reflect the duties of a cost estimator. Instead, the duties of the proffered position appear to place it within the occupation of purchasing managers, buyers, and purchasing agents, as discussed at pages 61-62 of the *Handbook*.

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 use by 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 services is received at the appropriate time

Purchasing managers, buyers, and purchasing agents evaluate suppliers on the basis of price, quality, service support, availability, reliability, and selection. To assist them in their search for the right suppliers, they review catalogs, industry and company publications, directories and trade journals. Much of this information is now available on the Internet Once all of the necessary information on suppliers is gathered, orders are placed and contracts are awarded to those suppliers who meet the purchaser’s needs

...

Purchasing specialists who buy finished goods for resale are employed by wholesale and retail establishments, where they commonly are known as buyers or merchandise managers Wholesale buyers purchase goods directly from manufacturers or from other wholesale firms for resale to retail firms, commercial establishments, institutions, and other organizations

The AAO finds the above description of the work performed by purchasing specialists who buy goods for resale by their employers to be closely aligned to the duties of the proffered position. Like a purchasing specialist, the beneficiary would be required to analyze and compare the health, nutritional and medical products provided by a range of suppliers and their costs to determine which should be purchased by the petitioner to meet its contractual obligations to the U.S. Government. The duties listed by the petitioner describe the step-by-step process to be used by the beneficiary in performing the comparative analysis necessary for the petitioner to “obtain the highest quality merchandise at the lowest possible purchase cost.” This is the work of purchasing specialists.

To determine what knowledge and skills are required for entry-level employment as a purchasing specialist, the AAO again turns to the *Handbook*, at pages 61-62, for its discussion of the educational requirements imposed on purchasing specialists or buyers.

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.

In that the *Handbook* states that individuals seeking work as purchasing managers, buyers and purchasing agents may be hired on the basis of experience, the AAO concludes that the proffered position does not constitute employment that normally requires job applicants to hold a baccalaureate or higher degree, or its equivalent. While the AAO notes that retail and wholesale firms may prefer to hire applicants who have college degrees, employer preference is not synonymous with the normally required language of the first criterion. Employer preference indicates only that employers find degrees desirable. It is, therefore, insufficient to establish that a baccalaureate or its equivalent is “normally the minimum requirement for entry into the particular position.” Accordingly, the AAO finds that the position does not qualify as a specialty occupation under the first criterion at 8 C.F.R. § 214.2(h)(4)(iii)(A).

The AAO now turns to a consideration of whether the proffered position may qualify as a specialty occupation under either of the prongs of the second criterion at 8 C.F.R. § 214.2(h)(4) – that a degree requirement is common to the industry in parallel positions among similar organizations, or the proffered position is so complex or unique that it can be performed only by an individual with a degree. It finds the petitioner to have submitted no evidence to establish either that a baccalaureate degree is the norm for a bidding analyst within its industry or that the position itself is so complex that its performance requires a degreed individual. Accordingly, the proffered position cannot be established as a specialty occupation under the second criterion.

The AAO next considers the criteria at 8 C.F.R. § 214.2(h)(4)(iii)(3) and (4): the employer normally requires a degree or its equivalent for the position; and the nature of the specific duties is so specialized and complex that the knowledge required to perform them is usually associated with the attainment of a baccalaureate or higher degree.

To determine a petitioner’s ability to meet the third criterion, the AAO normally reviews the petitioner’s past employment practices, as well as the histories, including names and dates of employment, of those employees with degrees who previously held the position, and copies of those employees’ diplomas. On appeal, counsel states that, as the proffered position requires knowledge in health, nutritional, and medical products, the petitioner requires individuals seeking employment as bidding specialists to hold bachelor’s degrees in nutrition, pre-med or a related field or the equivalent. He notes that the petitioner’s response to the director’s request for evidence submitted proof of its past hiring practices in the form of a signed declaration from one of its bidding specialists, which indicates he holds a baccalaureate degree in pharmacy, and an employment sheet signed by the petitioner, which states that the petitioner currently employs two individuals with baccalaureate degrees. One of these employees is the bidding analyst just noted and the other is a contract

specialist with a degree in business administration. This evidence will not, however, satisfy the requirements of the third criterion.

Although the petitioner submitted a signed employment sheet indicating two of its employees hold degrees and a signed statement from one of those employees regarding his degree, the record before the AAO contains no actual documentation of the petitioner's employment of these individuals or their degrees. The petitioner has submitted no evidence to support its claim of employment, i.e., a payroll document or tax form identifying these individuals as its employees. Further, the record contains no documentation of the undergraduate degrees awarded to the two employees listed by the petitioner in its employment sheet, e.g., diplomas or letters of confirmation issued by the academic institution each attended. Simply going on record without supporting documentary evidence is not sufficient for the 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)). The AAO also notes the disparate nature of the degrees, in pharmacy and in business administration, would not prove a degree requirement in a specialty.

The fourth criterion at 8 C.F.R. § 214.2(h)(4)(iii)(A) requires that a petitioner establish that the nature of the specific duties of the position is so specialized and complex that the knowledge required to perform them is usually associated with the attainment of a baccalaureate or higher degree. Although counsel does not specifically assert that the proffered position may be established as a specialty occupation under the fourth criterion, he contends, on appeal, that the proffered position requires the theoretical and practical application of knowledge in health, nutritional, and medical products. The AAO does not agree. It has reviewed the duties of the proffered position to determine whether they satisfy the specialized and complex threshold established by the fourth criterion, but does not find them to require the beneficiary to have a higher degree of knowledge and skill than would normally be expected of purchasing agents who evaluate products and services across a range of complex and technical businesses. As a result, the proffered position is not characterized by the specialization and complexity that would satisfy the requirements at 8 C.F.R. § 214.2(h)(4)(iii)(A)(4).

Therefore, for the reasons related in the preceding discussion, the petitioner has failed to establish that the proffered position meets the requirements for a specialty occupation set forth at 8 C.F.R. § 214.2(h)(4)(iii)(A). 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.