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U.S. Citizenship  
and Immigration  
Services

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FILE: EAC 04 265 53198 Office: VERMONT SERVICE CENTER Date: **MAY 24 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.

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 an interior design company that seeks to employ the beneficiary as a purchasing agent 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) and that the beneficiary was qualified to perform the duties of the job. 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 a purchasing agent. Evidence of the beneficiary's duties includes Form I-129 with attachments and the petitioner's response to the director's request for evidence.

According to this evidence, the beneficiary's duties would include: helping coordinate a variety of activities involved with the procurement of necessary supplies, furnishing and fixtures to assist in the realization of interior design plans; forecasting the creation of future popular design materials; conferring with suppliers to obtain information regarding price, availability, volume, shipping details and delivery schedules for needed materials; participating in the selection process of such products by testing observing and examining sample items, and based upon prior relationships with known suppliers; investigating new or yet unknown suppliers; preparing purchase orders or bid requests; reviewing bid proposals and counter proposals; assisting in the negotiation of contracts that keep within established budgetary authority; maintaining computerized and manual procurement records including items purchased, delivery, product quality, and inventories; liaising with other agents and item inspectors, including furniture inspectors; acting to expedite the shipping and receipt of goods; approving invoices for payment to suppliers directly; researching materials on the internet; scanning, editing and saving all the samples as JPEG files in Photoshop; transferring the architects' blue print saved in EPS format into Photoshop; using computer techniques to edit sample images for presentation; producing two dimensional artists' impressions designs in a visual form; transferring all the images into Power Points. The petitioner stated that the position required a bachelor's degree or its equivalent in business administration, fashion design, or management marketing.

The director concluded that the proposed position did not qualify as specialty occupation under the first criterion because the Department of Labor's *Occupational Outlook Handbook (Handbook)* indicated that a person could perform the proposed duties with some college preparation or simply with experience in merchandising. The director found that reference to a particular occupation in the Department of Labor's *Dictionary of Occupational Titles (DOT)* was not enough to establish an occupation is within the professions or is a specialty occupation. The director found that the record contained no evidence showing that the industry normally required a person with at least a bachelor's degree or higher for the position of purchasing agent.

On appeal, counsel asserts that the position entails several computer-related duties that were improperly omitted from the initial petition and the RFE. Counsel asserts that these additional duties establish that the position is professional in nature and require that the beneficiary hold either a degree in management information systems or business administration.

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 purchasing agent 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 and determines, from a review of the duties and any supporting evidence, 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.

Based on the petitioner's description and a thorough review of the Department of Labor's *Occupational Outlook Handbook (Handbook)*, a resource upon which CIS routinely relies in its consideration of whether or not the position is a specialty occupation, the AAO concurs with the petitioner that the proposed position closely reflects the duties of 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. They 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 studying sales records and inventory levels of

current stock, identifying foreign and domestic suppliers, and keeping abreast of changes affecting both the supply of, and demand for, needed products and materials. The beneficiary will “participate in the selection of products,” “forecast the creation of future popular design materials,” and “coordinate a variety of activities involved with the procurement of necessary supplies.”

The petitioner, however, failed to establish that the position is a specialty occupation under any of the criteria set forth in the regulations. The additional computer-related duties the petitioner lists on appeal do not elevate the job to one that requires a bachelor’s degree in a computer-related field.

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 purchasing agents. The *Handbook* indicates that retailers prefer, but do not require, applicants with college degrees. In addition, the *Handbook* does not specify whether those degrees are from 2-year or 4-year colleges. 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 require a bachelor’s degree in a specific field of study as a minimum for entry into the occupation. Accordingly, the petitioner cannot establish that a bachelor’s degree in a specific field of study is the normal minimum requirement for entry into the proposed position.

The AAO turns next to the first alternative prong of the second 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 computer- or business-related field is common in the industry in parallel positions among similar interior design firms. 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 purchasing agent, an occupation the *Handbook* says can be performed by individuals with associate degrees or through advancement. Counsel asserts that the additional computer-related duties (including researching materials on the internet and using Photoshop) add a layer of complexity to the proposed position. The record, however, lacks evidence that substantiates that the combined duties, as described by the petitioner, are so complex or unique that they can only be performed by an individual with a specialized bachelor's degree, or that they are so specialized and complex as to require knowledge usually associated with the attainment of a bachelor's degree or higher in a computer- or business-related field. Counsel's assertions are not supported by any document in the record. Without documentary evidence to support the claim, the assertions of counsel will not satisfy the petitioner's burden of proof. The unsupported 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 director also found that the beneficiary's bachelor's degree in Management Information Systems would not equip the beneficiary to perform the duties of the proposed position. As the AAO finds that the position is not a specialty occupation, it will not review the issue of 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 failed to sustain that burden and the appeal shall accordingly be dismissed.

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