

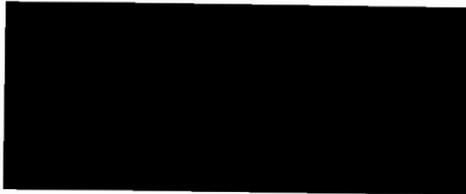
identifying data deleted to
prevent clearly unwarranted
invasion of personal privacy

U.S. Department of Homeland Security
20 Mass. Ave., N.W., Rm. A3042
Washington, DC 20529



U.S. Citizenship
and Immigration
Services

PUBLIC COPY



D2

FILE: LIN 05 009 50713

Office: NEBRASKA SERVICE CENTER

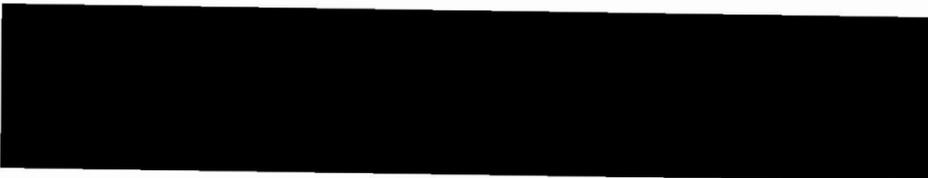
Date: **MAY 08 2006**

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.

Robert P. Wiemann, Chief
Administrative Appeals Office

DISCUSSION: The director of the Nebraska Service Center 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 manufacturer and distributor of precision auto parts, was established in 1948, has 700 employees, and annual sales of \$162 million. It seeks to employ the beneficiary as a Purchasing Manager 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 based on his determination that the proffered position was not a specialty occupation.

The record of proceeding before the AAO contains: (1) Form I-129 and supporting documentation; (2) the director's request for evidence; (3) the petitioner's response to the director's request for evidence, dated November 18, 2004; (4) the director's denial letter; and (5) Form I-290B, with the petitioner's brief and new and additional evidence.

The issue before the AAO is whether the proffered position qualifies as a specialty occupation. To meet its burden of proof in this regard, a petitioner must establish that the job it is offering to the beneficiary meets the following statutory and regulatory requirements.

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 above criteria to mean not just any baccalaureate or higher degree, but one in a specific specialty that is directly related to the proffered position.

To determine whether a particular job qualifies as a specialty occupation, CIS does not simply rely on a position’s title. The specific duties of the proffered position, combined with the nature of the petitioning entity’s business operations, are factors to be considered. 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 nor 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.

The petitioner states that it is seeking the beneficiary’s services as a purchasing manager.

At the time of filing, and in response to the RFE, the petitioner stated that the duties of the proffered position would require the beneficiary to develop and manage supplier relationships to assure competitiveness and maximize contribution through continuous cost and quality improvement in purchased materials. The petitioner specified the job duties as follows:

- Assure adherence to the TS 16949 procedures and policies;
- Oversee the contracts and personnel responsible for the purchase of product parts, capital equipment, MRO items, and tooling;
- Issue material releases against blanket orders to meet inventory and scheduling needs;
- Define and initiate purchasing policies;
- Negotiate and review negotiated contracts;
- Manage supplier development programs;
- Promote strong supplier relationships through mutually beneficial partnerships;
- Develop new suppliers as needed to support business plan objectives;
- Expedite material as required to support P&C line schedules;
- Participate in the development of business plan and determine purchasing measurables;
- Benchmark performance to drive process improvements, new technologies, systems, and methods;
- Direct supplier development activities/improvements; and
- Track vendor performance and participate in vendors’ reviews prior to contract renewal.

The petitioner stated that it required a bachelor’s degree.

