



U.S. Citizenship
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FILE: WAC 04 056 50298 Office: CALIFORNIA SERVICE CENTER Date:

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, Director
Administrative Appeals Office

DISCUSSION: The 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 to federal agencies that seeks to employ the beneficiary as a financial services bidding analyst. 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 the basis that the petitioner had failed to establish that the proposed position qualifies for classification as a specialty occupation, and that the beneficiary does not qualify to perform the duties of a specialty occupation.

Section 214(i)(1) of the Immigration and Nationality Act (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:

An 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 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 proposed position.

In determining whether a proposed position qualifies as a specialty occupation, CIS does not rely simply upon the position’s title. The specific duties of the proposed position, combined with the nature of the petitioning entity’s business operations, are factors to be considered. CIS must examine the ultimate employment of the beneficiary and make a determination as to whether the proposed position in fact qualifies for classification 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 nor 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.

The record of proceeding before the AAO contains (1) the Form I-129 and supporting documentation; (2) the director’s denial letter; (3) the director’s request for evidence (RFE); (4) the petitioner’s RFE response and supporting documentation; and (5) the Form I-290B and supporting documentation. The AAO reviewed the record in its entirety before issuing its decision.

In the letter of support submitted with the I-129 filing, the petitioner described the duties of the proposed position and offered a breakdown of the percentages of time to be spent performing each duty. According to the petitioner, the beneficiary would spend fifteen percent of her time performing the following tasks:

Determine the orders or requirements for professional financial services from the [w]eekly publications of CB Disk[,] which publish all the order from the [f]ederal [a]gencies during the week [sic].

Participate in the formulation, development[,] and recommendation to management of a system or program by which procurement requests, including requests for quotes, bids[,] and proposals are coordinated and reviewed. This duty also includes receiving and evaluating applications, quotations[,] and bids for required services from the job market.

The beneficiary would spend ten percent of her time performing the following tasks:

Research, [a]nalyze, study[,] and be familiar with the required services needed to be procured by the [p]etitioner through reading books, the Thomas Register, journals[,] brochures, publications[,] and attendance in trade fairs and seminars sponsored by job placement agencies. The analysis and research should pay attention to cost, quality, quantity[,] and the reputation of the job providers as well as to the qualifications of the applicants.

The beneficiary would spend twenty percent of her time performing the following tasks:

Conduct test and evaluation of applicants as required by the various [f]ederal agencies of the government. Evaluates and report results of tests and evaluation of applicants in compliance to the specified job description [sic].

The beneficiary would spend fifteen percent of her time performing the following tasks:

Research, study, and assist in the development and recommendation of the implementation of a program or policy involving the selection of cost effective hiring and identify most efficient modes of recruitment. This duty includes maintenance of communication with job providers, placement agencies[,] and applicants during the course of procurement to ensure timely employment in compliance with the contract or agreement or solicitation letter from the [g]overnment.

The beneficiary would spend ten percent of her time performing the following tasks:

Ensure that the [p]etitioner is hiring qualified employees and/or professionals at the most competitive levels available. Maintain competitive bid process to ensure most competitive cost.

The beneficiary would spend twenty percent of her time performing the following tasks:

Participate in the drafting [and] execution of contracts or agreements with respect to procurement of qualified manpower. Maintain and review these contracts and agreements to ensure that the terms and stipulations therein are complied with and followed by all involved.

The beneficiary would spend five percent of her time performing the following tasks:

Perform final quality assurance tests on qualified applicants selected by the [p]etitioner by checking against the invoice to verify conformity of the services as to the qualification, reliability[,] and character.

Finally, the beneficiary would spend five percent of her time performing the following tasks:

Participate in the development of the strategic plans in procurement, budget and forecast and anticipating price and quality changes in the services to be procured or provided.

On appeal, counsel contends that the proposed position in fact qualifies as a specialty occupation, and that the director erred in denying the petition. Counsel asserts that in denying the petition, the director caused the “actual business needs vis-à-vis the real-world market competition” of the petitioner to “rigidly and summarily be buried into deep oblivion.” Counsel also contends that the director’s denial constitutes an “unjust discrimination” against the petitioner’s business needs.

In determining whether a proposed 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 *Occupational Outlook Handbook* (the *Handbook*) for its information about the duties and educational requirements of particular occupations.

A review of the duties of the proposed position finds them closely aligned to the responsibilities of purchasing managers, buyers, and purchasing agents¹. As discussed in the *Handbook*:

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 use by 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. To assist them in their search for the right suppliers, they review catalogs, industry and company publications, directories, and trade journals. Much of this information is now available on the Internet. They research the reputation and history of the suppliers and may advertise anticipated purchase actions in order to solicit bids. At meetings, trade shows, conferences, and suppliers' plants and distribution centers, they examine products and services, assess a supplier's production and distribution capabilities, and discuss other technical and business considerations that influence the purchasing decision. Once all of the necessary information on suppliers is gathered, orders are placed and contracts are awarded to those suppliers who meet the purchaser's needs. Contracts often are for several years and may stipulate the price or a narrow range of prices, allowing purchasers to reorder as necessary. Other specific job duties and responsibilities of purchasing managers, buyers, and purchasing agents vary by employer and by the type of commodities or services to be purchased.

The *Handbook* reports the following educational requirement for individuals seeking employment in this field:

Qualified persons may begin as trainees, purchasing clerks, expeditors, junior buyers, or assistant buyers. Retail and wholesale firms prefer to hire applicants who have a college degree and who are familiar with the merchandise they sell and with wholesaling and retailing practices. Some retail firms promote qualified employees to assistant buyer positions; others recruit and train college graduates as assistant buyers. Most employers use a combination of methods.

