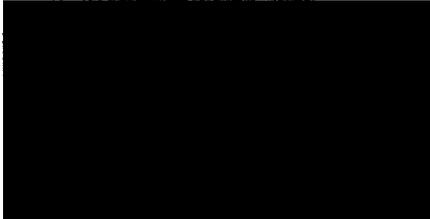




U.S. Citizenship
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Services

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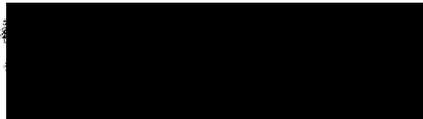
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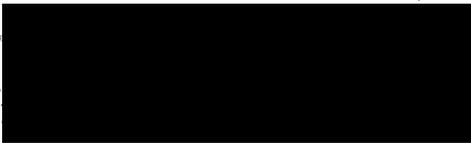
FILE: WAC 02 276 52251 Office: CALIFORNIA SERVICE CENTER Date: NOV 22 2005

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 provides resewing, sewing, alterations, remodeling, repair, dry cleaning, and laundry service. It seeks to employ the beneficiary as a supervisor/manager of production and operation. 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 states that the proposed position qualifies as 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 a supervisor and manager of production and operation of workers. 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 and coordinating workers that apply solutions to thread for strength and luster; analyzing and improving chemical materials and ingredients that are applied; analyzing and improving machinery with devices that expedite processes; scanning cloth for defects such as grease spots and irregularities in color; and examining thread for excess moisture and firmness of finish. The petitioner requires a bachelor's degree in textile technology for the proposed position.

In denying the petition, the director stated that based on the submitted evidence, the proposed position involves general managerial duties which do not require professional skills. The director also stated that the petitioner did not describe the positions that the beneficiary will supervise.

On appeal, counsel states that the proposed position requires a specialist with professional skills of planning and directing production activities. The beneficiary will train a substitute; provide product technology and control over it; implement new technology (such as for sewing production) and techniques thereby maximizing production, and efficiency of machinery and equipment; and prepare preliminary project and business plans to expand business operations.

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.

Based on the nature of the petitioner and the proposed job description, the AAO finds that the proposed position involves supervising laundry and drycleaning workers as those occupations are portrayed in the Department of Labor's (DOL) *Occupational Outlook Handbook* (the *Handbook*). The *Handbook* states:

Laundry and drycleaning workers clean cloth garments, linens, draperies, blankets, and other articles. They also may clean leather, suede, furs, and rugs. When necessary, they treat spots and stains on articles before laundering or drycleaning. They tend machines during cleaning and ensure that items are not lost or misplaced with those of another customer. *Pressers, textile, garment, and related materials* shape and remove wrinkles from items after steam pressing them or ironing them by hand. Workers then assemble each customer's items, box or bag them, and prepare an itemized bill for the customer.

...

Although laundries and drycleaners prefer entrants with previous work experience, they routinely hire inexperienced workers.

The *Handbook's* information suggests that the proposed duties would not require a bachelor's degree in textile technology.

On appeal, counsel asserts that the proposed position requires a specialist to plan and direct production, train a substitute, provide product technology, implement new technology (such as for sewing production) and techniques to maximize production and efficiency of machinery and equipment. The petitioner submitted no evidence demonstrating that the duty of introducing new product technologies and techniques, and new equipment and machinery would normally require the services of a person holding a bachelor's degree in textile technology. The record contains no information about the products, machinery, or equipment pertaining to the proposed position. 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)).

To the extent that the position includes supervisory duties, the AAO notes that the section on general managers in the *Handbook* indicates that a baccalaureate degree is not required to perform the services of a general manager.

The AAO's conclusion, from the evidence to which it has referred, is that 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 in a specific specialty 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 - the record contains job postings. This evidence is not persuasive given that none of the employers are similar in nature to the

petitioner, a laundry and dry cleaner that provides resewing, sewing, alterations, remodeling, repair services. Neutrogena produces soap products; Snak King Corporation produces food products; Specialty Motors, Inc. develops and manufactures motors; two postings are from manufacturers; Harman Consumer Group is an industrial design and manufacturing company. 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.

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 proposed position resembles that of a supervisor of laundry and drycleaning workers, and the *Handbook* indicates that laundry and drycleaning workers do not require any formal education. Moreover, the petitioner submitted no corroborating evidence to show that the proposed duty to introduce new product technologies and techniques, and new equipment and machinery would have such complexity or uniqueness as to require the services of a person holding a bachelor's degree in textile technology. Going on record without supporting documentary evidence is not sufficient for purposes of meeting the burden of proof in these proceedings. *Matter of Soffici*, citing *Matter of Treasure Craft of California*. Consequently, the petitioner fails to establish the second alternative prong at 8 C.F.R. § 214.2(h)(4)(iii)(A)(2).

No evidence in the record establishes the regulation 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. The AAO has already conveyed that the proposed duties resemble those of a supervisor of laundry and drycleaning workers, and that laundry and drycleaning workers do not require any formal education. In addition, the AAO has found that the petitioner submitted no evidence in the record reflecting that the nature of the proposed duty of introducing new product technologies and techniques, and new equipment and machinery is specialized and complex, requiring the knowledge associated with the attainment of a baccalaureate degree in textile technology. Going on record without supporting documentary evidence is not sufficient for purposes of meeting the burden of proof in these proceedings. *Matter of Soffici*, citing *Matter of Treasure Craft of California*. Consequently, 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.