The director found that the proffered position was not a specialty occupation because the duties are not so specialized and complex as to require a bachelor’s degree in a specific field of study. 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, counsel asserts that a purchasing manager position requires a bachelor's degree and points to the *Handbook's* section on education and training for purchasing managers and the specific vocational preparation (SVP) code in the DOL's *Dictionary of Occupational Titles (DOT)*. With the appeal brief counsel submitted Internet job advertisements from companies similar to the petitioner to demonstrate the industry requirement of a related bachelor's degree.

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.

To determine whether the duties just described are those of a specialty occupation, the AAO first considers 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; and 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 considered by the AAO when determining these criteria include: whether the Department of Labor's *Handbook*, on which the AAO routinely relies for the educational requirements of particular occupations, 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 turns to a consideration of the criterion at 8 C.F.R. § 214.2(h)(4)(iii)(A)(1), that a baccalaureate or higher degree or its equivalent is normally the minimum requirement for entry into the particular position. The AAO agrees that the proffered position is akin to that of a purchasing manager. The 2006-2007 *Handbook's* description of purchasing manager, at <http://www.bls.gov/oco/ocos023.htm>, states:

Purchasing managers, buyers, and purchasing agents make up a key component of a firm's supply chain. They buy the goods and services the company or institution needs to either resell to customers or for the establishment's own use....

In large industrial organizations, a distinction often is drawn between the work of a buyer or purchasing agent and that of a *purchasing manager*. Purchasing agents commonly focus on routine purchasing tasks, often specializing in a commodity or group of related commodities, such as steel, lumber, cotton, grains, fabricated metal products, or petroleum products. Purchasing agents usually track market conditions, price trends, and futures markets. Purchasing managers usually handle the more complex or critical purchases and may supervise a group of

purchasing agents handling other goods and services. Whether a person is titled purchasing manager, buyer, or purchasing agent depends more on specific industry and employer practices than on specific job duties.

With respect to educational qualifications for purchasing managers, the *Handbook* states:

Qualified persons may begin as trainees, purchasing clerks, expeditors, junior buyers, or assistant buyers. Retail and wholesale firms prefer to hire applicants who have a college degree and who are familiar with the merchandise they sell and with wholesaling and retailing practices. Some retail firms promote qualified employees to assistant buyer positions; others recruit and train college graduates as assistant buyers. Most employers use a combination of methods.

Educational requirements tend to vary with the size of the organization. Large stores and distributors prefer applicants who have completed a bachelor's degree program with a business emphasis. Many manufacturing firms put yet a greater emphasis on formal training, preferring applicants with a bachelor's or master's degree in engineering, business, economics, or one of the applied sciences. A master's degree is essential for advancement to many top-level purchasing manager jobs.

In manufacturing, new purchasing employees often are enrolled in company training programs and spend a considerable amount of time learning about their firm's operations and purchasing practices. They work with experienced purchasers to learn about commodities, prices, suppliers, and markets. In addition, they may be assigned to the production planning department to learn about the material requirements system and the inventory system the company uses to keep production and replenishment functions working smoothly.

Purchasing managers, buyers, and purchasing agents must know how to use both word processing and spreadsheet software, as well as the Internet. Other important qualities include the ability to analyze technical data in suppliers' proposals; good communication, negotiation, and mathematical skills; knowledge of supply-chain management; and the ability to perform financial analyses.

The AAO routinely consults the *Handbook* for its information about the duties and educational requirements of particular occupations. The *Handbook* does not establish a specific degree requirement for purchasing managers. The *Handbook* emphasizes purchasing experience, and for advancement, varying combinations of experience and education depending on the type of business, and for manufacturing firms employers are putting greater emphasis on formal education, "*preferring* [emphasis added] applicants with a bachelor's or master's degree in engineering, business, economics, or one of the applied sciences."

Counsel's reference to and assertions about the relevance of information from the *DOT* are not persuasive. The *DOT's* SVP rating does not indicate that a particular occupation requires the attainment of a baccalaureate or higher degree, or its equivalent, in a specific specialty as a minimum for entry into the occupation. An SVP rating is meant to indicate only the total number of years of vocational preparation required for a particular position. The classification does not describe how those years are to be divided among training, formal education, and experience, nor specifies the particular type of degree, if any, that a position would require.

