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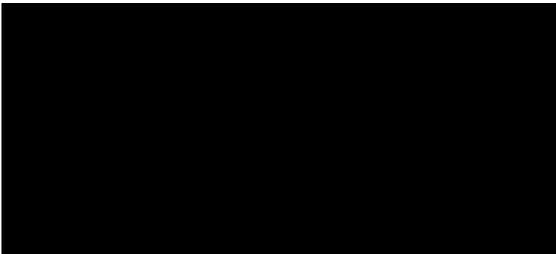
FILE: EAC 04 093 53817 Office: VERMONT SERVICE CENTER Date: NOV 02 2005

IN RE: Petitioner:  
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:



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 designs, installs, services, and manufactures signs and displays. It seeks to employ the beneficiary as a logistics operations supervisor. 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 a brief 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 logistics operations supervisor. Evidence of the beneficiary's duties includes: the Form I-129; the attachments accompanying the Form I-129; the petitioner's 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 supervising the business life-cycle of the components for the new assembly plant, which include acquisition, distribution, internal allocation, and delivery; overseeing business trade development such as analyzing trade partners and industry resources with an emphasis on Asian markets; negotiating contracts with suppliers and overseeing the contract's performance; preparing cost-benefit analysis reports and directing production meetings with company executives and technical staff; assisting and recommending capital expenditures, and developing import strategies for the assembly plant; serving as the liaison for technical and industrial safety issues; advising senior executives on regional customs, import procedures, and regulations in connection with trading partners; and providing recordkeeping and inventory control. For the proposed position the petitioner requires a bachelor's degree, or its equivalent, in business administration, logistics management, or a related field.

The director stated that the petitioner asserts that the proposed duties are a combination of those of production managers and purchasing managers; according to the director, the *Handbook* indicates that a production manager and a purchasing manager are not specialty occupations. The director concluded that the proposed position is not immediately available for the beneficiary to occupy as the petitioner indicates that it is not presently conducting business. The director stated that the record does not reflect that there is an industry standard for the proposed position to require a baccalaureate degree in business administration, logistics management, or a related field. The director noted that the proposed position is newly created.

On appeal, counsel states that the *Handbook* is a reference and guide that should not be used by the director to undermine other evidence in the record such as the submitted job postings, which establish that the proposed position is a specialty occupation. Counsel discusses the proposed duties and the *Handbook's* description of an industrial production manager and purchasing managers, buyers, and purchasing agents. Counsel states that the proposed position requires specialized knowledge of logistics analysis and management, distribution, and resource management, as well as the theories and principles of business administration; an understanding of logistics models and practices in order to analyze, coordinate, and supervise the flow of components in the assembly plant; and supervision of the product's life cycle. Counsel asserts that the petitioner's degree requirement is common in the wholesale manufacturing and distribution industries. Counsel submits a letter from the petitioner, dated June 7, 2004, stating that the previously submitted evidence reflects the specialty nature of the proposed position; that the petitioner had been in business since 1983; that it has a new business line, the import and assembly of LED-style channel letters; and that it will adapt its existing assembly plant to assemble the letters.

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.Minn. 1999)(quoting *Hird/Blaker Corp. v. Sava*, 712 F. Supp. 1095, 1102 (S.D.N.Y. 1989)).

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 AAO finds that the proposed duties are an amalgam of those of an industrial production manager and purchasing managers, buyers, and purchasing agents; and that the *Handbook* indicates that those occupations do not require a baccalaureate degree in a specific specialty. The *Handbook's* text about industrial production managers reads as follows:

Because of the diversity of manufacturing operations and job requirements, there is no standard preparation for this occupation. However, a college degree is required, even for those who have worked their way up through the ranks. Many industrial production managers have a college degree in business administration, management, industrial technology, or industrial engineering. Others have a master's degree in industrial management or business administration (MBA). Some are former production-line supervisors who have been promoted. Although many employers prefer candidates with a business or engineering background, some companies hire well-rounded liberal arts graduates.

As production operations become more sophisticated, increasing numbers of employers are looking for candidates with graduate degrees in industrial management or business administration. Combined with an undergraduate degree in engineering, either of these graduate degrees is considered particularly good preparation. Managers who do not have graduate degrees often take courses in decision sciences, which provide them with techniques and mathematical formulas that can be used to maximize efficiency and improve quality. Companies also are placing greater importance on a candidate's interpersonal skills. Because the job requires the ability to compromise, persuade, and negotiate, successful production managers must be well-rounded and have excellent communication skills.

