



U.S. Citizenship
and Immigration
Services

identifying data deleted to
prevent clearly unwarranted
invasion of personal privacy

PUBLIC COPY



DZ

FILE: WAC 03 227 51361 Office: CALIFORNIA SERVICE CENTER Date: OCT 28 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:
[Redacted]

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. 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 corporation that has been engaged in the distribution and manufacture of supplies and parts for copiers, facsimile machines, and printers since 1989. In order to continue employing the beneficiary as a purchasing agent, the petitioner endeavors to continue the classification of 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 two independent grounds, namely, that the petitioner had failed to establish that (1) the proffered position meets the definition of a specialty occupation at 8 C.F.R. § 214.2(h)(4)(iii)(A), and (2) the beneficiary is qualified to serve in a specialty occupation in accordance with 8 C.F.R. § 214.2(h)(4)(iii)(C).

On appeal, counsel contends that correct application of the relevant regulations to the evidence of record requires reversal of the director's decision.

Counsel submits a 17-page brief and the following documents: a 13-page statement by the petitioner's executive vice president (EVP) (Exhibit 1); copies of: three Internet job vacancy advertisements from employers other than the petitioner; a business profile article on the petitioner from ENX magazine, pages printed from the petitioner's Internet site, and advertisement sheets regarding the petitioner and its products (all collated as Exhibit A to Exhibit 1); the petitioner's 2002-2003 Product Catalog (Exhibit B to Exhibit 1); a 2-page job description of the proffered position (Exhibit C to Exhibit 1); copies of: job announcements for the proffered position, a Form I-797A reflecting that the previous H-1B petition filed on behalf of the beneficiary for the proffered position had been approved, and a variety of documents that had been previously submitted with the instant Form I-129 (all collated as Exhibit D to Exhibit 1); a copy of the beneficiary's Hawaii Pacific University diploma for a master's of business administration degree (MBA) in travel industry management, and a three-page statement from the beneficiary (both documents submitted as Exhibit E to Exhibit 1); a printout of the section "Purchasing Managers, Buyers, and Purchasing Agents" from the 2002-2003 Internet edition of the Department of Labor's (DOL) *Occupational Outlook Handbook (Handbook)* (Exhibit 2); the title page and pages 104 to 106 of the DOL's *Dictionary of Occupational Titles (DOT)* (Exhibit 3); and copies of a 3-page statement by the beneficiary (Exhibit 4).

The specialty occupation issue will be addressed first.

Upon consideration of the entire body of evidence in the record, including all the documents submitted by the petitioner in this proceeding, the AAO has determined that the director was correct in denying the petition extension on the ground that the evidence of record does not establish the proffered position as a specialty occupation.

The proffered position is located at the corporate headquarters of this business with a gross annual income of \$48,000,000. According to the petitioner's executive vice president, the petitioner has 30 distribution and

manufacturing locations worldwide. The proposed duties concentrate on these six main areas that are outlined in the job description submitted on appeal and discussed in the EVP's statement: (1) placing regular and special orders; (2) searching new suppliers and updating products information; (3) filing various claims with vendors; (4) generating various purchasing reports; (5) evaluating the vendors' programs and special offers; and (6) scheduling the production line of the petitioner's products. The EVP statement in part states:

[T]he offered job calls for development of specifications and performance test requirements to facilitate procurement of equipment, parts and supplies; analysis of technical data, designs, quality and availability of equipment, parts and supplies; consultation with engineering department personnel to establish performance criteria and specifications for testing; investigation of potential suppliers and recommendation of those most desirable; compilation and analysis of statistical data to determine [the] feasibility of buying equipment, parts, and supplies; preparation of forecast of purchase volume of desirable equipment, parts and supplies; establishment of price objectives for contract transactions; conferences with vendors to obtain product or service information, such as product design, engineering, specifications, price, availability, and delivery schedule; selection of products for purchase by testing, observing, or examining equipment, parts, and supplies; estimation of value according to knowledge and information on market price; determination of method of procurement, such as direct purchase or bid; preparation of purchase orders or bid requests; review and examination of bid proposals and negotiation of contracts within budgetary limitations and scope of authority; and communication of defective or unacceptable goods or services with inspection or quality control personnel, users, and vendors to determine source(s) of trouble and take corrective actions.

