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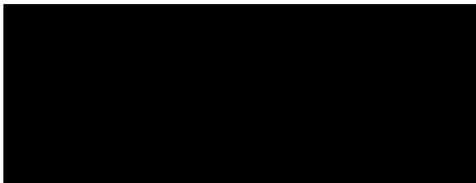
U.S. Department of Homeland Security
20 Mass Ave., N.W., Rm. A3042
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U.S. Citizenship
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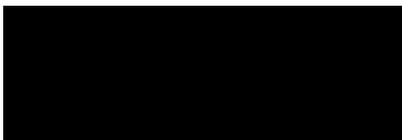


FILE: LIN 04 055 51877 Office: NEBRASKA SERVICE CENTER Date: JUN 28 2005

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:



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

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 an industrial and administrative staffing service that seeks to employ the beneficiary as an assistant manager, purchasing and fabrication. 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 on two grounds: (1) the proposed position is not a specialty occupation; and (2) the petitioner failed to establish an employer/employee relationship. On appeal, counsel submits a brief and previously submitted evidence.

The AAO will first address whether the proposed position is a specialty occupation.

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 an assistant manager, purchasing and fabrication. 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 traveling extensively to Europe to inspect prospective purchases; evaluating, selecting, and procuring stone, granite, and marble; conferring with Croatian, Italian, and Adriatic suppliers regarding price, availability, and delivery schedules; reviewing bids; working with the production manager to ensure inventories are maintained; assisting in directing and coordinating the fabrication and installation of marble and granite; and supervising the stoneworkers during fabrication and installation. The petitioner's response to the request for evidence elaborated on the job duties. The petitioner indicates that a candidate for the proffered position must possess a bachelor's degree in business administration with a focus on management, supply-chain management, or marketing.

The director indicated that the duties of the proffered position are an amalgam of those of industrial production managers and purchasing managers, buyers, and purchasing agents as those occupations are described in the Department of Labor's (DOL) *Occupational Outlook Handbook* (the *Handbook*). The director further indicated that the *Handbook* reveals that these occupations do not require a bachelor's degree in a specific specialty. The director found the opinion letter from [REDACTED] and the job postings unpersuasive in establishing that the proposed position qualifies as a specialty occupation. According to the director, the petitioner had not shown a past practice of requiring a bachelor's degree in a specific specialty for the proposed position or that the nature of the beneficiary's duties is so specialized and complex as to require knowledge that is associated with a bachelor's degree in a specific specialty. The director noted that the petitioner failed to establish an employer/employee relationship with the beneficiary.

On appeal, counsel states that the beneficiary will provide services to [REDACTED] the petitioner's client. Counsel states that the regulations do not indicate that a bachelor's degree must always be required for a position; rather, they indicate that the profession is usually comprised of persons having a bachelor's degree. Counsel cites to the *Handbook's* statements of employers preferring a bachelor's degree, and requiring a college degree, "even for those who have worked their way up through the ranks," to establish that the occupations of purchasing managers, buyers, and purchasing agents require a bachelor's degree in a specific specialty. Counsel asserts that although the *Handbook* indicates that some companies hire liberal arts graduates, a bachelor's degree in a job-related field is normally the requirement. Counsel discusses the job outlook section of the *Handbook* relating to purchasing managers, buyers, and purchasing agents. Counsel states that the director erroneously denied the petition on the ground that a junior buyer or purchasing clerk does not require a bachelor's degree in a business-related field, and counsel asserts that the proposed position is not a lower-level position. Counsel states that the *Handbook* indicates that the proposed position has a limited number of closely related academic fields. Counsel states that the *Handbook* indicates that for industrial production

manager jobs, applicants with a college degree in industrial engineering, management, or business administration enjoy the best job prospects, and that an increasing number of employers seek candidates with graduate degrees in industrial management or business administration. Counsel conveys that the regulations do not indicate that all related positions or lower-level positions usually must require a degree; they indicate that the proposed position, which in this case is assistant manager, purchasing and fabrication, must require a bachelor's degree. Counsel discusses a publication from Canada entitled "National Occupational Classification." Counsel discusses job postings and the opinion letter from [REDACTED] Hofstra University, New York.