The *Handbook* reports that employers accept baccalaureate degrees in the liberal arts and business administration for an industrial engineer position. The AAO notes that *Matter of Michael Hertz Assocs.*, 19 I&N Dec. 558, 560 (Comm. 1988)<sup>1</sup> indicates that a baccalaureate degree in the liberal arts or business administration, without further specification, are not disciplines that would qualify a position as a specialty occupation.

In the following passage, the *Handbook* relays that a baccalaureate degree in a specific specialty is not required for purchasing managers, buyers, and purchasing agents:

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. Many manufacturing firms put yet a greater emphasis on formal training, preferring applicants with a bachelor's or master's degree in engineering, business, economics, or one of the applied sciences. A master's degree is essential for advancement to many top-level purchasing manager jobs.

For the reasons discussed above, the petitioner fails to satisfy the first criterion at 8 C.F.R. § 214.2(h)(4)(iii)(A): that a baccalaureate or higher degree or its equivalent is the normal minimum requirement for entry into the particular position.

To establish the first alternative prong at 8 C.F.R. § 214.2(h)(4)(iii)(A)(2) - that a specific degree requirement is common to the industry in parallel positions among similar organizations – counsel refers to submitted job postings and asserts that the petitioner's degree requirement is common in the wholesale manufacturing and distribution industries.

Counsel's assertion and the job postings are not persuasive as the employers in the postings are either dissimilar from the petitioner, a small company that designs, installs, services, and manufactures signs and displays; or the job postings do not disclose their nature. Worthington Armstrong Venture produces metal ceiling systems; Environmental Chemical Corp. deals with environmental remediation; Bose Corporation has

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<sup>1</sup> *Matter of Michael Hertz Assocs.* conveys that for a position to qualify as a specialty occupation:

A petitioner must establish that the position realistically requires knowledge, both theoretical and applied, which is almost exclusively obtained through studies at an institution of higher learning. The depth of knowledge and length of studies required are best typified by a degree granted by such institution at the baccalaureate level. It must be demonstrated that the position requires a precise and specific course of study which 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 of generalized title, such as business administration or liberal arts, without further specification, does not establish eligibility.

worldwide manufacturing and sales divisions; RadioShack Corporation is a consumer products company; Bumble Bee Seafoods, LLC has over 1,000 employees; McKesson Pharmaceutical is in the pharmaceutical industry; New Balance Athletic Shoes has revenues of \$1 billion; Covance Laboratories, Inc. provides biological and chemical research services; Kia Motors America Incorporated is an automotive company; SPX Corporation is in the transportation industry; Exel has 70,000 employees; Armstrong World Industries, Inc. earns \$3 billion in revenue; GES Exposition Services is a trade show and event marketing company; McQuay International manufactures commercial/industrial air conditioning equipment; and Solectron Corporation is a supply-chain facilitator. The job postings do not describe the nature of Brown Jordan International, Waste Management; Symmetricom; Eldon, Leupold & Stevens, Inc., Keystone Dedicated Logistics, and the company in South Carolina that seeks an inventory control manager. For these reasons, the job postings fail to establish that a specific degree requirement is common to the industry in parallel positions among *similar* organizations.

Counsel asserts that the petitioner's degree requirement is common in the wholesale manufacturing and distribution industries. However, 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 Obaighena*, 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).

The petitioner has not satisfied the second alternative prong at 8 C.F.R. § 214.2(h)(4)(iii)(A)(2) as no evidence in the record shows the proffered position as so complex or unique that it can be performed only by an individual with a degree. The evidence in the record about LEDs and the duties of the proposed position fail to convey a complexity or uniqueness that would demonstrate that the proposed position requires the knowledge associated with a baccalaureate degree in a specific specialty such as logistics management. Furthermore, the *Handbook* reveals that an industrial production manager and a purchasing manager, buyer, and purchasing agent are occupations that do not require a baccalaureate degree in a specific specialty.

No evidence in the record establishes the criterion at 8 C.F.R. § 214.2(h)(4)(iii)(A)(3): that the petitioner normally requires a degree or its equivalent for the position.

To satisfy the regulation at 8 C.F.R. § 214.2(h)(4)(iii)(A)(4), the petitioner must establish that the nature of the specific duties is so specialized and complex that the knowledge required to perform them is usually associated with the attainment of a baccalaureate or higher degree in a specific specialty. The record does not reflect proposed duties that are so specialized and complex as to require knowledge associated with a baccalaureate degree in a specific specialty such as logistics management. In addition, according to the *Handbook*, employers do not require industrial production managers and purchasing managers, buyers, and purchasing agents to possess a baccalaureate degree in a specific specialty. Accordingly, the petitioner fails to establish this last criterion at 8 C.F.R. § 214.2(h)(4)(iii)(A).

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 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.