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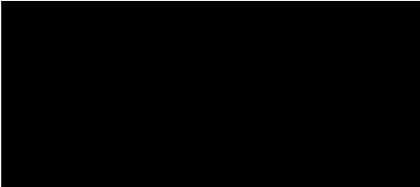
U.S. Department of Homeland Security
20 Mass. Ave., N.W., Rm. A3042
Washington, DC 20529



U.S. Citizenship
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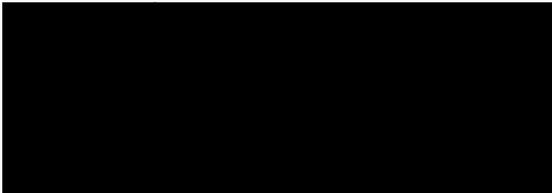
FILE: EAC 04 084 53721 Office: VERMONT SERVICE CENTER Date: DEC 15 2005

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, 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 petitioner is a clothing retail shop that seeks to employ the beneficiary as an assistant manager/buyer and to classify her 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 grounds that the petitioner failed to establish that the proposed position meets the definition of specialty occupation at 8 C.F.R. § 214.2(h)(4)(iii)(A). 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 bachelor's or higher degree, but one in a specific field of study that is directly related to the proposed 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 with supporting documentation. The AAO reviewed the record in its entirety before issuing its decision.

The petitioner seeks the beneficiary's services as an assistant manager/buyer. Evidence of the beneficiary's duties includes Form I-129 with attachments and the petitioner's response to the director's request for evidence. According to this evidence, the beneficiary's duties would include: creating and maintaining new and existing business relationships with clothing manufacturers and distributors of women's and children's formal fashion to ensure the continued supply of items offered for sale and keeping control of inventory; networking the petitioner's personal computer with the company computer; assisting in the development of the complete concept for the season, and adapting it appropriately to the individual assigned the merchandise area; developing knowledge of the brand by spending time with customers in brand stores, distributors, and competitive and imitator businesses; having a working technical knowledge of product promotion and marketing strategies; promoting designs based on merchant line plan and incorporating feedback for finalization; presenting a line of merchandise persuasively in a team atmosphere to merchants in sample form; selecting items that meet the distributor's business requirements; being proficient in normal business computer and internet software, training employers for computer usage; possessing strong organizational skills; and participating in planning discussions using her familiarity with the fast-moving retail fashion market. The petitioner states that the position requires a bachelor's degree or its equivalent in business administration, fashion design, or management marketing.

The director asked the petitioner to submit the following: evidence that the position is a specialty occupation; a detailed description of duties, including the percentage of time to be spent on each duty; the job posting for the proposed position; and the number of the petitioner's employees, past or present, working as buyers, with documentation of the educational attainment of those employees.

In response, the petitioner submitted an opinion letter from [REDACTED] with accompanying credentials, a more detailed job description noting that the proposed position requires a bachelor's degree in business administration, fashion design, or management marketing, the job announcement for the proposed position, and tax documents relating to the petitioner's business.

The director denied the petition on the basis that the evidence did not establish that the proposed position qualified as a specialty occupation.

On appeal, counsel submits evidence that includes several previously submitted documents.

Upon review of the record, the AAO concludes that the petitioner has failed to establish that its assistant manager/buyer position meets any of the four criteria outlined in 8 C.F.R. §214.2(h)(4)(iii)(A). Therefore, the proposed position is not a specialty occupation.

Factors often considered by CIS to determine whether these criteria have been met 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/Baker Corp. v. Sava*, 712 F. Supp. 1095, 1102 (S.D.N.Y. 1989)).

The AAO turns first to the criterion at 8 C.F.R. § 214.2(h)(4)(iii)(A)(I) - a bachelor's or higher degree is normally the minimum requirement for entry into the proposed position. To determine whether a position qualifies as a specialty occupation, Citizenship and Immigration Services (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 highly specialized knowledge, and the attainment of a bachelor's degree in a specific field of study as the minimum for entry into the occupation.

The AAO routinely consults the *Handbook* for its information about the duties and educational requirements of particular occupations. A thorough review of the *Handbook* reveals that the duties of the proposed position fall within those noted for buyers. The *Handbook* describes what buyers do in the following way:

[B]uyers typically buy items for resale. . .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 service is received at the appropriate time. . .buyers and purchasing agents 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* notes that educational requirements for retail buyer positions tend to vary with the size of the shop. Retail and wholesale firms prefer to hire applicants with a college degree and who are familiar with the merchandise they sell and with wholesaling and retailing practices.

The petitioner fails to establish the first criterion because the *Handbook* states that retailers prefer, but do not require, applicants with college degrees. In addition, the *Handbook* does not specify whether those degrees are from 2-year or 4-year colleges. Although the *Handbook* indicates that large stores prefer their buyers to have degrees with a business emphasis, it does not indicate that this is always a requirement. As noted above, for a position to be considered a specialty occupation under this first criterion, it must require a bachelor's degree in a specific field of study as a minimum for entry into the occupation. Accordingly, the petitioner cannot establish that a bachelor's degree in a specific field of study is the normal minimum requirement for entry into the proposed position. The AAO notes that the petitioner has not submitted evidence that the beneficiary holds a bachelor's degree in any field of study.

The AAO turns next to the first alternative prong of the second criterion at 8 C.F.R. § 214.2(h)(4)(iii)(A)(2) - the degree requirement is common to the industry in parallel positions among similar organizations. The petitioner asserts that "all apparel design and fashion firms require that their Merchandisers have, at a minimum, a Bachelor of Business Administration degree in Management, Marketing, Fashion Design, or a related field with specialized training in design, marketing, public relations, business law, computer software, trend analysis, and related technology..." The petitioner, however, does not submit any evidence to support this assertion. Going on record without supporting documentary evidence 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)).

The AAO turns next to the second alternative prong of the second criterion at 8 C.F.R. § 214.2(h)(4)(iii)(A)(2) - a particular position is so complex or unique that it can be performed only by an individual with a bachelor's degree in a specific field of study. The petitioner asserts that the duties of the proposed position are so complex that a bachelor's degree in business administration or the equivalent is the minimum requirement for the job. The duty description the petitioner provided for the position is not

distinguishable from other assistant manager/buyer positions, positions that do not require a bachelor's degree in a specific field of study.

The AAO turns next to the third 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. The petitioner implies that the proposed position is newly created and asserts that it requires a bachelor's degree in business administration for this position. As the petitioner cannot offer proof of past hiring practices for the position, the petitioner has not met its burden of proving this criterion.

Finally, the AAO turns to the fourth 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 the 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 bachelor's or higher degree, or its equivalent, in a specific field of study. Again, the *Handbook* reveals that the proposed position, retail buyer, is not a position that requires a bachelor's degree 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).

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 failed to sustain that burden and the appeal shall accordingly be dismissed.

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