[Statement of EVP, at pages 2,3.]

The petitioner has not satisfied the criterion at 8 C.F.R. § 214.2(h)(4)(iii)(A)(I), which assigns specialty occupation status to a position for which the normal minimum entry requirement is a baccalaureate or higher degree, or the equivalent, in a specific specialty closely related to the position's duties.

The *Handbook* indicates that the purchasing agent position is not one for which employers normally require a bachelor's degree, or the equivalent, in a specific specialty.¹ The *Handbook*, at page 63, states that, for this type of position, large distributors, especially those in the wholesale and retail trade, "prefer applicants who have completed a bachelor's degree with a business emphasis." This recognition of a hiring preference, however, is not evidence that employers normally require a bachelor's degree, or its equivalent, in a specific specialty as a minimum credential for hiring. In fact, the Significant Points introducing the *Handbook's* narrative in the section on Purchasing Managers, Buyers, and Purchasing Agents include these "bullets" that reflect that a bachelor's degree in a specific specialty is not part of a normal hiring standard:

- Some firms promote qualified employees to these positions, while other employers recruit college graduates; regardless of academic preparation, new employees need 1 to 5 years to learn the specifics of their employer's business.

¹ The AAO consulted the 2004-2005 edition of the *Handbook*.

- Opportunities should be best for those with a college degree.

Also, the preference for a “bachelor’s degree with a business emphasis” is not indicative of a specialty occupation position. Even a requirement, as opposed to a preference, for a bachelor’s degree in business administration would be inadequate to establish that a position qualifies as a specialty occupation. A petitioner must demonstrate that the proffered position requires a precise and specific course of study that relates directly and closely to the position in question. Since there must be a close corollary between the required specialized studies and the position, the requirement of a degree of generalized title, such as business administration or liberal arts, without further specification, does not establish eligibility. The mere requirement of a college degree for the sake of general education, or to obtain what an employer perceives to be a higher caliber employee, also does not establish eligibility. See *Matter of Michael Hertz, Assoc.*, 19 I&N Dec. 558, 560 (Comm. 1988).

No evidence of record substantiates the EVP’s statement, cited at page 3 of counsel’s brief, that the proffered position “could not be satisfactorily performed by any candidate whose educational background falls short of a baccalaureate degree in the fields of science/engineering and business.” As already discussed, the *Handbook* does not support this statement. 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)). 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).

The *DOT* information submitted into the record is not probative. The *DOT* is not a persuasive source of information regarding whether a particular job requires the attainment of a baccalaureate or higher degree in a specific specialty, or its equivalent, as a minimum for entry into the occupation. For instance, the *DOT*’s SVP ratings are meant to indicate only the total number of years of vocational preparation required for a particular position. An SVP rating does not describe 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 position would require. The job advertisements from other employers are too few to establish an industry-wide standard. Also, the advertisements, are consistent with and do not rebut information provided by the DOL in the *Handbook* about the wide range of academic credentials that are acceptable in the purchasing agent and buyer occupational category.

As the evidence fails to establish that the proffered position is one that normally requires at least a bachelor’s degree, or its equivalent, in a specific specialty, the petitioner has not satisfied the criterion at 8C.F.R. § 214.2(h)(4)(iii)(A)(1).

The petitioner has not satisfied the first alternative prong of 8 C.F.R. § 214.2(h)(4)(iii)(A)(2), which is for a position with a requirement for at least a bachelor’s degree in a specific specialty that is common to the petitioner’s industry in positions that are both (1) parallel to the proffered position and (2) located in organizations that are similar to the petitioner.

In determining whether there is such a common degree requirement, factors often considered by CIS 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)).

As earlier discussed, the petitioner has not established that the proffered position is one for which the *Handbook* reports an industry-wide requirement for at least a bachelor's degree in a specific specialty. The petitioner has not submitted attestations from other persons or firms in the industry or from a professional association that the position is one for which there is a routine practice of recruiting and hiring only persons with at least a bachelor's degree in a specific specialty. The job vacancy advertisements have no probative value. The evidence of record does not establish that the advertisers are similar to the petitioner, or that the advertised positions are parallel to the one proffered here. Moreover, the advertisements that were submitted are too few to demonstrate a common recruiting and hiring practice in the petitioner's industry.

