

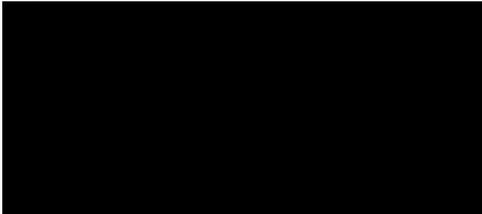


U.S. Citizenship
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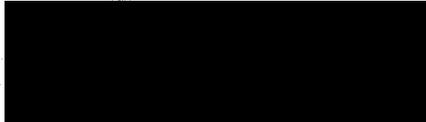
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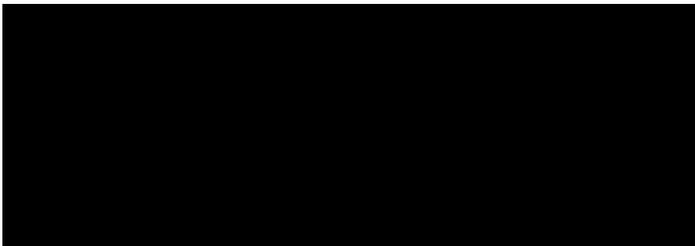
FILE: WAC 04 255 53376 Office: CALIFORNIA SERVICE CENTER Date: **OCT 21 2005**

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 is a federal contractor. It seeks to hire the beneficiary as a laboratory equipment bidding analyst. The director denied the petition based on his determination that the petitioner had failed to establish that its proffered position was a specialty occupation.

The record of proceeding before the AAO contains: (1) Form I-129 and supporting documentation; (2) the director's request for evidence; (3) counsel's response to the director's request for evidence; (3) the director's denial letter; and (4) Form I-290B, with counsel's brief and new and previously submitted documentation. The AAO reviewed the record in its entirety before reaching its decision.

The issue before the AAO is whether the petitioner's proffered position qualifies as a specialty occupation. To meet its burden of proof in this regard, a petitioner must establish that the job it is offering to the beneficiary meets the following statutory and regulatory requirements.

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 one 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 above criteria to mean not just any baccalaureate or higher degree, but one in a specific specialty that is directly related to the proffered position.

To determine whether a particular job qualifies as a specialty occupation, CIS does not simply rely on a position's title. The specific duties of the proffered 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 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 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 petitioner states that it is seeking the beneficiary's services as a laboratory equipment bidding analyst. Evidence of the beneficiary's duties includes: the Form I-129; and an August 17, 2004 letter from the petitioner.

At the time of filing, the petitioner stated that the beneficiary's duties entail: (1) determining the orders for laboratory equipment from the weekly publications of CB Disk which publishes all orders from the Federal Agencies during the week; participation 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; receiving and evaluating proposals, quotations and components from manufacturers, suppliers and wholesalers (15% of time); (2) researching, analyzing, studying and being familiar with the required equipment and supplies needed to be procured by the petitioner through reading books, the Thomas register, journals, brochures, publications and attendance at trade fairs and seminars sponsored by the suppliers and wholesalers (10% of time); (3) conducting test product analysis of laboratory equipment and supplies according to prescribed standards; evaluating and reporting results of tests on samples submitted for quality assurance testing (20% of time); (4) researching, studying and assisting in the development and recommendation of the implementation of a program or policy involving the selection of cost effective shipping sources and identifying the most efficient modes of transportation; (5) ensuring that the petitioner is purchasing or buying laboratory equipment and supplies at the most competitive levels available; maintaining competitive bid or purchasing process to ensure most competitive pricing levels; (10% of time); (6) participating in drafting, execution of contracts or agreements with respect to procurement and purchase of laboratory equipment and supplies; maintaining and reviewing contracts and agreements (20% of time); (7) performing final quality assurance tests on laboratory equipment and products purchased by petitioner by checking against invoice to verify conformity (5% of time); (8) and participating in the development of strategic plans in purchasing, budget, and forecast and anticipating price and quality changes in components and related products to be procured or purchased (5% of time). The petitioner indicated that a bachelor's degree or equivalent and relevant work experience is required for the proffered position.

The director requested additional evidence that the proffered position meets one of the above listed criteria. The director requested copies of the petitioner's signed income tax returns that have been certified by the IRS with all required schedules.

Counsel responded to the director's request and the petitioner added to the job description. The petitioner submitted a Form 1065 U.S. Return of Partnership Income which indicated gross receipts or sales of

\$29,963,480 for tax year 2003. The Form 1065 also indicated salaries and wages of \$3,360,264. The petitioner stated that it has been its practice to hire persons with professional credentials in the same positions. The petitioner submitted a list of employees and stated that they were in the same or related position and listed the degrees which included a BS in civil engineering, computer engineering, business administration, commerce, pharmacy, electronics and mechanical engineering. The petitioner asserted that the proffered position meets all four of the preceding criteria.

