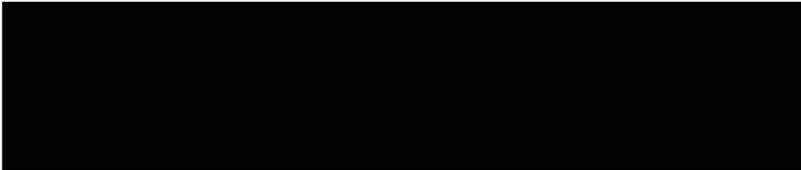




U.S. Citizenship
and Immigration
Services

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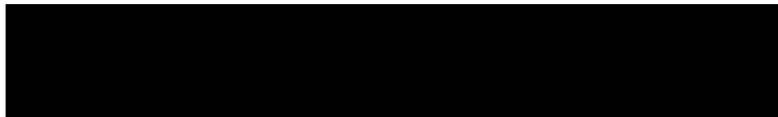
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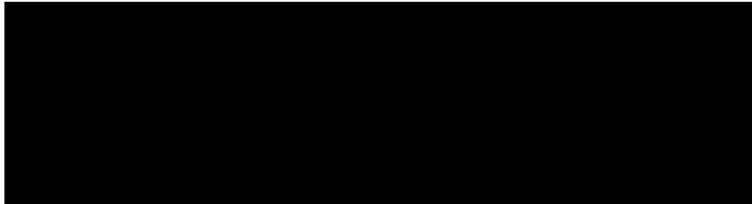
FILE: EAC 04 232 53452 Office: VERMONT SERVICE CENTER Date: JUN 02 2006

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 handbag and luggage importer, exporter, and wholesaler that seeks to employ the beneficiary as an assistant director of international trade and 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 on the grounds that the petitioner failed to establish that the proposed position meets the definition of specialty occupation at 8 C.F.R. § 214.2(h)(4)(iii)(A). On appeal, counsel submits a brief and additional evidence.

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 bachelor's or higher degree, but one in a specific field of study that is directly related to the proposed position.

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

The petitioner seeks the beneficiary's services as an assistant director of international trade. Evidence of the beneficiary's duties includes Form I-129 with attachments, the petitioner's response to the RFE, and evidence submitted on appeal. According to this evidence, the beneficiary's duties would include: developing ladies fashion handbags; sourcing and locating new manufacturers in Korea and China; evaluating factories; traveling to Korea and China to source the suppliers of materials and products; meeting with suppliers and manufacturers; controlling production at factories outside the United States; controlling the shipping schedule; communicating with English and Korean speaking clients regarding pricing, quantity, quality, and delivery for those products imported to the United States; creating a competitive, tactical marketing and sales plan for the product line; internal and external messaging; and positioning the company's marketing programs. The petitioner stated that the position required a bachelor's degree or its equivalent in international trade and experience in the import/export business.

The director concluded that, based on the description of the position, and in light of the size and nature of the petitioner's business, it did not appear that the proposed duties were so complex, specialized, or unique as to require a four-year bachelor's degree in a business-related field.

On appeal, counsel asserts that the small size of the petitioner's business should not preclude the petitioner from establishing that the proposed position is a specialty occupation. Counsel understands that the proposed duties might be considered lacking in the necessary complexity normally required of an H-1B beneficiary, but asserts that the international nature of the job elevates the position to the specialty occupation level.

The petitioner need only satisfy one of the criteria at 8 C.F.R. 214.2(h)(4)(iii)(A) to establish that a position is a specialty occupation. Upon a thorough review, the AAO concludes that the petitioner has failed to establish that its proposed assistant director of international trade position meets any of the four criteria outlined in 8 C.F.R. § 214.2(h)(4)(iii)(A). Therefore, the proposed position is not a specialty occupation.

To determine whether a position qualifies as a specialty occupation, CIS looks beyond the title of the position. CIS considers the specific duties of the proposed position and any supporting evidence, in relation to the nature of the petitioning entity's business operations, to determine if the position requires the theoretical and practical application of a body of highly specialized knowledge and the attainment of a bachelor's degree in a specific field of study as the minimum for entry into the occupation.

The AAO routinely consults the Department of Labor's *Occupational Outlook Handbook (Handbook)* in its consideration of whether or not a position is a specialty occupation and for the *Handbook's* information about the duties and educational requirements of particular occupations. Based on a thorough review of the petitioner's position description and the *Handbook*, the AAO finds that the proposed position closely reflects the duties of a combination of the positions of marketing managers - who, according to the *Handbook*, estimate the demand for products and services offered by the firm and its competitors - and purchasing agents - who, according to the *Handbook*, buy the goods and services the company or institution needs to either resell to customers or for the establishment's own use. Purchasing agents also consider price, quality, availability, reliability, and technical support when choosing suppliers and merchandise. They try to get the best deal for their company, by identifying foreign and domestic suppliers. The beneficiary will create tactical marketing programs as well as participate in locating new manufacturers and meeting with suppliers and manufacturers in Korea and China.

The petitioner, however, failed to establish that the position is a specialty occupation under any of the criteria set forth in the regulations. The fact that the job entails supervisory duties and purchasing products abroad does not elevate the job to one that requires a bachelor's degree in international trade.

