

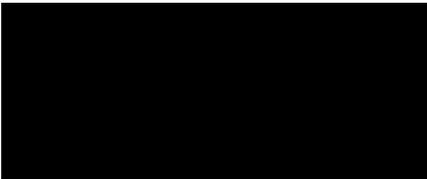
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U.S. Citizenship
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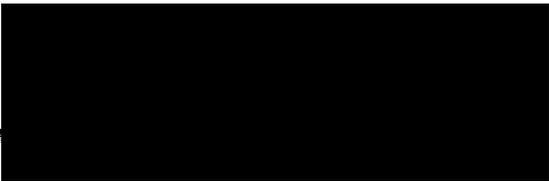
FILE: SRC 04 800 35642 Office: TEXAS SERVICE CENTER Date:

JUN 08 2006

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.

for Michael T. Kelly
Robert P. Wiemann, Chief
Administrative Appeals Office

DISCUSSION: The service center 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 an auto parts trading business that seeks to employ the beneficiary as a purchasing/inside sales agent. The petitioner endeavors to classify the beneficiary as a nonimmigrant worker in a specialty occupation pursuant to § 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 because the proffered position is not a specialty occupation. On appeal, counsel submits a letter from the petitioner's executive vice president.

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 additional evidence; (3) the petitioner's response to the director's request; (4) the director's denial letter; and (5) Form I-290B and supporting documentation. The AAO reviewed the record in its entirety before issuing its decision.

The petitioner is seeking the beneficiary's services as a purchasing/inside sales agent. Evidence of the beneficiary's duties includes: the I-129 petition; the petitioner's September 15, 2004 letter in support of the

petition; and the petitioner's response to the director's request for evidence. According to this evidence, the beneficiary would be responsible for the following:

[S]ales and purchasing equipment to plan, direct and coordinate full projects, including controlling related workers and budgeting. In addition, she will provide oversight for technical support and manufacturer's representation for Japanese manufacturer's products and their follow[-]up service, spare parts specification clarification and its sourcing. [The beneficiary] will assist American engineers with Japanese customs, she will engage in translating/interpreting the documentation/specifications including technical materials and verbal communication. She will be responsible for formulating policies, managing daily operations and planning the use of materials and human resources. Her job requires that she analyze customer's needs and requirements; oversee the progress of projects to meet deadlines; arrange the shipment of equipment to customers located in North America; coordinate the relationship between [the petitioner's] staff and customers. Finally, she must conduct analytical studies on equipment parts and analyze data to determine the feasibility of projected sales and purchases of equipment.

The petitioner indicated that the beneficiary is a qualified candidate for the job because she possesses a foreign bachelor's degree in business and economics and a U.S. master's degree in technology management with an emphasis in information technology.

The director found that the proffered position, which combines the duties of a purchasing agent with a sales position, was not a specialty occupation because the job does not appear to require the theoretical and practical application of a body of highly specialized knowledge. Citing to the Department of Labor's (DOL) *Occupational Outlook Handbook (Handbook)*, the director noted that the minimum requirement for entry into the position was not a baccalaureate degree or its equivalent in a specific specialty. The director found further that the petitioner failed to establish any of the criteria found at 8 C.F.R. § 214.2(h)(4)(iii)(A).

On appeal, both counsel and the petitioner state that the proffered position is complex and unique. The petitioner states further: "[T]he Purchasing/Inside Sales person must be skilled and knowledgeable in import/export requirements, information technology, translation from English to Japanese, metal composition, marketing, sales, purchasing and more."

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 turns first to 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*, 712 F. Supp. 1095, 1102 (S.D.N.Y. 1989)).

The AAO routinely consults the *Handbook* for its information about the duties and educational requirements of particular occupations. The AAO does not concur with counsel and the petitioner that the proffered position, which is primarily that of a sales representative, is a specialty occupation. A review of the Sales Representatives, Wholesale and Manufacturing, in the *Handbook*, 2006-2007 edition, finds no evidence indicating that a baccalaureate or higher degree, or its equivalent, in a specific specialty is required for a sales representative job. Further, the petitioner also has not established that the beneficiary's translation duties are of such complexity that a baccalaureate degree in a specific specialty, as distinguished from familiarity with the English and Japanese languages or a less extensive education, is necessary for the successful completion of its duties. Thus, the petitioner has not shown that a bachelor's degree, or its equivalent, in a specific specialty is required for the position being offered to the beneficiary.

Regarding parallel positions in the petitioner's industry, the petitioner submitted Internet job postings for purchasing agents. There is no evidence, however, to show that the employers issuing those postings are similar to the petitioner, or that the advertised positions are parallel to the instant position. The advertisements describe duties that are more complex than the proposed duties of the proffered position. For example, the duties described in the advertised positions entail: performing contract administration; preparing documentation to obtain performance bonds and bank guarantees; negotiating optimum price, quality, delivery, and service for all products; leading cross functional teams; researching commodity best practices; and negotiating multi-year agreements. Thus, the advertisements are not probative.

The record also does not include any evidence from firms, individuals, or professional associations regarding an industry standard, or documentation to support the complexity or uniqueness of the proffered position.

The petitioner, therefore, has not established the criteria set forth at 8 C.F.R. § 214.2(h)(4)(iii)(A)(1) or (2).

The AAO now turns to the criterion at 8 C.F.R. § 214.2(h)(4)(iii)(A)(3) – the employer normally requires a degree or its equivalent for the position. Neither counsel nor the petitioner addresses this issue on appeal. The record, however, contains a list of the petitioner's purchasing/inside sales employees and their educational backgrounds. A review of this list finds that a wide range of educational backgrounds is suitable for entry into the purchasing/inside sales group, such as sociology, communications, and marketing, thereby confirming the position of the DOL in its *Handbook*, namely that a sales representative position does not require a bachelor's degree in a specialty.

Finally, the AAO turns to the criterion at 8 C.F.R. § 214.2(h)(4)(iii)(A)(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.

To the extent that they are depicted in the record, the duties 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. Therefore, the evidence does not establish that the proffered position is a specialty occupation under 8 C.F.R. § 214.2(h)(4)(iii)(A)(4).

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.