The director found that some of the duties of the proffered position resembled a medical assistant and referred to the Department of Labor's *Occupational Outlook Handbook* (the *Handbook*). The director noted that the *Handbook* indicated that the position of medical assistant is an occupation that does not require a baccalaureate level of education. The director referred to the petitioner's claims that it had been hiring persons who majored in civil engineering, computer engineering, business administration, electronics & communications engineering, and mechanical engineering in the same positions. Thus, the director determined according to the evidence submitted, that a bachelor's degree in a specific specialty is not required for entry into the proffered position.

On appeal, counsel notes that the petitioner needs to expand its work force in order to work with more government agencies. Counsel asserts that the director based his decision on the misclassification of the petitioner's business under the healthcare category. Counsel contends that the petitioner is engaged in supplying goods and services to federal agencies of the U.S. government. Counsel asserts that the proffered position satisfies two of four criteria in that a baccalaureate degree or its equivalent is normally the minimum requirement for entry into a particular position and that the nature of the duties is so specialized and complex that the knowledge required to perform them is usually associated with the attainment of baccalaureate degree.

Although counsel and the petitioner assert that the petitioner is engaged in supplying goods and services to federal agencies of the U.S. government, the record does not contain evidence of government contracts. 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 Obaigbena*, 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). 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)).

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 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*, 812 F. Supp. 872, 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.

Upon review of the record, the petitioner has failed to establish that the proffered position qualifies as a specialty occupation. The AAO routinely consults the *Handbook* for information about the duties and educational requirements of particular occupations. The duties of the proffered position resemble those of a purchasing agent as described in the *Handbook*. The *Handbook* indicates the following duties:

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.

Purchasing specialists employed by government agencies or manufacturing firms usually are called purchasing directors, managers, or agents; buyers or industrial buyers; or contract specialists. These workers acquire materials, parts, machines, supplies, services, and other inputs to the production of a final product. Some purchasing managers specialize in negotiating and supervising supply contracts, and are called contract or supply managers. Purchasing agents and managers obtain items ranging from raw materials, fabricated parts, machinery, and office supplies to construction services and airline tickets. The flow of work—or even the entire production process—can be slowed or halted if the right materials, supplies, or equipment are not on hand when needed. To be effective, purchasing specialists must have a working technical knowledge of the goods or services to be purchased.

According to the *Handbook*:

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.

Similarly, the beneficiary will participate in ensuring that the petitioner is purchasing or buying laboratory equipment and supplies at the most competitive levels available; maintaining the competitive bid or purchasing process to ensure the most competitive pricing levels.

The *Handbook* reports:

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.

The petitioner fails to establish the first criterion because the *Handbook* states that large stores and distributors prefer, but do not require, applicants with bachelor's degrees with a business emphasis and that retail and wholesale firms prefer, but do not require, applicants who have a college degree, though not necessarily in a specific specialty. The *Handbook* explains that a bachelor's degree is not required for a purchasing manager position. Accordingly, the petitioner cannot establish that a baccalaureate or higher degree or its equivalent in a specific specialty is the normal minimum requirement for entry into the proffered position.

The petitioner has not provided evidence to establish the second criterion - that a specific degree requirement is common to the industry in parallel positions among similar organizations.

No evidence is in the record that would show the proffered position is so complex or unique that it can be performed only by an individual with a degree. Again, the *Handbook* reveals that the duties of the proffered position are performed by a purchasing manager, a position that does not require a bachelor's degree in a specific specialty.

Nor is there evidence in the record to establish the third criterion at 8 C.F.R. § 214.2(h)(4)(iii)(A): that the petitioner normally requires a degree or its equivalent for the position.

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. The petitioner indicated that the beneficiary would determine the orders for laboratory equipment. The petitioner contends that the beneficiary would perform final quality assurance tests on laboratory equipment and products purchased by the petitioner by checking against invoice to verify conformity. The petitioner has not explained where the testing would take place or the types of equipment to be tested. The petitioner has not described the specific duties and responsibilities to be performed by the beneficiary in relation to its particular business interests. It has not provided evidence of government contracts or the complexity of the contracts. It cannot be concluded 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. Once again, the *Handbook* reveals that the duties of the proffered position are performed by purchasing managers, an occupation not requiring a bachelor's degree in a specific specialty.

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.

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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.