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U.S. Department of Homeland Security
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Washington, DC 20529

U.S. Citizenship and Immigration Services

D2

[redacted]

FILE: WAC 04 059 53511 Office: CALIFORNIA SERVICE CENTER Date: JAN 03 2005

IN RE: Petitioner: [redacted]
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:

[redacted]

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 is a corporation engaged in the wholesale import/export business. In order to employ the beneficiary as a senior merchandiser, the petitioner 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 on the basis that the petitioner had failed to establish that the proffered position met the requirements of a specialty occupation.

On appeal, counsel maintains that the petition should have been approved because, according to counsel, the petitioner had established that the proffered position requires at least a bachelor's degree in business administration.

The director's decision to deny the petition was correct. The AAO based this decision upon its consideration of the entire record of proceeding before it, which includes: (1) the petitioner's Form I-129 and the supporting documentation filed with it; (2) the director's request for additional evidence (RFE); (3) the matters submitted in response to the RFE; (4) the director's denial letter; and (5) the Form I-290B and counsel's brief.

Section 101(a)(15)(H)(i)(b) of the Act, 8 U.S.C. § 1101(a)(15)(H)(i)(b), provides a nonimmigrant classification for aliens who are coming temporarily to the United States to perform services in a specialty occupation.

Section 214(i)(l) of the Act, 8 U.S.C. § 1184 (i)(l), 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.

Thus, it is clear that Congress intended this visa classification only for aliens who are to be employed in an occupation that requires the theoretical and practical application of a body of highly specialized knowledge that is conveyed by at least a baccalaureate or higher degree in a specific specialty.

Consonant with section 214(i)(1) of the Act, the regulation at 8 C.F.R. § 214.2(h)(4)(ii) states that a specialty occupation means an occupation:

> which [1] 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 [2] 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." (Italics added.)

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) has consistently interpreted 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. Applying this standard, CIS regularly approves H-1B petitions for qualified aliens who are to be employed as engineers, computer scientists, certified public accountants, college professors, and other such professions. These occupations all require a baccalaureate degree in the specific specialty as a minimum for entry into the occupation and fairly represent the types of professions that Congress contemplated when it created the H-1B visa category.

It must be noted that a position will not qualify as a specialty occupation by requiring a generalized baccalaureate degree in business administration, that is, one without a major or concentration in a specific business specialty. Counsel's asserting a contrary view is erroneous. The petitioner must demonstrate that the proffered position requires a precise and specific course of study that relates directly and closely to the position in question. Since there must be a close corollary between the required specialized studies and the position, the requirement of a degree with a generalized title, such as business administration or liberal arts, without further specification, does not establish the position as a specialty occupation. *See Matter of Michael Hertz Associates*, 19 I&N Dec. 558 (Comm. 1988), a precedent decision that is binding on all CIS employees in the administration of the Act in accordance with 8 C.F.R. § 103.3(c).

The petitioner's letter of support that was submitted with the Form I-129 includes this description of the business context in which the beneficiary would work:

> The company's principle [sic] business activity involves the wholesale development and worldwide distribution of high quality consumer fabrics for the apparel and accessory

> markets. We sell our products to hundreds of different retailers and private label customers and to distributors around the world. Retail customers purchase finished goods directly from us and then sell the product through their retail stores to the consumer marketplace. Distributors purchase finished goods directly from our company and then distribute [them] to retailers in the international marketplace.
>
> Due to the fact that the business must operate within a highly competitive environment, the hired Senior Merchandiser is required to be highly intelligent with updated knowledge in buying services and emerging world markets. Growth in our industry has been rapid, and, accordingly, we need the continued services [of the beneficiary] to perform these duties for our company. We anticipate that her services will be needed for a three year period.

The aforementioned letter of support (at page 2) noted that the beneficiary was needed to "improve, service, and expand the sales operations of our company worldwide." On appeal, counsel observes that the beneficiary would report directly to the petitioner's president (brief, at page 5), and that she would be required to "apply appropriate analytical techniques" to responsibilities that include "sales records, inventory levels and identification of foreign and domestic suppliers in relation to changes affecting both the supply and demand of products and materials" (brief, at page 2). Otherwise, the descriptions of the proposed duties in the petitioner's job announcement, aforementioned letter of support, and letter of response to the RFE are virtually repetitions of the generic information presented in the 2002-2003 edition of the Department of Labor's (DOL) *Occupational Outlook Handbook's* section on purchasing managers, buyers, and purchasing agents.

The petitioner has not satisfied the criterion at 8 C.F.R. § 214.2(h)(4)(iii)(A)(1), which assigns specialty occupation status to a position for which the normal minimum entry requirement is a baccalaureate or higher degree, or the equivalent, in a specific specialty closely related to the position's duties.

The AAO recognizes the *Handbook* as an authoritative source on the duties and educational requirements of a wide variety of occupations. As described in the record, the proffered position substantially comports with, and largely repeats, the 2002-2003 *Handbook* edition's information on purchasing managers, buyers, and purchasing agents. This information indicates that, while persons with a business degree should have the best chances of obtaining a position such as the one proffered here, employers hiring for these positions do not normally require a baccalaureate or higher degree, or the equivalent, in a specific specialty. Accordingly, the petitioner has not satisfied the criterion at 8 C.F.R. § 214.2(h)(4)(iii)(A)(*1*).

Also, the petitioner has not satisfied either of the alternative prongs of 8 C.F.R. § 214.2(h)(4)(iii)(A)(*2*).

The first alternative prong assigns specialty occupation status to a proffered position with a requirement for at least a bachelor's degree in a specific specialty that is common to the petitioner's industry in positions which are both (1) parallel to the proffered position and (2) located in organizations that are similar to the petitioner.

In determining whether there is such a common degree requirement, factors often considered by CIS 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)). Here, the petitioner has asserted, without supporting documentation, that there is a common, industry-wide requirement for a business degree. 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 assertions of counsel do not constitute evidence. *Matter of Obaigbena*, 19 I&N Dec. 533, 534 (BIA 1988); *Matter of Ramirez-Sanchez*, 17 I&N Dec. 503, 506 (BIA 1980). Furthermore, as earlier discussed, a requirement for a generalized degree in business administration would not qualify a position as a specialty occupation, even if the petitioner's industry commonly required that degree.

The evidence of record also does not qualify the proffered position under the second alternative prong of 8 C.F.R. § 214.2 (h)(4)(iii)(A)(*2*). This provides that, instead of proving a common degree requirement, "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." The evidence of record does not distinguish the proffered position as uniquely different or more complex than usual purchasing manager positions that require no degree in a specific specialty.

As the record establishes no history of the petitioner's recruiting and hiring for the proffered position, the petitioner has not met the criterion at 8 C.F.R. § 214.2(h)(4)(iii)(A)(*3*), which is for a position for which the employer normally requires at least a baccalaureate degree or its equivalent in a specific specialty.

Finally, the evidence does not satisfy the criterion at 8 C.F.R. § 214.2(h)(iii)(A)(*4*) for positions with specific duties so specialized and complex that their performance requires knowledge that is usually associated with the attainment of a baccalaureate or higher degree in a specific specialty. The record does not establish that the duties are more specialized and complex than those normally associated with the purchasing manager positions as described in the *Handbook,* and the *Handbook* indicates that these jobs do not normally require a degree in a specific specialty.

As the petitioner has failed to establish that the proffered position qualifies as a specialty occupation under any criterion of 8 C.F.R. § 214.2(h)(4)(iii)(A), the director's decision shall not be disturbed.

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. Accordingly, the appeal will be dismissed.

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