The *Handbook* is clear that a degree or its equivalent is not the normal minimum requirement for entry into the occupation. The petitioner also requires fluency in Hungarian and English for the proffered position. It is noted that the *Handbook's* discussion of the occupation of interpreters and translators does not indicate that a degree in a specialty is required for interpreting or translation duties. Thus, the requirement that the beneficiary be bilingual does not establish the position as a specialty occupation.

Accordingly, the AAO finds that the petitioner has failed to establish the proffered position as a specialty occupation under the first criterion at 8 C.F.R. § 214.2(h)(4)(iii)(A)(1) – a baccalaureate or higher degree or its equivalent is normally the minimum requirement for entry into the particular position.

The AAO now turns to a consideration of whether the proffered position may qualify as a specialty occupation under either of the prongs of the second criterion at 8 C.F.R. § 214.2(h)(4)(ii)(A)(2) – the petitioner must establish that a degree requirement is common to the industry in parallel positions among similar organizations, or that the proffered position is so complex or unique that it can be performed only by an individual with a degree.

Regarding parallel positions in the petitioner's industry, the petitioner submitted 13 Internet job postings for purchasing managers. Five of the advertisements are from employers in fields unrelated to the petitioner's. Of the 8 advertisers that are in the automotive parts business, only one supplies metal stampings, which is the petitioner's line of business. The supplier of stampings employs 1700 workers in 9 plants, and requires a bachelor's degree or its equivalent in a related field. The petitioner is seeking a purchase manager for one plant that employs 700 workers, and seeks to employ the beneficiary, who has a degree in Psychology.

Further, the duties of the advertised positions are not specific enough to compare with the job duties of the proffered position. Thus, the petitioner has not established that the degree requirement is common to the industry in parallel positions among similar organizations.

It is further noted that most of the 13 advertisements require a degree in business, engineering, or a related field. While engineering is a specialized degree, business administration is not, without further specification. A petitioner must demonstrate that the proffered position requires a precise and specific course of study that relates directly and closely to the position in question. Since there must be a close corollary between the required specialized studies and the position, the requirement of a degree with a generalized title, without further specification, does not establish the position as a specialty occupation. *Matter of Michael Hertz Associates*, 19 I&N Dec. 558 (Comm. 1988). While the petitioner indicates that the beneficiary has 8 years of relevant employment experience, no evidence of record substantiates this claim. Going on record without supporting documentary evidence is not sufficient for the purposes of

meeting the burden of proof in these proceedings. See *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

Counsel asserts that the petitioner's business is similar to the businesses in the advertisements. However, the petitioner provides no information that would establish them as organizations of comparable size and complexity to the petitioner. Furthermore, there is no evidence to show that the proposed duties of the proffered position are similar to the duties described in the advertisements. The advertisements provide generalized descriptions of duties, such as "materials purchasing and management", and "responsible as a buyer of materials and parts for manufacturing". Without documentary evidence to support the claim, the assertions of counsel will not satisfy the petitioner's burden of proof. The assertions of counsel do not constitute evidence. *Matter of Obaigbena*, 19 I&N Dec. 533, 534 (BIA 1988); *Matter of Laureano*, 19 I&N Dec. 1 (BIA 1983); *Matter of Ramirez-Sanchez*, 17 I&N Dec. 503, 506 (BIA 1980).

The petitioner will accept a degree in psychology, that is not directly and closely related to the position in question. As the educational requirements for the positions advertised and for the proffered position are not specific to the work to be performed, the position cannot be established as a specialty occupation under the first prong of the second criterion. No other evidence of record establishes the first prong of the second criterion.

The record also does not include any evidence from professional associations regarding an industry standard, or documentation to support the complexity or uniqueness of the proffered position.¹ Therefore, the petitioner has failed to establish that a specific degree requirement is common to the industry in parallel positions among similar organizations.

