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**U.S. Citizenship
and Immigration
Services**

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FILE: WAC 04 033 53589 Office: CALIFORNIA SERVICE CENTER Date: **03 03 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

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 a supplier of goods and services for the United States government and seeks to employ the beneficiary as a purchasing analyst. The petitioner 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 does not qualify as a specialty occupation. On appeal, counsel submits a brief stating that the offered position qualifies as a specialty occupation.

The issue to be discussed in this proceeding is whether the proffered position qualifies as a specialty occupation.

Section 101(a)(15)(H)(i)(b) of the Act, 8 U.S.C. § 1101(a)(15)(H)(i)(b), provides, in part, for the classification of qualified nonimmigrant aliens who are coming temporarily to the United States to perform services in 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.

The term "specialty occupation" is further defined at 8 C.F.R. § 214.2(h)(4)(ii) as:

[A]n occupation which requires theoretical and practical application of a body of highly specialized knowledge in fields of human endeavor including, but not limited to, architecture, engineering, mathematics, physical sciences, social sciences, medicine and health, education, business specialties, accounting, law, theology, and the arts, and which requires the attainment of a bachelor's degree or higher in a 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 are 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) the 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) the Form I-290B with supporting documentation. The AAO reviewed the record in its entirety before issuing its decision.

The petitioner is seeking the beneficiary’s services as a purchasing analyst. Evidence of the beneficiary’s duties includes the Form I-129 petition with attachment and the petitioner’s response to the director’s request for evidence. According to this evidence the beneficiary would:

- Determine orders for car and truck spare parts and other related products from weekly publications of CB Disk, which publishes all weekly orders from federal agencies;
- Participate in the formulation, development and recommendation to management of a system or program by which purchase requests, including requests for quotes, bids and proposals are coordinated and reviewed;
- Receive and evaluate proposals, quotations and bids for required related products from manufacturers, suppliers and wholesalers;
- Research, analyze, study and be familiar with the car and truck spare parts and other related products, and items to be procured by the petitioner through reading books, the Thomas Register, journals, brochures, publications and attendance in trade fairs and seminars sponsored by the suppliers and wholesalers;
- Conduct test product samples of car and truck spare parts and other related products, according to prescribed standards or Mil specs;
- Evaluate and report results of tests on samples submitted for quality assurance testing;
- Research, study, and assist in the development and recommendation of the implementation of a program or policy involving the selection of cost effective shipping sources and identify most efficient modes of transportation;

- Communicate with suppliers during the course of procurement to ensure timely delivery in compliance with the contract or agreement of sale and monitoring of shipments and deliveries;
- Ensure that the petitioner is purchasing and buying car and truck spare parts and related products at the most competitive levels available;
- Maintain competitive bid or purchasing processes to ensure the most competitive pricing labels;
- Participate in the drafting and execution of contracts or agreements with respect to procurement and purchase of car and truck spare parts and related products;
- Maintain and review contracts and agreements to ensure that the terms and stipulations therein are complied with;
- Perform final quality assurance tests on car and truck spare parts and other related products purchased by the petitioner by checking against the invoice to verify conformity of the products as to the name, count, and labeling; and
- Participate in the development of the strategic plans in purchasing, budget and forecast anticipating price and quality changes in the products and items to be procured or purchased.

The petitioner does not state that it requires a degree in any specific discipline for entry into the proffered position, but finds the beneficiary qualified for the position by virtue of his foreign education which has been determined by a credentials evaluation service to be equivalent to a bachelor's degree in business administration from an accredited institution of higher learning in the United States.

Upon review of the record, the petitioner has failed to establish that a baccalaureate or higher degree or its equivalent is normally the minimum requirement for entry into the offered position, or that a degree requirement is common to the industry in parallel positions among similar organizations, as asserted by the petitioner. Factors often considered by CIS when determining these criteria include: whether the Department of Labor's *Occupational Outlook Handbook (Handbook)* reports that the industry requires a degree; whether an industry 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 information about the duties and educational requirements of particular occupations. The duties of the proffered position are essentially those noted for buyers or purchasing managers, and are described in the *Handbook*, 2004-05 edition at p. 61, as follows:

Purchasing managers, buyers and purchasing agents seek to obtain the highest quality merchandise at the lowest possible purchase cost for their employers. In general, *purchasers* buy goods and services for their company or organization, whereas *buyers* typically buy items for resale. Purchasers and buyers determine which commodities or services are best,

choose the suppliers of the product or service, negotiate the lowest price, and award contracts that ensure that the correct amount of the product or service is received at the appropriate time. In order to accomplish these tasks successfully, purchasing managers, buyers, and purchasing agents study sales records and inventory levels of current stock, identify foreign and domestic suppliers, and keep abreast of changes affecting both the supply of and demand for needed products and materials.

