

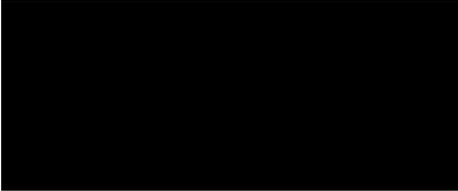
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U.S. Citizenship
and Immigration
Services

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DA

FILE: SRC 03 255 52714 Office: TEXAS SERVICE CENTER Date: JUN 09 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:
[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 matter is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed. The petition will be denied.

The petitioner is an oriental carpet importer, distributor, wholesaler, and retailer that seeks to employ the beneficiary as a project manager. The petitioner endeavors to classify the beneficiary as a nonimmigrant worker in a specialty occupation pursuant to § 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 a brief and a copy of his response to the director's notice of action.

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 project manager. Evidence of the beneficiary's duties includes: the I-129 petition; counsel's September 19, 2003 letter in support of the petition; and counsel's

response to the director's request for evidence. In his September 19, 2003 letter, counsel describes the proposed duties, in part, as follows:

The company is desirous of hiring a project director who can transform company operations into a more vertically-integrated [sic] process. This process should increase the company's ability to procure more carpet product by arranging financing from advance purchases and from traditional credit facilities, and, should enable the company to offer payment terms to 2nd tier distributors and dealers who can increase the company's sales volume. The project manager will also be responsible for directing and coordinating the company's export/import activities to regulate supply against demand, and, formulating a strategy for pricing and distribution based upon seasonal demand, demographic preferences and other factors that the project director finds significant through its own market research. Put simply, the Project Director in this case will be assisting the President in "re-inventing" the company's way of doing business to make it more competitive with other national importers and distributors.

In his response to the director's notice of action, counsel states, in part, as follows:

As was mentioned in the original application, the petitioner does market some of its products through Ebay [sic]. There is a plausible argument that online sales through Ebay [sic] do not necessitate any appreciable marketing or financial expertise. However, online sales account for only 20% percent of the petitioner's total sales. The use of Ebay [sic] simply reflects the petitioner's quest to expand sales by exploiting as many marketing channels as possible. The primary sales channels for petitioner's products are found with distributors, wholesalers, antique and fine art auction houses and a variety of retailers. Sales through these market channels are not conducted online and cannot realistically be conducted online (as with Ebay [sic]) because of different pricing and distribution strategies required to assure patronage from these types of merchants. . . .

Counsel indicated that a qualified candidate for the job would possess a bachelor's degree in economics and finance or an equivalent thereof.

The director found that the proffered position, which is primarily that of a sales manager, was not a specialty occupation. Citing to the Department of Labor's *Occupational Outlook Handbook (Handbook)*, 2002-2003 edition, the director noted that the minimum requirement for entry into the position was not a baccalaureate degree or its equivalent in a specific specialty. The director found further that the petitioner failed to establish any of the criteria found at 8 C.F.R. § 214.2(h)(4)(iii)(A).

On appeal, counsel states, in part, that the petitioner did not address the petitioner's response to the director's request for evidence. Counsel states further that the proffered position is primarily that of a financial manager, and is not a sales manager. Counsel also states that the proposed duties, which include structuring financial packages and handling the budget, are the complex duties of a financial manager.

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. The AAO does not concur with counsel that the proffered position is primarily that of a financial manager. A review of the evidence in the record finds that the petitioner is an eBay "Power Seller." The record also contains evidence that the petitioner was among fifteen winners of an eBay "top seller" contest, "representing the top dollar sales, monthly sales growth and conversion rates on eBay antiques." Although counsel asserts that the petitioner's online sales account for only 20 percent of its total sales, and that its primary sales are found with distributors, wholesalers, antique and fine art auction houses, and a variety of retailers, he provides no evidence in support of these assertions. Without documentary evidence to support the claim, the assertions of counsel will not satisfy the petitioner's burden of proof. The unsupported assertions of counsel do not constitute evidence. *Matter of Obaighbena*, 19 I&N Dec. 533, 534 (BIA 1988); *Matter of Laureano*, 19 I&N Dec. 1 (BIA 1983); *Matter of Ramirez-Sanchez*, 17 I&N Dec. 503, 506 (BIA 1980). In an undated letter of employment, the president of the Pakistani oriental carpet business, Pakobel, states that the beneficiary has been employed by Pakobel as an independent purchasing agent, with duties that entail analyzing carpets and deciding whether they possess the quality, workmanship, and suitability for export. He goes on to say that the beneficiary's expertise lies in grading a variety of Pakistani carpets and marketing the same for re-sale in the U.S. and European wholesale and retail markets. Upon review of the record in its entirety, the petitioner has not demonstrated that the beneficiary would be primarily performing the complex duties of a financial manager. Rather, it appears that the beneficiary would be performing the duties of a purchasing agent. No evidence in the *Handbook*, 2004-2005 edition, indicates that a baccalaureate or higher degree, or its equivalent, is required for a purchasing agent job.

The record does not include any evidence regarding parallel positions in the petitioner's industry. 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, therefore, has 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. On appeal, counsel states that the petitioner does not claim to meet this criterion. Therefore, it will not be discussed further.

Finally, the AAO turns to the 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 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 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 appeal is dismissed. The petition is denied.