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U.S. Citizenship
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FILE: SRC 04 204 50709 Office: TEXAS SERVICE CENTER Date: **JUN 12 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:

SELF-REPRESENTED

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.

A handwritten signature in cursive script, appearing to read "Robert P. Wiemann".

Robert P. Wiemann, Chief
Administrative Appeals Office

DISCUSSION: The 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 a transportation and cargo firm that seeks to hire the beneficiary as a cargo and freight agent. 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 record of proceeding before the AAO contains (1) the 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) the Form I-290B and supporting documentation. The AAO reviewed the record in its entirety before issuing its decision.

The director denied the petition on the basis of her determination that the petitioner had failed to establish that the proposed position qualifies for classification as a specialty occupation.

The issue on appeal is whether the petitioner's proposed position qualifies for classification as a specialty occupation. 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 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 proposed position.

In its June 23, 2004 letter of support, the petitioner stated that the duties of the proposed position would consist of arranging for and tracking incoming and outgoing cargo and freight shipments on airlines, train or trucking terminals, or on shipping docks; expediting the movement and preparation of shipping documents; taking orders from customers; arranging for the pickup of freight or cargo for delivery to loading platforms; keeping records of the properties of cargo; keeping a tally of missing items; recording the conditions of damaged items; documenting excess supplies; researching market conditions in South Florida; and conferring with management regarding operations and marketing strategies, and implementing those strategies.

In determining whether a proposed 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. The AAO routinely consults the Department of Labor’s *Occupational Outlook Handbook* (the *Handbook*) for its information about the duties and educational requirements of particular occupations.

The *Handbook* provides the following information regarding the duties of cargo and freight agents:

Cargo and freight agents arrange for and track incoming and outgoing cargo and freight shipments in airline, train, or trucking terminals or on shipping docks. They expedite shipments by determining the route that shipments are to take and by preparing all necessary shipping documents. The agents take orders from customers and arrange for the pickup of freight or cargo for delivery to loading platforms. Cargo and freight agents may keep records of the cargo, such as its amount, type, weight, and dimensions. They keep a tally of missing items, record the condition of damaged items, and document any excess supplies.

Cargo and freight agents arrange cargo according to its destination. They also determine the shipping rates and other charges that can sometimes apply to the freight. For imported or exported freight, they verify that the proper customs paperwork is in order. Cargo and freight agents often track shipments electronically, using bar codes, and answer customers’ inquiries on the status of their shipments.

The *Handbook* notes that many of these positions are entry-level, and require no more than a high school diploma. Thus, a cargo and freight agent is not required to have a baccalaureate degree or its equivalent in order to enter the field.

Accordingly, the proposed position does not qualify as a specialty occupation under the first criterion set forth at 8 C.F.R. § 214.2(h)(4)(iii)(A), that a baccalaureate or higher degree or its equivalent is normally the minimum requirement for entry into the position.

Nor does the proposed position qualify as a specialty occupation under either prong of 8 C.F.R. § 214.2(h)(4)(iii)(A)(2). The first prong of this regulation requires a showing that a specific degree requirement is common to the industry in parallel positions among similar organizations.

However, no evidence has been presented, nor has the petitioner contended, that the proposed position qualifies under this criterion. Therefore, the proposed position does not qualify as a specialty occupation under the first prong of 8 C.F.R. § 214.2(h)(4)(iii)(A)(2).

The second prong of this regulation requires that the petitioner prove that the duties of the proposed position are so complex or unique that only an individual with a degree can perform them. Again, the *Handbook* reveals that the duties of the proposed position are analogous to those of cargo and freight agents, which do not require a degree.

The proposed position does not qualify as a specialty occupation under 8 C.F.R. § 214.2(h)(4)(iii)(A)(3), which requires a showing that the petitioner normally requires a degree or its equivalent for the position. To determine a petitioner's ability to meet this criterion, the AAO normally reviews the petitioner's past employment practices, as well as the histories, including names and dates of employment, of those employees with degrees who previously held the position, and copies of those employees' diplomas.

However, no such evidence has been presented. Moreover, according to the evaluation of educational credentials contained in the record, the beneficiary possesses the equivalent of a high school diploma, which indicates that the petitioner does not require even the beneficiary to possess a bachelor's degree. Accordingly, the proposed position does not qualify as a specialty occupation under 8 C.F.R. § 214.2(h)(4)(iii)(A)(3).

The fourth criterion, 8 C.F.R. § 214.2(h)(4)(iii)(A)(4), requires the petitioner to establish that the nature of the proposed position's duties is so specialized and complex that the knowledge required to perform them is usually associated with the attainment of a baccalaureate or higher degree in the specialty. As previously discussed, the *Handbook* indicates that employers do not normally require a baccalaureate degree for cargo and freight agent positions, and no evidence has been submitted to demonstrate that the duties of the proposed position are more specialized and complex than those of the aforementioned positions. Thus, the proposed position does not qualify for classification as a specialty occupation under 8 C.F.R. § 214.2(h)(4)(iii)(A)(4).

On appeal, the petitioner asserts that it has completed "all the demanded requirements." The AAO disagrees. The criteria for establishing a position as a specialty occupation are clearly delineated at 8 C.F.R. § 214.2(h)(4)(iii)(A), and the petitioner has satisfied none of them. The petitioner also draws attention to the fact that the Department of Labor certified the labor condition application (LCA). However, certification of an LCA does not establish a position as a specialty occupation; that determination is for CIS to make. Moreover, the AAO notes that the prevailing wage determination issued by the State of Florida for the position, which the petitioner submits on appeal, states specifically that a degree is not required for this position. The assertions made by the petitioner on appeal regarding the beneficiary's qualifications for the position are irrelevant, as they do not address the basis for the director's denial, namely, that the position does not qualify for classification as a specialty occupation.

The proposed position does not qualify for classification as a specialty occupation under any of the criteria set forth at 8 C.F.R. §§ 214.2(h)(4)(iii)(A)(1), (2), (3), and (4), and the director was correct to deny the petition. Accordingly, the AAO will not disturb the director's denial of the petition. As the

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proposed position is not a specialty occupation, the beneficiary's qualifications to perform its duties are immaterial.

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.