As noted above, the petitioner has described duties normally performed by purchasing managers. In its response to the RFE, in addressing the first, second, and fourth criteria, counsel simply made reference to the *Dictionary of Occupational Titles* description of purchasing agent and purchasing manager to offer a further explanation of the proffered position's duties. The AAO finds the petitioner to have provided no evidence that would support a finding that the job duties are so complex or unique that it can be performed only by an individual with a degree. Therefore, the record also fails to establish that the position qualifies as a specialty occupation under the second prong of the second criterion at 8 C.F.R. § 214.2(h)(4)(iii)(A)(2) – the position is so complex or unique that it can be performed only by an individual with a degree.

Accordingly, the petitioner has not established its position as a specialty occupation under either prong of the second criterion.

¹ The AAO notes that the Institute of Supply Management (ISM) that certifies purchasing managers, and issues a Certified Purchasing Manager (C.P.M.) certification does not require a degree for certification.

The ISM website indicates that the C.P.M. Program was originated by ISM in 1974, and is the first nationally accepted standard of competence and knowledge for the purchasing and supply management field. Applicants for C.P.M. certification must pass all four modules of the C.P.M exam. In addition, the applicant must (a) have five years of full-time professional (non-clerical, non-support) purchasing and supply management experience, or (b) have a four-year degree from an accredited institution and three years of full-time professional purchasing and supply management experience. The ISM website is referred to in the *Handbook* as an additional source of information.

<http://www.ism.ws/Certification/CPMCertification.cfm>.

The AAO next considers the criteria at 8 C.F.R. § 214.2(h)(4)(iii)(3) and (4): the employer normally requires a degree or its equivalent for the position; and the nature of the specific 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. To determine the petitioner's ability to meet the third 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, the petitioner provides no such information. Instead, in the appeal brief counsel stated that of the petitioner's three purchasing agents two have bachelor's degrees, and one has an associate degree and is pursuing a bachelor's degree. He states that the purchasing director position requires a 4-year degree. The petitioner was established in 1948 and currently has more than 700 hundred employees. There is no evidence of record indicating how many of the 700 employees are purchasing managers or directors, and no evidence of previous hiring practices for purchasing managers. Without documentary evidence to support the claim, the assertions of counsel will not satisfy the petitioner's burden of proof. The assertions of counsel do not constitute evidence. *Matter of Obaigbena*, 19 I&N Dec. 533, 534 (BIA 1988); *Matter of Laureano*, 19 I&N Dec. 1 (BIA 1983); *Matter of Ramirez-Sanchez*, 17 I&N Dec. 503, 506 (BIA 1980).

Accordingly, the petitioner has not established its position as a specialty occupation under the third criterion.

The fourth criterion at 8 C.F.R. § 214.2(h)(4)(iii)(A)(4) requires that a petitioner establish that the nature of the specific duties of the 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. On appeal, counsel contends that the duties of the proffered position satisfy the criterion's requirements.

Counsel stated that the beneficiary will perform duties similar to those of purchasing agents, as well as those of purchasing manager, procurement services. The job description provided does not indicate that the duties of the proffered position are distinguishable from those of purchasing agents and purchasing managers described in the *Handbook*, which does not indicate that a degree in a specialty is required. The petitioner has not submitted business documentation to establish that the complexity of the duties requires a 4-year degree in a specialty.

Therefore, the proffered position has not been established as a specialty occupation under the requirements at 8 C.F.R. § 214.2(h)(4)(iii)(A)(4).

For the reasons related in the preceding discussion, the petitioner has failed to establish that the proffered position meets the requirements for a specialty occupation set forth at 8 C.F.R. § 214.2(h)(4)(iii)(A). Accordingly, the AAO shall not disturb the director's denial of the petition.

LIN 05 009 50713

Page 9

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.