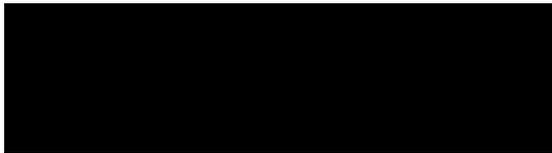




U.S. Citizenship
and Immigration
Services

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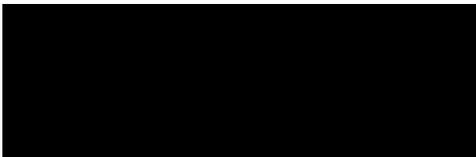
D2

FILE: LIN 04 260 50574 Office: NEBRASKA SERVICE CENTER Date: **JUN 15 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.

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

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 a provider of limited edition collectibles and seeks to employ the beneficiary as a quality assessment coordinator. It endeavors to classify her 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 because the proffered position does not qualify as a specialty occupation, and because the beneficiary is not qualified to perform the duties of the proffered position. On appeal, counsel submits a brief and additional information stating that the offered position qualifies as a specialty occupation and that the beneficiary is qualified to perform the duties of the offered position.

The first issue to be discussed in this proceeding is whether the proffered position qualifies as a specialty occupation.

Section 101(a)(15)(H)(i)(b) of the Act, 8 U.S.C. § 1101(a)(15)(H)(i)(b), provides, in part, for the classification of qualified nonimmigrant aliens who are coming temporarily to the United States to perform services in 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.

The term "specialty occupation" is further defined at 8 C.F.R. § 214.2(h)(4)(ii) as:

[A]n 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 are 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) 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 with supporting documentation. The AAO reviewed the record in its entirety before issuing its decision.

The petitioner is seeking the beneficiary’s services as a quality assessment coordinator. Evidence of the beneficiary’s duties includes the Form I-129 petition with attachment and the petitioner’s response to the director’s request for evidence. According to this evidence this beneficiary would:

- Perform quality control checks on initial shipments of each stock-keeping unit (SKU) for accuracy and completeness;
- Scrutinize items and subjectively compare items against standards;
- Develop methodologies to rate vendors for conformity to standard specification limits;
- Develop and implement product control standards;
- Review final agreements and exercise quality control “sign-off”;
- Identify candidates for concession or “rework”;
- Analyze final price proposals to ensure hours spent on reworks are reasonable;
- Coordinate various reworks, both internally and externally, to ensure timely completion and compliance with quality control standards;
- Liaise between management, contract administration, and contractors regarding the work process;
- Gather, analyze, organize and interpret product quality information;
- Provide research, interpretations, and resolve problems as necessary;

- Compile and summarize report data for inspection and quality reports;
- Monitor and evaluate work performed by suppliers against goals and the Supplier Quality Improvement Plan;
- Design mail-order packages; and
- Implement product department problem-solving.

The petitioner states in its letter of September 13, 2004 that it requires a bachelor's degree in business administration or communications for entry into the offered position. The petitioner's July 29, 2004 job description for the offered position, however, states that the petitioner requires a bachelor's degree in business **or** three years of applicable work experience in international trade with giftware companies or a quality control environment. (Emphasis added).

Upon review of the record, the petitioner has failed to establish that a baccalaureate or higher degree or its equivalent is normally the minimum requirement for entry into the offered position. Factors often considered by CIS when determining this criterion include: whether the Department of Labor's *Occupational Outlook Handbook (Handbook)*, reports that the industry requires a degree; whether an industry 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 information about the duties and educational requirements of particular occupations. The duties of the proffered position are essentially those noted for quality-control inspectors with managerial responsibilities. The position of a quality control inspector is discussed under the *Handbook* classification of inspectors, testers, sorters, samplers, and weighers. The *Handbook* states that the training requirements for the position vary based on job requirements. A high school diploma is sufficient for workers who perform simple "pass/fail" tests of products. Complex precision inspecting positions are filled by experienced assemblers, machine operators, or mechanics who already have a thorough knowledge of the products and production processes. To advance to these positions, experienced workers may need training in statistical process control, new automation, or the company's quality assurance policies. In general, quality control inspectors need mechanical aptitude, math and communication skills, and good hand-eye coordination and vision. They may advance to inspector of more complex products, supervisor, or related positions such as purchaser of materials and equipment. The duties to be performed by the beneficiary fall within these duties with additional managerial/administrative responsibilities. The *Handbook* does not require, however, a baccalaureate level education in a specific specialty to perform the managerial duties associated with this position. General managerial duties are routinely performed by individuals having less than a baccalaureate level education, and by individuals having degrees in a wide variety of unrelated disciplines. The petitioner itself states that a degree in business administration or the unrelated field of communications will qualify the beneficiary for the position, or three years of applicable work experience in international trade with giftware companies or in a quality control environment. Three years of experience is not equivalent to a bachelor's degree in any field. The petitioner has failed to establish the first criterion of 8 C.F.R. § 214.2(h)(4)(iii)(A).

