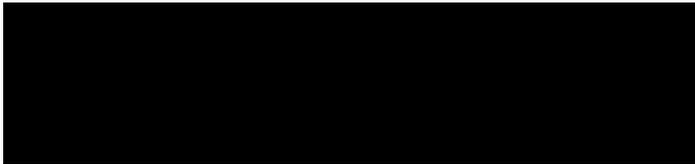


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**U.S. Citizenship
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FILE: EAC 04 025 53438 Office: VERMONT SERVICE CENTER Date: OCT 26 2005

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 materials 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 service center director denied the nonimmigrant visa petition. The matter is now on appeal before the Administrative Appeals Office (AAO). The appeal will be dismissed. The petition will be denied.

The petitioner is a forwarding and transportation group. It seeks to employ the beneficiary as a transportation manager and to classify him 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 ground that the record failed to establish that the proffered 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.

As provided in 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 materials; (2) the director's request for evidence (RFE); (3) the petitioner's response to the RFE; (4) the director's decision; and (5) Form I-290B, an appeal brief, and supporting documentation. The AAO reviewed the record in its entirety before issuing its decision.

In Form I-129 and an accompanying letter the petitioner described itself as a provider of logistics and transportation services to clients around the world. The petitioner indicated that its business was established in 1968, has 1,800 employees and gross annual income of \$140 million, and serves a diverse clientele in the automotive, electronics, telecommunications, and chemical industries, as well as the U.S. government. The petitioner stated that it proposes to hire the beneficiary as a transportation manager for its Foreign Military Sales (FMS) Program activities to coordinate the export of cargo from U.S. military depots and commercial suppliers. As described by the petitioner, the duties of the position include:

- Planning and directing flow of air and surface traffic moving to overseas destinations.
- Supervising workers engaged in receiving and shipping freight.
- Preparation of shipping documentation, verifying compliance with export licensing requirements and International Traffic in Arms (ITAR) regulations and with U.S. customs and Transportation Safety Administration (TSA) regulations.
- Customer relations activities with clients who are primarily foreign embassies and liaison offices of foreign defense ministries.

The minimum educational qualification for the transportation manager position, according to the petitioner, is a bachelor's degree in a business-related field. The beneficiary qualifies for the position, the petitioner stated, by virtue of his bachelor of science degree, with a major in decision science and management information systems, from the School of Management at George Mason University, granted in January 2003.

In response to the RFE the petitioner asserted that the duties of the transportation manager position are specialized and complex because they require knowledge of the principles of international business, international trade, consumer behavior, advertising, and management, and the exercise of high-level responsibility involving broad professional discretion and decision-making authority. The duties of the position also require a thorough knowledge of Defense and State Department regulations governing the export of cargo from U.S. military depots, as well as the aforementioned U.S. export licensing, ITAR, and TSA regulations. According to the petitioner its four most recently hired employees involved in transportation management have bachelor's degrees in business-related fields.

In his decision the director determined that the duties of the proffered position reflect those of a marketing manager as described in the Department of Labor's *Occupational Outlook Handbook (Handbook)*. The director cited an excerpt from the *Handbook* indicating that a baccalaureate level of study in a specific field is not the normal minimum requirement for entry into the occupation. The petitioner's reliance on another DOL resource, the *Dictionary of Occupational Titles (DOT)* was misplaced, the director declared, because the *DOT* is not a reliable source to establish the educational qualifications of a specific occupation. The petitioner did not show that it had required applicants for the position in the past to have a baccalaureate or higher degree in a specific specialty, the director determined, or that such a degree requirement is common to the petitioner's industry for parallel positions in similar organizations. Though the petitioner submitted a series of internet job announcements for similar positions, they did not demonstrate that applicants were required to have a bachelor's degree in a specific specialty. The director concluded that the proffered position did not qualify as a specialty occupation under any of the criteria enumerated at 8 C.F.R. § 214.2(h)(4)(iii)(A).

On appeal counsel asserts that the director erred in classifying the proffered position as a marketing manager. The duties of the position, counsel asserts, are identical to those of a transportation, storage and distribution manager (as described in the *DOL Handbook*). Counsel submits a letter from another company in the international transportation services industry as evidence that a bachelor's degree in a business-related field is required for transportation manager positions. Counsel asserts that a transportation manager is considered a professional position based on its worker function code of 117 in the *DOT*, and that the internet job announcements of other companies for transportation managers requiring a bachelor's degree in a business-related field demonstrate that a baccalaureate degree in a specific field is an industry-wide requirement for the proffered position.

In determining whether a position meets the statutory and regulatory criteria of a specialty occupation, CIS routinely consults the *DOL Handbook* as an authoritative source of information about the duties and educational requirements of particular occupations. Factors typically considered are whether the *Handbook* indicates a degree is required by the industry; 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*, 764 F.Supp. 1095, 1102 (S.D.N.Y. 1989)). CIS also analyzes the specific duties and complexity of the position at issue, with the *Handbook's* occupational descriptions as a reference, as well as the petitioner's past hiring practices for the position. See *Shanti, Inc. v. Reno, id.*, at 1165-66.

The AAO agrees with counsel that the proffered position does not fall within the *Handbook's* occupational category of marketing manager, but rather within its occupational category of "transportation, storage, and distribution managers." The duties of that occupation are described as follows in the *DOL Handbook*, 2004-05 edition, at 649. "Plan, direct, or coordinate transportation, storage, or distribution activities in accordance with governmental policies and regulations." With respect to the educational requirements for transportation, storage, and distribution managers, the *Handbook* states the following: "Most significant source of education or training: Work experience in a related occupation." *Id.* Based on the foregoing information the AAO concludes that the proffered position does not meet the first alternative criterion of a specialty occupation, at 8 C.F.R. § 214.2(h)(4)(iii)(A)(I), because a baccalaureate degree in a specific specialty is not the normal minimum requirement for entry into the position.

