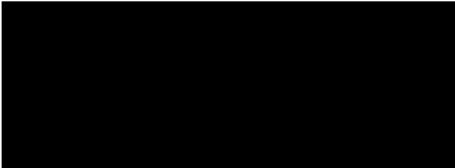




U.S. Citizenship
and Immigration
Services

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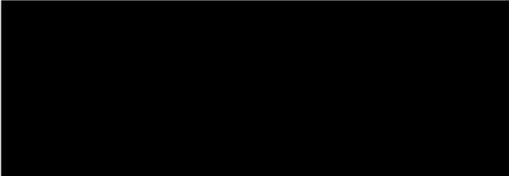
D2

FILE: EAC 04 095 53208 Office: VERMONT SERVICE CENTER Date: DEC 05 2006

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, Chief
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 repairs and sells Oriental rugs. It seeks to employ the beneficiary as a rug repairer of fine Oriental rugs. 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 finding that the proffered position is not a specialty occupation and the beneficiary is not qualified to perform the duties of a specialty occupation. Counsel submitted a timely appeal.

The AAO will first address the director's conclusion that the proffered position fails to qualify 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.

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 proffered position.

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

The petitioner is seeking the beneficiary's services as a rug repairer of fine Oriental rugs. The record reflects that the beneficiary's duties entail specialized repairing of antique and damaged rugs of Oriental silk and wool.

The director denied the petition. It is noted that the petitioner failed to respond to the RFE, which requested evidence establishing that the proposed position qualifies as a specialty occupation, demonstrating the beneficiary's qualifications to perform the duties of a specialty occupation, and clarifying the beneficiary's immigration status. The director stated that the petitioner clarified the beneficiary's immigration status but failed to address how the proposed position qualifies as a specialty occupation and how the beneficiary is qualified to perform the duties of a specialty occupation. According to the director, the job description does not convey that the proposed duties are complex and unique or specialized and complex and thereby require a baccalaureate or higher degree. The director found the submitted job postings unpersuasive in establishing that a degree requirement is common to the industry in parallel positions among similar organizations to the petitioner. According to the director, the record does not suggest that the petitioner previously or presently requires all of its sales associates to hold a baccalaureate or higher degree in a specialized area.¹ The director noted that the petitioner did not reveal the number of people it employed or its annual gross income, even though this information is requested on the Form I-129 petition. The director found the evidence did not reflect that the beneficiary is qualified to perform the duties of a specialty occupation.

Counsel states on appeal that the repair of antique Oriental silk and wool rugs is a traditional art, analogous to "art restoration" for carpets, and is learned by many years as an apprentice to a master. To support his assertion counsel submits documentation from the Oriental Rug Hospital of New York and a description of the proposed duties. According to counsel, the petitioner did not post an in-house announcement for the position but used an informal network of experts who are known in the field. Counsel states that the petitioner has many years of experience cleaning and treating antique and valuable silk and wool rugs but has not been able to satisfy requests to restore or repair them. Counsel submits evidence of employment verification letters to establish the beneficiary's qualifications for the proposed position.

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.

¹ The director erred in referring to sales associates; the proposed position is for Oriental rug repairer (fine rugs).

To establish a position as a specialty occupation at 8 C.F.R. § 214.2(h)(4)(iii)(A), the petitioner must show that (1) a baccalaureate or higher degree or its equivalent in a specific specialty is the normal minimum requirement for entry into the particular position; (2) a specific degree requirement is common to the industry in parallel positions among similar organizations or, in the alternative, that the position is so complex or unique that it can be performed only by an individual with a degree in a specific specialty; (3) the petitioner normally requires a degree or its equivalent in a specific specialty for the proffered position; or (4) 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 in a specific specialty.

The record reflects that the petitioner does not require a baccalaureate degree in a specific academic discipline for the proposed position. Neither the petitioner nor counsel indicates that the proposed position requires a baccalaureate degree in a specific field. The evidence of record, the petitioner's December 1, 2003 memorandum to the beneficiary, counsel's response to the director's request for evidence, the job postings from other companies, counsel's April 5, 2004 letter, the materials submitted on appeal, and other documentation in the record, does not state that the proposed position requires a baccalaureate degree in a specific specialty, as required by section 214(i)(1) of the Act and by the regulation at 8 C.F.R. § 214.2(h)(4)(iii)(A). As such, the petitioner fails to establish the proposed position as a specialty occupation under the Act and the regulations.

The AAO will now address the director's conclusion that the beneficiary is not qualified to perform the duties of a specialty occupation.

The director found the beneficiary unqualified to perform the duties of a specialty occupation. The record reflects that the beneficiary does not hold a baccalaureate degree in a specific academic discipline. It contains employment letters and the English translation of those letters. The submitted letters do not convey that the beneficiary has previously worked in specialty occupations. The AAO thus finds that the beneficiary lacks the qualifications to perform the duties of a specialty occupation.

As related in the discussion above, the petitioner has failed to establish that the proffered position is a specialty occupation and that the beneficiary is qualified to perform the duties of 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 not sustained that burden.

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