The petitioner has not satisfied the criterion at 8 C.F.R. § 214.2(h)(4)(iii)(A)(3), as the evidence of record does not establish that the petitioner has a prior history of hiring only persons with at least a bachelor's degree in a specific specialty.

The evidence of record does not establish either that this particular position is so complex or unique that it can be performed only by an individual with a degree (so as to satisfy the second alternative prong of 8 C.F.R. § 214.2(h)(4)(iii)(A)(2)), or that the specific duties are so specialized and complex that their performance requires knowledge usually associated with at least a baccalaureate degree in a specific specialty (so as to satisfy the criterion of 8 C.F.R. § 214.2(h)(4)(iii)(A)(4)). Upon review of all the evidence that counsel and the petitioner have presented about the proffered position and its proposed duties, the AAO finds that the petitioner has not established where the proffered position lies on the educational-requirement continuum. The petitioner has established that the proffered position is compatible with the purchasing agent occupational category discussed in the *Handbook*. However, the *Handbook* indicates that even large distributors employ purchasing agents without a bachelor's degree.

The evidence of record does not distinguish the proffered position as more complex than and unique from the purchasing agent positions held by persons with less than a bachelor's degree in a specific specialty. Therefore, the second alternative criterion of 8 C.F.R. § 214.2(h)(4)(iii)(A)(2) has not been satisfied. The criterion at 8 C.F.R. § 214.2(h)(4)(iii)(A)(4) has not been satisfied, because the evidence does not convey that the duties of the proffered position are so specialized and complex as to be usually associated with a bachelor's degree, rather than with lesser educational credentials that have also equipped people to work as purchasing agents.

As the petitioner has failed to establish that the proffered position qualifies as a specialty occupation under any criterion of 8 C.F.R. § 214.2(h)(4)(iii)(A), the director's decision shall not be disturbed.

The petitioner noted that CIS approved a previous petition filed by the petitioner on behalf of the beneficiary. The director's decision does not indicate whether he reviewed the prior approvals of the other nonimmigrant petition. Each petition filing is a separate proceeding with a separate record. *See* 8 C.F.R. § 103.8(d). In making a determination of statutory eligibility, CIS is limited to the information contained in the record of proceeding. *See* 8 C.F.R. § 103.2(b)(16)(ii). If the previous nonimmigrant petition was approved based on the same evidence contained in the current record, the approval would constitute material and gross error on the part of the director. Prior approvals do not preclude CIS from denying an extension of the original visa petition based on a reassessment of the petitioner's qualifications. *Texas A&M Univ. v. Upchurch*, 99 Fed. Appx. 556, 2004 WL 1240482 (5th Cir. 2004). The AAO is not required to approve applications or petitions where eligibility has not been demonstrated, merely because of prior approvals that may have been erroneous. *See, e.g. Matter of Church Scientology International*, 19 I&N Dec. 593, 597 (Comm. 1988). It would be absurd to suggest that CIS or any agency must treat acknowledged errors as binding precedent. *Sussex Engg. Ltd. v. Montgomery*, 825 F.2d 1084, 1090 (6th Cir. 1987), *cert. denied*, 485 U.S. 1008 (1988).

Furthermore, the AAO's authority over the service centers is comparable to the relationship between a court of appeals and a district court. Even if a service center director had approved the nonimmigrant petitions on behalf of the beneficiary, the AAO would not be bound to follow the contradictory decision of a service center. *Louisiana Philharmonic Orchestra v. INS*, 2000 WL 282785 (E.D. La.), *aff'd*, 248 F.3d 1139 (5th Cir. 2001), *cert. denied*, 122 S.Ct. 51 (2001).

Because the petitioner has not established that the proffered position is a specialty occupation, the beneficiary's qualifications are inconsequential to the outcome of this case and therefore shall not be further discussed.

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. Accordingly, the appeal will be dismissed.

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