Purchasing managers, buyers, and purchasing agents evaluate suppliers on the basis of price, quality, service support, availability, reliability, and selection. . . . They research the reputation and history of the suppliers and may advertise anticipated purchase actions in order to solicit bids. . . .

The duties associated with the proffered position are essentially those listed above. The *Handbook* notes that qualified individuals for purchasing managers, buyers and purchasing agents positions may begin as trainees, purchasing clerks, expeditors, junior buyers, or assistant buyers. Retail and wholesale firms prefer to hire applicants with a college degree and familiarity with the products they sell, as well as wholesale and retail practices. It is also noted, however, that some retail firms promote qualified employees to assistant buyer positions, while others recruit and train college graduates. Most employers use a combination of methods for filling these positions. *Id.* at 62. Educational requirements tend to vary with the size of the organization. Large stores and distributors prefer applicants who have completed a bachelor's degree program with a business emphasis, and many manufacturing firms put 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. The fact remains, however, that while some employers prefer applicants with a bachelor's degree, a degree requirement in a specific specialty is not the minimum requirement for entry into the offered position. Many employers still fill buyer positions by promoting experienced employees who qualify for the position through work experience and training rather than a bachelor's level education in a specific specialty. The petitioner has failed to satisfy the criterion at 8 C.F.R. § 214.2(h)(4)(iii)(A)(1).

The petitioner contends that a degree in a specific specialty is common for the position in the industry in parallel positions among similar organizations. In support of that assertion, the petitioner submitted copies of four job advertisements. Three of the advertisements were for positions that are not parallel to the proffered position (marketing analyst, business analyst, and marketing analyst/project manager), and are accordingly of little evidentiary value. The fourth advertisement is for a purchasing assistant and notes that a bachelor's degree is required for the position. The advertisement indicates that there is a preference for a business related degree, but does not require that the degree be in any specific educational discipline. The advertisement does not indicate that a degree in a specific specialty is required for the position. Further, a single job advertisement is insufficient in scope to establish an industry educational standard for the offered position. The petitioner has failed to establish the referenced criterion at 8 C.F.R. § 214.2(h)(4)(iii)(A)(2).

The petitioner contends that it normally requires a degree for the proffered position. In support of that assertion the petitioner listed eleven employees it says are employed in similar positions. The petitioner states that these employees have degrees in the following fields: civil engineering; computer engineering; business administration; electronics and communications engineering; commerce; information and computer science; pharmacy; and mechanical engineering. The petitioner did not, however, provide independent proof of the

employees' credentials, such as W-2s, or copies of diplomas or verification from the educational institutions where the degrees were obtained. Simply going on the 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 190 (Reg. Comm. 1972)). Further, CIS must examine the ultimate employment of the alien, and determine whether the position qualifies as a specialty occupation. *Cf. Defensor v. Meissner*, 201 F. 3d 384 (5th Cir. 2000). The critical element is not the title of the position or an employer's self-imposed standards, but whether the position actually requires the theoretical and practical application of a body of highly specialized knowledge, and the attainment of a baccalaureate or higher degree in the specific specialty as the minimum for entry into the occupation as required by the Act.¹ To interpret the regulations any other way would lead to absurd results: if CIS were limited to reviewing a petitioner's self-imposed employment requirements, then any alien with a bachelor's degree could be brought into the United States to perform menial, non-professional, or an otherwise non-specialty occupation, so long as the employer required all such employees to have baccalaureate or higher degrees. *See id* at 388. The petitioner has failed to establish the criterion at 8 C.F.R. § 214.2(h)(4)(iii)(A)(3).

Finally, the petitioner has not established that the duties of the proffered position are so specialized and complex that knowledge required to perform them is usually associated with the attainment of a baccalaureate or higher degree in a specific specialty, or that they so complex or unique that they can only be performed by an individual with a degree in a specific specialty. The duties to be performed by the beneficiary are routine in the industry for the offered position. The petitioner has failed to establish the referenced criteria at 8 C.F.R. § 214.2(h)(4)(iii)(A)(2) or (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 failed to sustain that burden and the appeal shall accordingly be dismissed.

ORDER: The appeal is dismissed. The petition is denied.

¹ The court in *Defensor v. Meissner* observed that the four criteria at 8 C.F.R. 214.2(h)(4)(iii)(A) present certain ambiguities when compared to the statutory definition, and "might also be read as merely an additional requirement that a position must meet, in addition to the statutory and regulatory definition." *See id.* at 387.