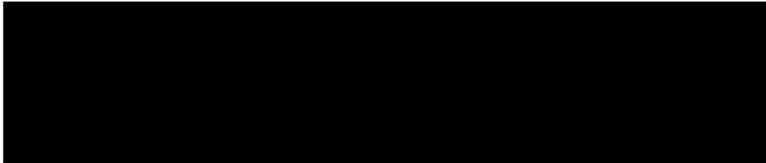


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U.S. Citizenship
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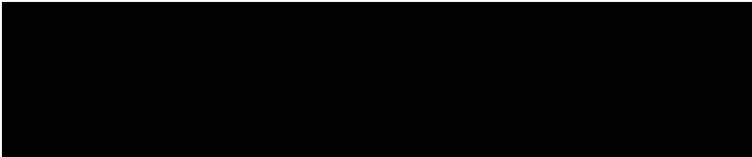
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FILE: EAC 04 081 53137 Office: VERMONT SERVICE CENTER Date: MAR 29 2006

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.

for *Michael T. Kelly*
Robert P. Wiemann, Director
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 sustained. The petition will be approved.

The petitioner is a manufacturer and wholesaler of rough and polished diamonds with over eight million dollars in annual gross revenue that seeks to employ the beneficiary as a marketing associate. 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 on two grounds: that the petitioner had failed to establish that the proposed position qualifies for classification as a specialty occupation, and that the petitioner had failed to demonstrate that the beneficiary qualifies to perform the duties of a specialty occupation. On appeal, counsel contends that the proposed position qualifies as a specialty occupation, and that the beneficiary is in fact qualified to perform the duties of the position.

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

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 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:

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.

The proposed position qualifies as a specialty occupation under 8 C.F.R. § 214.2(h)(4)(iii)(A)(4), which requires a showing that the nature of the specific duties of the proposed position 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.

According to the petitioner’s January 8, 2004 letter of support, the beneficiary would research market conditions in the United States diamond industry to determine the potential sale of diamond jewelry to major retailers. He would analyze data on competitors, manufacturing costs, and customer preferences to forecast future sales of various grades of diamonds, colorstones, settings, and jewelry designs. He would also analyze data on past sales to predict future sales of diamond and colorstone jewelry and perform cost analysis of diamond and colorstone jewelry pieces.

On appeal, the petitioner submits further, detailed information regarding the details of the proposed position. These duties appear so specialized and complex that the knowledge required to perform them is usually associated with the attainment of a baccalaureate or higher degree. The petitioner has also submitted documentary evidence regarding the educational background of its other marketing associate,¹ as well as letters from other diamond manufacturer and wholesaler of similar size to the petitioner that attest to their practices of hiring only persons with degrees to perform the duties of their marketing associate positions.

The petitioner has submitted a detailed description of the duties of the proposed position, that, in combination with this particular record’s information about the petitioner’s business, establishes that the duties of the proposed position are so specialized and complex that the knowledge required to perform them is usually associated with the attainment of a baccalaureate or higher degree.

The AAO notes that the beneficiary possesses the equivalent of a bachelor’s degree in business administration with a concentration in marketing, so he is qualified to perform the duties of the specialty occupation. Counsel has submitted an evaluation of education and experience, dated June 10, 2004, from [REDACTED] a professor of marketing and the Graduate Program Chair in the Department of Marketing at the Lubin Graduate School of Business at Pace University. A copy of [REDACTED] curriculum vitae was submitted as well. Counsel has also submitted a letter from [REDACTED] associate Dean and Director of Graduate Programs at the same institution. In that letter, which is on Pace University letterhead, [REDACTED]

¹ The other marketing associate possesses the equivalent of a bachelor’s degree in business administration with a concentration in sales and marketing. The petitioner has provided CIS with the other marketing associate’s name, her resume, a copy of her degree, a copy of her undergraduate transcripts, and copies of her Forms W-2.

confirms that faculty at Pace University have the authority to grant college-level credit for training and professional experience, and that Pace has a program for granting college-level credit based upon foreign educational credentials, training, and/or professional employment experience.

The petitioner has established both that the position qualifies for classification as a specialty occupation and that the beneficiary is qualified to perform the duties of that specialty occupation. As such, the petition will be approved.

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 sustained that burden.

ORDER: The appeal is sustained. The petition is approved.