Counsel asserts that the *DOT's* SVP ("special vocational preparation") rating of 7 for the occupation of transportation manager demonstrates that it is considered a professional position. The *DOT*, however, is not a persuasive source of information about whether a particular job requires a baccalaureate or higher degree in a specific specialty, or its equivalent, as a minimum for entry into the occupation. An SVP rating indicates the total number of years of vocational preparation required for a particular position. It does not specify how those years are to be divided among training, formal education, and experience, and it does not specify the particular type of degree, if any, that a particular position would require. Nor does the worker function code cited by counsel indicate that a degree in a specific specialty, or the equivalent thereof, is the normal minimum requirement for entry into a transportation manager position. Accordingly, the *DOT* does not support counsel's assertion that the proffered position qualifies as a specialty occupation under 8 C.F.R. § 214.2(h)(4)(iii)(A)(I).

With regard to the second alternative criterion of a specialty occupation, at 8 C.F.R. § 214.2(h)(4)(iii)(A)(2), the record includes the previously referenced internet job postings for parallel positions variously titled import/export coordinator, export coordinator/expediter, import/export specialist, and the like. While all six advertising companies state that a bachelor's degree is required, four of the six do not indicate that the degree must be in any particular specialty. Thus, the internet job postings do not establish that a degree requirement in a specific specialty is common to the petitioner's industry in parallel positions among similar organizations, as required for the proffered position to qualify as a specialty occupation under the first prong of 8 C.F.R. § 214.2(h)(4)(iii)(A)(2).

The petitioner submits a letter on appeal from the president of another company in the field of international transportation services – called First International – which states that it is common among employers in the industry to require their transportation managers to have a bachelor's degree in a business-related field. What the petitioner must demonstrate, however, is that the proffered position requires a precise and specific course of study that relates directly and closely to the position in question. The requirement of a degree with a generalized title such as business administration, without further specification, does not establish the position as a specialty occupation. *See Matter of Michael Hertz Associates*, 19 I&N Dec. 558, 560 (Comm. 1988). The letter from First International does not identify any precise and specific course of study within a bachelor's degree program in business administration that is required for entry into a transportation manager position in the international transportation services industry. Accordingly, the letter does not establish that a degree requirement in a specific specialty is common to the petitioner's industry in parallel positions among similar organizations, as required for the proffered position to qualify as a specialty occupation under the first prong of 8 C.F.R. § 214.2(h)(4)(iii)(A)(2).

Nor does the evidence of record demonstrate that the proffered position is so complex or unique that a degree in a specific specialty is required to perform the job. Accordingly, the proffered position does not qualify as a specialty occupation under the second prong of 8 C.F.R. § 214.2(h)(4)(iii)(A)(2).

As evidence that the proffered position meets the third alternative criterion of a specialty occupation, at 8 C.F.R. § 214.2(h)(4)(iii)(A)(3), the petitioner has submitted the names of four individuals it claims were its “most recently hired employees involved in transportation management” and copies of their degrees which include a bachelor of science in business administration, a master of business administration, a master of arts in international commerce and policy, and a bachelor of arts in political science with a major in international relations. The petitioner has not demonstrated how this variety of degrees establishes that it normally requires its transportation manager to have a degree in a specific specialty directly related to the position. Furthermore, there is no documentary evidence in the record that any of the four individuals identified by the petitioner is actually employed by the company, or that they are (or were) employed in the specific position of transportation manager. The language identifying the individuals as the “most recently hired employees involved in transportation management” is unclear as to whether they were hired for the particular position of transportation manager. Moreover, the record does not show that there are only four transportation managers among the petitioner's 1,800 employees. Simply going on record without supporting documentation does not satisfy the petitioner's burden of proof. *See 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)). Thus, the evidence of record does not establish that the petitioner normally requires a baccalaureate or higher degree in a specific specialty for the proffered position, as required for it to qualify as a specialty occupation under 8 C.F.R. § 214.2(h)(4)(iii)(A)(3).

Finally, the record does not show that the duties of the proffered position are so specialized and complex that they require knowledge usually associated with a baccalaureate or higher degree in a specific specialty. While the petitioner indicates that the beneficiary will be managing transportation in the FMS program and will communicate daily with foreign embassies and liaison offices, no evidence has been submitted to establish that the complexity of the transactions requires a baccalaureate or higher degree in a specific specialty. Accordingly, the position does not meet the fourth alternative criterion of a specialty occupation at 8 C.F.R. § 214.2(h)(4)(iii)(A)(4).

For the reasons discussed above, the record does not establish that the proffered position meets any of the criteria enumerated in 8 C.F.R. § 214.2(h)(4)(iii)(A) to qualify as a specialty occupation. Therefore, the petitioner has not established that the beneficiary will be coming temporarily to the United States to perform services in a specialty occupation, as required under section 101(a)(15)(H)(i)(b) of the Act, 8 U.S.C. § 1101(a)(15)(H)(i)(b).

The petitioner bears the burden of proof in these proceedings. *See* section 291 of the Act, 8 U.S.C. § 1361. The petitioner has not sustained that burden. Accordingly, the AAO will not disturb the director's decision denying the petition.

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