The petitioner asserts that a degree requirement is common to the industry in parallel positions among similar organizations, and in support thereof submits an opinion letter [REDACTED]

[REDACTED] Seattle Pacific University, and four job advertisements. [REDACTED] states that the duties of the position are specialized and complex requiring professional theoretical level knowledge in business areas covered in the course work of a U.S. bachelor's degree in business administration or equivalent degree, and that in firms of similar size to the petitioner, it is an industry standard to recruit college graduates with bachelor's degrees in business administration for the position. [REDACTED] does not provide the basis for his opinion except to state that he is qualified to render the opinion based on his education and experience. He does not reference any authoritative source of information in support thereof such as a labor or industry study or survey. Simply going on the 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 190 (Reg. Comm. 1972)). The AAO will [REDACTED] opinion little weight since he provides no basis for his opinion. CIS may, in its discretion, use as advisory opinion statements submitted as expert testimony. However, where an opinion is not in accord with other information or is in any way questionable, CIS is not required to accept, or may give less weight, to that evidence. *Matter of Caron International*, 19 I&N Dec. 791 (Comm. 1988). [REDACTED] opinion does not establish that a degree in a specific specialty is common to the industry in parallel positions among similar organizations for the offered position.

The four job advertisements submitted also fail to establish that a degree in a specific specialty is common to the industry for parallel positions in similar organizations. None of the advertisements listed appear to be from organizations similar to that of the petitioner, and the advertisements either don't require a degree in a specific specialty, state that a degree is preferred rather than required, or state that a degree in a scientific field is required or preferred. The advertisements submitted do not establish that a degree in a specific specialty is common to the industry for entry into the offered position. The petitioner has not established the referenced criterion at 8 C.F.R. § 214.2(h)(4)(iii)(A)(2).

The petitioner asserts that it normally requires a degree in a specific specialty for the offered position. In support of this assertion the petitioner states that the position is relatively new and that the beneficiary is the only quality assessment coordinator employed by the petitioner. It notes, however, that the position was previously filled by an individual who possessed a master's degree in business administration. In support of that assertion the petitioner submitted a copy of the past employee's resume, but did not provide a copy of his diploma or other documentation from the university where the degree was obtained establishing that the degree was awarded to the employee. The documentation submitted does not establish the criterion at 8 C.F.R. § 214.2(h)(4)(iii)(A)(3). Further, CIS must examine the ultimate employment of the alien, and determine whether the position qualifies as a specialty occupation. *Cf. Defensor v. Meissner*, 201 F. 3d 384 (5th Cir. 2000). The critical element is not the title of the position or an employer's self-imposed standards, but whether the position actually requires the theoretical and practical application of a body of highly specialized knowledge, and the attainment of a baccalaureate or higher degree in the specific specialty as the minimum

for entry into the occupation as required by the Act.¹ To interpret the regulations any other way would lead to absurd results: if CIS were limited to reviewing a petitioner's self-imposed employment requirements, then any alien with a bachelor's degree could be brought into the United States to perform menial, non-professional, or an otherwise non-specialty occupation, so long as the employer required all such employees to have baccalaureate or higher degrees. *See id* at 388.

Finally, the petitioner has not established that the duties of the offered position are so complex or unique that they can only be performed by an individual with a degree in a specific specialty, or that the duties are so specialized or complex that knowledge required to perform them is usually associated with the attainment of a baccalaureate or higher degree in a specific specialty. The duties described by the petitioner appear to be routine for quality control inspectors/managers in the petitioner's industry, and regularly performed by individuals with less than a baccalaureate level education. Reference is again made to the opinion letter submitted by [REDACTED]. As previously [REDACTED] opinion does not establish that the duties of the proffered position are so specialized, complex, or unique that their performance requires attainment of a degree in a specific specialty [REDACTED] provides no basis for his opinion. The AAO notes that the *Handbook* is a compilation of nationwide data collected through surveys, questionnaires, interviews of employers, and other sources, and [REDACTED] opinion is in conflict with information provided by the *Handbook* detailing the educational requirements of the position. The petitioner has failed to establish the referenced criteria at 8 C.F.R. § 214.2(h)(4)(iii)(A)(2) or (4).

The petitioner has failed to establish that the offered position meets any of the criteria listed at 8 C.F.R. § 214.2(h)(4)(iii)(A). Accordingly, the AAO shall not disturb the director's denial of the petition.

The director also determined that the beneficiary was not qualified to perform the services of a specialty occupation. As the position is not a specialty occupation, the beneficiary's qualifications are immaterial to the outcome of this proceeding. Accordingly, the AAO will not address the beneficiary's qualifications.

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 and the appeal shall accordingly be dismissed.

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

¹ The court in *Defensor v. Meissner* observed that the four criteria at 8 C.F.R. 214.2(h)(4)(iii)(A) present certain ambiguities when compared to the statutory definition, and "might also be read as merely an additional requirement that a position must meet, in addition to the statutory and regulatory definition." *See id.* at 387.