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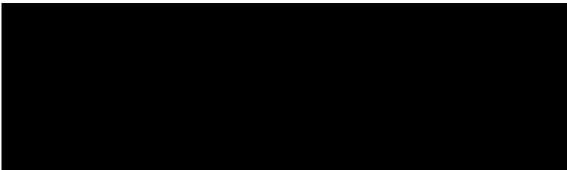
FEB 08 2007

FILE: WAC 02 270 53401 Office: CALIFORNIA SERVICE CENTER Date:

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 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 imports, exports, sells, and distributes products. It seeks to employ the beneficiary as a purchasing agent. 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, counsel submits states that the petitioner normally requires a bachelor's degree for the proffered position, and submits additional and previously submitted 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 documentation. The AAO reviewed the record in its entirety before issuing its decision.

The petitioner is seeking the beneficiary's services as a purchasing agent. 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 coordinating activities associated with procuring automobile parts and related products; conferring with vendors for product information including price, availability, delivery, quality, material, and size; selecting products; evaluating values and quality of products; preparing purchase orders and bid requests; reviewing bid proposals and negotiating contracts; and discussing defective or unacceptable goods with inspection and quality control personnel to determine problems and correct them. The petitioner's May 5, 2003 letter elaborated on the duties of the proffered position. The petitioner stated that a candidate for the proffered position must possess a bachelor's degree in business, preferably in international business or marketing.

The director determined that the proffered position was not a specialty occupation. The director found that the proffered position's duties are performed by purchasers and buyers, and that the Department of Labor's (DOL) *Occupational Outlook Handbook* (the *Handbook*) explains that employers do not require a bachelor's degree in a specific specialty for such occupations. The director stated, in part, that large stores and distributors, especially those in wholesale and retail trade, prefer applicants who have completed a bachelor's degree with an emphasis in business. According to the director, the *Handbook* revealed that there is no industry-wide minimum requirement of a bachelor's degree in a specific specialty. The director found the submitted evidence did not indicate that the petitioner normally requires candidates to possess a bachelor's or higher degree in the field. Finally, the director concluded that the proposed duties and stated level of responsibility did not indicate a complexity or authority beyond what is normally encountered in the occupational field, and that the evidence did not show that the job offered could not be performed by an experienced person whose educational training fell short of a baccalaureate degree.

On appeal, counsel states that the director did not consider the submitted evidence, and that the proffered position is a specialty occupation. Counsel states that the beneficiary will perform a make versus buy analysis that requires analytical skills, and will deal with issues related to foreign contracts and international law, mergers and acquisitions, and commodity exchange rules. Counsel submits evidence about the make versus buy analysis, emphasizing that the *Handbook* does not describe this complex analysis. Counsel states that the response to the request for evidence described the beneficiary's duties associated with marketing and analyzing marketing trends, international business, and buying trends. According to counsel, the petitioner hires only applicants with at least a bachelor's degree for the proffered position, and submits additional evidence about this.

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.

The *Handbook* discloses that the duties of the proffered position are performed by buyers. The *Handbook* states:

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 service 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. . . . At meetings, trade shows, conferences, and suppliers' plants and distribution centers, they examine products and services, assess a supplier's production and distribution capabilities, and discuss other technical and business considerations that influence the purchasing decision. . . .

The *Handbook* reports that employers do not require a specific bachelor's degree for these occupations; it states:

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.

Selecting products and determining their purchase price, performing the make versus buy analysis, guiding the selection process of suppliers and monitoring their performance and the quality of their products, and preparing purchase orders and bid requests are some of the beneficiary's duties. As described in the *Handbook*, these duties are performed by buyers. The *Handbook* states that buyers buy items for resale. They determine which commodities are best, "choose the suppliers of the product," and "negotiate the lowest price, and award contracts that ensure that the correct amount of the product or service is received at the appropriate time." They also "evaluate suppliers on the basis of price, quality, service support, availability, reliability, and selection."

The *Handbook* indicates that employers do not require a bachelor's degree in a specific specialty for a buyer. Consequently, the petitioner fails to establish that a baccalaureate or higher degree or its equivalent in a specific specialty is the normal minimum requirement for entry into the particular position, purchasing agent, because the *Handbook* reveals that the proffered positions's duties are performed by a buyer, an occupation that does not require a bachelor's degree in a specific specialty.

There is no evidence in the record to establish the second criterion - that a specific degree requirement is common to the industry in parallel positions among similar organizations or that the proffered position is so complex or unique that it can be performed only by an individual with a degree. The beneficiary's duty to perform a make versus buy analysis would be encompassed within the role of a buyer because, as already discussed, the *Handbook* explains that buyers "discuss other technical and business considerations that influence the purchasing decision." Accordingly, the petitioner fails to satisfy the regulation at 8 C.F.R. §§ 214.2(h)(4)(iii)(A)(2).

Counsel claims that the petitioner established the third criterion at 8 C.F.R. § 214.2(h)(4)(iii)(A): that the petitioner normally requires a bachelor's degree or its equivalent in a specific specialty for the position. The evidentiary record contains the petitioner's August 22, 2003 letter; it indicates that five employees occupy purchasing agent positions with the petitioner or "its related companies." The AAO observes that the petitioner does not explain which of the five persons it employs (only these employees may be used to establish the third criterion at 8 C.F.R. § 214.2(h)(4)(iii)(A)(3)), and does not submit independent evidence such as copies of the degrees held by the employees to corroborate the assertions in the letter. Simply going on record without supporting documentary evidence is not sufficient for the purpose of meeting the burden of proof in these proceedings. *Matter of Treasure Craft of California*, 14 I&N Dec. 190 (Reg. Comm. 1972).

Furthermore, the petitioner's creation of a position with a perfunctory bachelor's degree requirement will not mask the fact that the position is not a specialty occupation. 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 or 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.¹ To interpret the regulations any other way would lead to absurd results: if CIS were limited to reviewing a petitioner's self-imposed requirements, then any alien with a bachelor's degree could be brought into the United States to perform a menial, non-professional, or an otherwise non-specialty occupation, so long as the employer required all such employees to have baccalaureate or higher degrees. *See id.* at 388. As already discussed, the *Handbook* reveals that the proffered position is performed by a buyer, an occupation that does not require a specific bachelor's degree.

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. Once again, the *Handbook* reveals that the proffered position is performed by a buyer, an occupation that does not require a bachelor's degree in a specific specialty. Further, as already discussed, the make versus buy analysis is encompassed within the responsibilities of a buyer.

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.

¹ The court in *Defensor v. [REDACTED]* observed that the four criteria at 8 C.F.R. 214.2(h)(4)(iii)(A) present certain ambiguities when compared to the statutory definition, and "might also be read as merely an additional requirement that a position must meet, in addition to the statutory and regulatory definition." *See id.* at 387.