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

¹ The AAO notes that both counsel and the petitioner also drew a parallel between the proposed position and those of purchasing managers, buyers, and purchasing agents, as discussed in the *Handbook*.

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.

These findings do not support counsel's contention that a bachelor's degree is required for entry into this occupation. The *Handbook* states that educational requirements vary, and that most employers use a combination of internal promotion and hiring individuals with bachelor's degrees in order to fill these positions. Moreover, the fact that many employers "prefer" a degree is not synonymous with the "normally required" standard imposed by the regulation. Consequently, the proposed position does not qualify for classification as a specialty occupation under 8 C.F.R. § 214.2(h)(4)(iii)(A)(1).

Nor does the proposed position qualify as a specialty occupation under either prong of 8 C.F.R. § 214.2(h)(4)(iii)(A)(2). The first prong of this regulation requires a showing that a specific degree requirement is common to the industry in parallel positions among similar organizations.

The AAO has reviewed the four job postings submitted by counsel in response to the director's RFE. Counsel, however, has failed to consider the specific requirements at 8 C.F.R. § 214.2(h)(4)(iii)(A)(2) for establishing a baccalaureate or higher degree as an industry norm. To meet the burden of proof imposed by the regulatory language, a petitioner must establish that its degree requirement exists in parallel positions among similar organizations.

No evidence has been submitted to establish that any of these four postings are from organizations similar in size or scope of operations to the petitioner. Limited Brands is engaged in retail stores, UnitedHealth Group is a healthcare company, and Merck is a pharmaceutical firm. The fourth posting is from Bevan Resources, which appears to be an employment locator service, as the four positions listed in its posting seemed to be at different companies (no information regarding the companies was provided).

The AAO is also unable to verify whether these positions are in fact parallel to the proffered position in terms of the basic qualification requirements of the positions. For example, the job posting from Limited Brands does not state that a bachelor's degree is required. Rather, it states that it is "preferred." The petitioner requires a degree, although not in a specialty. The postings are too few in number to be indicative of an industry-wide standard, and they do not indicate a common requirement for a degree in a specific specialty. As noted previously, CIS interprets the term "degree" to mean not just any in any field, but one in a specific specialty that is directly related to the proposed position. The AAO is presented with no basis to conclude that the positions advertised in these job postings and the one proposed in this petition are parallel, as required by the regulation.

Accordingly, the proposed position does not qualify as a specialty occupation under the first prong of 8 C.F.R. § 214.2(h)(4)(iii)(A)(2).

The second prong of 8 C.F.R. § 214.2(h)(4)(iii)(A)(2) requires the petitioner to prove that the duties of the proposed position are so complex or unique that only an individual with a degree can perform them. The nature of the duties of the proposed position as set forth in the petition does not support such a finding, as they are similar to those set forth in the *Handbook*, which does not state that a degree is required. The record contains no evidence that would support a finding that the position proposed here is more complex or unique than such positions at organizations similar to the petitioner.

Therefore, the petitioner cannot establish that the proposed position qualifies as a specialty occupation under either prong of 8 C.F.R. § 214.2(h)(4)(iii)(A)(2).

The AAO next turns to the criterion at 8 C.F.R. § 214.2(h)(4)(iii)(A)(3), which requires that the petitioner demonstrate that it normally requires a degree or its equivalent for the position. To determine a petitioner's ability to meet the third criterion, the AAO normally reviews the petitioner's past employment practices, as well as the histories, including the names and dates of employment, of those employees with degrees who previously held the position, and copies of those employees' diplomas.

In its RFE response, the petitioner presented a list of names of individuals who it states are employed "in the same or related position." The petitioner also submitted a list of 64 individuals identified as employees.² However, no evidence to document this claim, such as employment records or diplomas, was presented. Simply 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)).

The proposed position also fails to qualify under this criterion for another reason. The AAO notes that in the list of individuals the petitioner states is employed in the same, or in a similar, position, none of the listed individuals possesses a bachelor's degree in accounting (the degree possessed by the beneficiary). Three hold bachelor's degrees in business administration, two hold degrees in civil engineering, and one person holds a degree in each of the following areas: computer engineering, electronics and communications engineering, commerce, information and computer science, pharmacy, and mechanical engineering. Again, as noted previously, CIS interprets the term "degree" to mean not just any in any field, but one in a specific specialty that is directly related to the proposed position. When a range of degrees, e.g., the liberal arts, or a degree of generalized title without further specification, e.g., business administration, can perform a job, the proposed position does not qualify as a specialty occupation. *Matter of Michael Hertz Associates*, 19 I&N Dec. 558 (Comm. 1988).

Therefore, the proposed position does not qualify for classification as a specialty occupation under the third criterion of 8 C.F.R. § 214.2(h)(4)(iii)(A).

Finally, the AAO turns to the criterion at 8 C.F.R. § 214.2(h)(4)(iii)(A)(4), which requires a demonstration that 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 of the proposed position 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. Again, there is no information in the record to support a finding that the proposed position is more complex or unique than similar positions in other, similar organizations. As the *Handbook* reveals, such organizations do not normally impose a bachelor's degree requirement. Therefore, the evidence does not establish that the proposed position is a specialty occupation under 8 C.F.R. § 214.2(h)(4)(iii)(A)(4).

The proposed position does not qualify for classification as a specialty occupation under any of the four criteria set forth at 8 C.F.R. §§ 214.2(h)(4)(iii)(A)(1), (2), (3), and (4), and the petition was properly denied. The position in this petition is not a specialty occupation, so the beneficiary's qualifications to

² The AAO notes that on the Form I-129, the petitioner stated that it had 35 employees.

perform the duties of a specialty occupation are inconsequential. Accordingly, the AAO will 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.