To determine whether the proposed position qualifies as a specialty occupation under the criterion at 8 C.F.R. 214.2(h)(4)(iii)(A)(1) – a bachelor’s or higher degree or its equivalent is normally the minimum requirement for entry into the particular position – the AAO turns to the *Handbook’s* discussion of the educational requirements for marketing managers and purchasing agents. The *Handbook* indicates that employers prefer, but do not require, marketing manager applicants with college degrees and that employers sometimes promote individuals from within the company, with good performance records, into marketing manager positions. Although the *Handbook* indicates that large stores prefer their purchasing agents to have degrees with a business emphasis, it does not indicate that this is normally required. As noted above, for a position to be considered a specialty occupation under this first criterion, it must be one that requires a bachelor’s degree in a specific field of study as a minimum for entry into the occupation. Because the evidence of record has not established that a bachelor’s degree in a specific field of study is the normal minimum requirement for entry into the proposed position, the petitioner has not satisfied the first criterion.

The AAO turns next to the first alternative prong of the criterion at 8 C.F.R. § 214.2(h)(4)(iii)(A)(2) - the degree requirement is common to the industry in parallel positions among similar organizations. To determine if a position is a specialty occupation under this criterion, CIS generally considers whether or not letters or affidavits from companies or individuals in the industry attest that such companies “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 petitioner has not provided any evidence that the requirement of a bachelor’s degree in a specific specialty is common in the handbag and luggage importing and exporting industry in parallel positions among similar companies. Therefore, the proposed position does not qualify as a specialty occupation under the first alternative prong at 8 C.F.R. § 214.2(h)(4)(iii)(A)(2).

The AAO now turns to the criterion at 8 C.F.R. § 214.2(h)(4)(iii)(A)(3) – the employer normally requires at least a bachelor’s degree or its equivalent, in a specific field of study, for the position. To determine if a petitioner has established this criterion, the AAO generally reviews the petitioner’s past employment practices, including the histories of those employees who previously held the position, as well as their names, dates of employment, and copies of their diplomas. In the instant case, the petitioner has submitted no evidence to establish its normal hiring practices. In the absence of an employment history for the proposed position, the petitioner cannot establish that its proposed position qualifies as a specialty occupation under the criterion at 8 C.F.R. § 214.2(h)(4)(iii)(A)(3).

Finally, the AAO turns to the criteria related to the complexity, uniqueness, or specialized nature of the proposed position. A petitioner satisfies the second alternative prong of the criterion at 8 C.F.R. § 214.2(h)(4)(iii)(A)(2) if it establishes that a particular position is so complex or unique that it can be performed only by an individual with a bachelor’s degree in a specific field of study. The criterion at 8 C.F.R. § 214.2(h)(4)(iii)(A)(4) requires a petitioner to establish that 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 bachelor’s or higher degree in a specific field of study. The record does not indicate that the proposed duties are distinguishable from those of a typical marketing manager/purchasing agent, occupations the *Handbook* says can be performed by individuals with less than a bachelor’s degree or through advancement.

Counsel asserts that the international aspect of the duties (i.e. traveling to China and Korea) adds a layer of complexity to the proposed position. To support this assertion, counsel submits two expert opinion letters. Professor [REDACTED] of the American Evaluation and Translation Service asserts that the duties of the

proposed position are unique and so highly complex as to require a bachelor's degree in international trade. The professor asserts that, from his observation and experience, the proposed position requires a bachelor's degree in international trade or a related field. This opinion letter is not probative. Professor [REDACTED] lists the duties of the proposed position verbatim from the petitioner's duty description but does not provide an analysis of why these particular duties are more complex than those of an average marketing manager/purchasing agent. While a marketing manager/purchasing agent position may require a bachelor's degree in international trade or a related field, Professor [REDACTED] either gives sufficient details about the complexity of the duties in relation to the petitioner's business nor does he submit documentary evidence to substantiate his conclusions. The AAO 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, the AAO is not required to accept or may give less weight to that evidence. *Matter of Caron International*, 19 I&N Dec. 791 (Comm. 1988).

Counsel also submits a letter from [REDACTED] president of Spacemax International. Mr. [REDACTED] asserts that the petitioner faces problems that require specialized skills acquired by the beneficiary during her years of study and post-graduate work. Mr. [REDACTED]'s letter is not persuasive. The issue is not whether the beneficiary is qualified to perform the duties of the proposed position, but whether the proposed position is a specialty occupation. Mr. [REDACTED] does not explain why the skills the beneficiary learned in college could not be learned through non-college level training or on the job, as the *Handbook* asserts they can be. Furthermore, Mr. [REDACTED] does not submit documentation to support these assertions. 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)). Mr. [REDACTED] does not establish that the proposed position is so complex or unique that it can be performed only by an individual with a bachelor's degree in international trade or that 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 bachelor's or higher degree in international trade.

As the record indicates that individuals may enter these occupations with less than a bachelor's degree, the petitioner has failed to establish that the proposed position qualifies as a specialty occupation based on its complexity, uniqueness, or specialized nature.

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 failed to sustain that burden and the appeal shall accordingly be dismissed.

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