Upon review of the record, the petitioner has established that the proffered position is a specialty occupation.

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. As described by the petitioner, the duties of the proposed position are so specialized and complex as to require knowledge that is usually associated with the attainment of a bachelor's degree in a specific specialty relating to the proposed position, which in this case is an assistant manager, purchasing and fabrication.

The AAO will now address whether the petitioner established that it is the United States employer or agent of the beneficiary.

In the denial letter, the director stated that the petitioner failed to establish an employer/employee relationship with the beneficiary.

Pursuant to 8 C.F.R. § 214.2(h)(4)(ii), *United States employer* means a person, firm, corporation, contractor, or other association, or organization in the United States which:

- (1) Engages a person to work within the United States;
- (2) Has an employer-employee relationship with respect to employees under this part, as indicated by the fact that it may hire, pay, fire, supervise, or otherwise control the work of any such employee;
- (3) Has an Internal Revenue Service Tax identification number.

Under 8 C.F.R. § 214.2(h)(2)(i)(F) the term *agent* is discussed and the section states that:

A United States agent may file a petition in cases involving workers who are traditionally self-employed or workers who use agents to arrange short-term employment on their behalf with numerous employers, and in cases where a foreign employer authorizes the agent to act on its behalf. A United States agent may be: the actual employer of the beneficiary, the representative of both the employer and the beneficiary, or, a person or entity authorized by the employer to act for, or in place of, the employer as its agent. A petition filed by a United States agent is subject to the following conditions:

- (1) An agent performing the function of an employer must guarantee the wages and other terms and conditions of employment by contractual agreement with the beneficiary or beneficiaries of the petition. The agent/employer must also provide an itinerary of definite employment and information on any other services planned for the period of time requested.
- (2) A person or company in business as an agent may file the H petition involving multiple employers as the representative of both the employers and the beneficiary or beneficiaries if the supporting documentation includes a complete itinerary of services or engagements. The itinerary shall specify the dates of each service or engagement, the names and addresses of the actual employers, and the names and addresses of the establishment, venues, or locations where the services will be performed. In questionable cases, a contract between the employers and the beneficiary or beneficiaries may be required. The burden is on the agent to explain the terms and conditions of employment and to provide any required documentation.

On appeal, counsel asserts that the director also denied the H-1B petition by alluding to "speculative employment." According to counsel, in prior decisions the AAO has determined that contracts between the petitioning employer and the client worksite are not required, requests for contracts do not fall within CIS guidelines, and there is no basis for the concept of speculative employment in the Act or regulations.

In the December 12, 2003 letter, the petitioner indicates that the beneficiary will provide services to ASI, the petitioner's client. Counsel maintains that the AAO has previously determined that if a beneficiary is to provide services for a petitioner's client at the client's worksite, the petitioner is not required to furnish the contractual agreements entered into with such clients. Counsel's assertion is not persuasive in that the regulations set forth at 8 C.F.R. § 214.2(h)(4)(ii) and C.F.R. § 214.2(h)(2)(i)(F) require that a petitioner establish that it is either the U.S. employer or agent of the beneficiary, with the latter regulation indicating the conditions imposed upon a U.S. agent such as providing "an itinerary of definite employment and information on any other services planned for the period of time requested." No independent evidence in the record corroborates the agreement between the petitioner and ██████████ with respect to the beneficiary's providing services in a specialty occupation to ██████████. Going on record without supporting documentary evidence is not sufficient for the purpose 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)).

Furthermore, counsel's reference to prior AAO decisions is not convincing. This record of proceeding does not contain all of the supporting evidence submitted in the prior cases. In the absence of all of the corroborating evidence contained in those records of proceeding, counsel's assertions are not sufficient to enable the AAO to determine whether those petitions are parallel to the instant petition.

Each nonimmigrant petition is a separate proceeding with a separate record. *See* 8 C.F.R. § 103.8(d). In making a determination of statutory eligibility, CIS is limited to the information contained in the record of proceeding. *See* 8 C.F.R. § 103.2(b)(16)(ii).

As related in the discussion above, the director denied the petition on the ground that the petitioner failed to establish that it qualifies as the U.S. employer or agent of the beneficiary. Accordingly, the AAO shall not disturb the director's denial of the petition on this ground.

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.