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U.S. Citizenship
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Services

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JUL 11 2005

[Redacted]

FILE: [Redacted] Office: VERMONT 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:

[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 service center director denied the nonimmigrant visa petition and the Administrative Appeals Office (AAO) dismissed a subsequent appeal. The matter is again before the AAO on motion to reopen or reconsider. The motion will be accepted, and the petition is reopened. The petition, however, will be denied.

The petitioner is a consulting and manpower services company that seeks to employ the beneficiary as a contract specialist. The petitioner endeavors to classify the beneficiary as a nonimmigrant worker trainee 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 proffered position did not meet the definition of a specialty occupation. The AAO affirmed the director's findings.

On motion, counsel states that the AAO determined that the position was most like a purchasing agent, as described in the Department of Labor's *Occupational Outlook Handbook (Handbook)*, and that the AAO erred in determining that a variety of educational backgrounds was suitable to enter the field. Counsel also states that the position, as classified by the AAO, has a Department of Labor Job Zone category of 4, which indicates that it is a specialty occupation. Finally, counsel asserts that the *Handbook* states that purchasing agents typically engage in training programs of 1 to 5 years, indicating that the position is sufficiently complex to establish it as a specialty occupation.

A motion to reopen must state the new facts to be proved in the reopened proceeding and be supported by affidavits or other documentary evidence. 8 C.F.R. § 103.5(a)(2). The AAO relied on a position description different from the one the director used. Counsel submits documentation regarding the position as described by the AAO, therefore, the petitioner has met its burden, and the motion is accepted.

The AAO now turns to the merits of the reopened petition. Counsel states that the position of purchasing agent is a specialty occupation, and he submits a copy of the entry regarding purchasing agents from the *Handbook*, as well as copies of the Department of Labor's *Online Wage Library* entries for purchasing agents.

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 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; (5) Form I-290B and supporting documentation; (6) the AAO's decision; and (6) the petitioner's motion to reopen and supporting documents. The AAO reviewed the record in its entirety before issuing its decision.

The petitioner is seeking the beneficiary's services as a contract specialist. The AAO determined that the position was most like a purchasing agent. Evidence of the beneficiary's duties includes: the I-129 petition; additional information submitted with the petition; and the petitioner's response to the director's request for evidence. According to this evidence, the beneficiary would perform duties that entail, in part: negotiating with suppliers to draw up procurement contracts; negotiating, administering, extending, terminating and renegotiating contracts; formulating and coordinating procurement proposals; directing and coordinating activities of workers engaged in formulating bid proposals; evaluating or monitoring contract performance to determine the need for amendments or extensions of contracts and compliance to contractual obligations; approving or rejecting requests for deviations from contract specifications and delivery schedules; arbitrating claims or complaints occurring in the performance of contracts; analyzing price proposals, financial reports and other data to determine the reasonableness of prices; negotiating collective bargaining agreements; serving as liaison officer to ensure fulfillment of obligations by contractors. The petitioner indicated that a qualified candidate for the job would possess a bachelor's degree in business administration, economics, or finance.

The director found that the proffered position was not a specialty occupation, because the record indicated that, while a bachelor's degree appears to be required for the position, there was no requirement that the degree be in a specific specialty. In response to the petitioner's appeal, the AAO determined that the position is similar to a purchasing agent and that the Department of Labor's *Occupational Outlook Handbook (Handbook)* indicates that a variety of educational backgrounds may be suitable to enter the field. In addition, the AAO found that the petitioner failed to establish that a degree in a specific specialty was required to enter the field.

In the motion to reopen, counsel states that the AAO misconstrued the intent of the *Handbook's* statement that a variety of educational backgrounds would be appropriate preparation for the proffered position. Counsel asserts that the *Handbook* supports its claim that a bachelor's degree is required for the position. Counsel also states that the Department of Labor has assigned the position of purchasing agent a JobZone level of 4, which counsel states indicates that a bachelor's degree is required. Counsel states that the *Handbook* indicates that regardless of academic preparation, training periods for purchasing agents last from one to five years, and this reflects the position's complexity.

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. No evidence in the *Handbook* indicates that a baccalaureate or higher degree in a specific specialty, or its equivalent, is required for a purchasing agent job. The *Handbook* states clearly that educational requirements for the position vary with the size of the organization, and while large stores and distributors prefer applicants with a bachelor's degree in a business-related area, it is not required. In addition, many manufacturing firms prefer applicants with a bachelor's or a master's degree in engineering, business, economics, or one of the applied sciences. There is no clear standard for how one prepares for the proffered position, as currently described. The requirements vary by employer as to what course of study might be appropriate or preferred, but it is apparent that a baccalaureate degree in a specific specialty is not required. As a result, the proffered position cannot be considered to have met this criterion.

Counsel asserts that the Department of Labor described purchasing managers as being a Job Zone 4 position, which indicates that a bachelor's degree is required. The Job Zone category does not indicate that a particular occupation requires the attainment of a baccalaureate or higher degree, or its equivalent, in a specific specialty as a minimum for entry into the occupation. A Job Zone category is meant to indicate only the total number of years of vocational preparation required for a particular position. It does not describe how those years are to be divided among training, formal education, and experience, nor specify the particular type of degree, if any, that a position would require.

Regarding parallel positions in the petitioner's industry, the petitioner had previously submitted five Internet job postings, only one of which states that a bachelor's degree *in a specific specialty* is required. In addition,

there is no evidence to show that the employers issuing those postings are similar to the petitioner, or that the advertised positions are parallel to the instant position. Thus, the advertisements have little 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 has, thus, 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. In its response to the director’s request for evidence, the petitioner stated that it employed two contract specialists, who were required to have a bachelor’s degree in business administration, economics, or finance. The record does not contain any evidence to support this claim. 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)).

Finally, the AAO turns to the criterion 8 C.F.R. § 214.2(h)(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.

Counsel asserts that because the *Handbook* states that training for the proffered position requires one to five years, regardless of the individual’s academic preparation, this establishes that the position is highly complex. Simply because a position requires in-house training, it is not necessarily a specialty occupation, even if that training is extensive. For instance, many crafts and trades require years of training, but they are not specialty occupations. To the extent that they are depicted in the record, the duties of the proffered position 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 previous decision of the AAO, dated November 7, 2003, is affirmed. The petition is denied.