

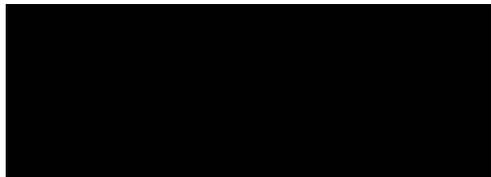
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U.S. Department of Homeland Security
20 Mass Ave., N.W., Rm. 3000
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U.S. Citizenship
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Services

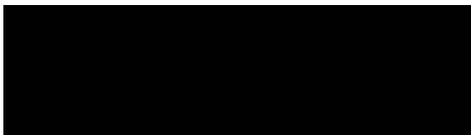
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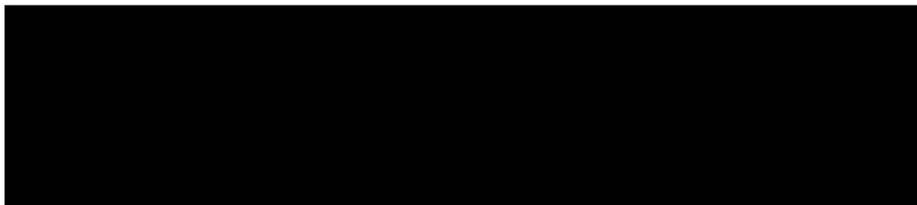
FILE: WAC 04 008 50175 Office: CALIFORNIA SERVICE CENTER Date: NOV 02 2006

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.

Robert P. Wiemann

Robert P. Wiemann, Chief
Administrative Appeals Office

DISCUSSION: The director of the 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 food wholesale distribution company that seeks to employ the beneficiary as a purchasing manager. 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 finding that the position is not a specialty occupation and that a previously filed petition, submitted on behalf of the beneficiary by another petitioner, contained fraudulent educational documents. The director implicitly found the beneficiary unqualified to perform the duties of a specialty occupation. Counsel submits a timely appeal.

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 baccalaureate or higher degree, but one in a specific specialty that is directly related to the proffered position.

Section 214(i)(2) of the Act, 8 U.S.C. § 1184(i)(2), states that an alien applying for classification as an H-1B nonimmigrant worker must possess full state licensure to practice in the occupation, if such licensure is required to practice in the occupation, and completion of the degree in the specialty that the occupation requires. If the alien does not possess the required degree, the petitioner must demonstrate that the alien has experience in the specialty equivalent to the completion of such degree, and recognition of expertise in the specialty through progressively responsible positions relating to the specialty.

Pursuant to 8 C.F.R. § 214.2(h)(4)(iii)(C), to qualify to perform services in a specialty occupation, an alien must meet one of the following criteria:

- (1) Hold a United States baccalaureate or higher degree required by the specialty occupation from an accredited college or university;
- (2) Hold a foreign degree determined to be equivalent to a United States baccalaureate or higher degree required by the specialty occupation from an accredited college or university;
- (3) Hold an unrestricted state license, registration or certification which authorizes him or her to fully practice the specialty occupation and be immediately engaged in that specialty in the state of intended employment; or
- (4) Have education, specialized training, and/or progressively responsible experience that is equivalent to completion of a United States baccalaureate or higher degree in the specialty occupation, and have recognition of expertise in the specialty through progressively responsible positions directly related to the specialty.

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

In denying the petition, the director stated that the previous petition submitted on behalf of the beneficiary by a different employer sought the beneficiary's services as a systems programmer/analyst. According to the director, that employer submitted the beneficiary's degree and transcript in the field of computer science, which was granted to the beneficiary by AMA Computer College in Makati City on March 23, 2002. The director stated that the petitioner here submitted into the record the beneficiary's degree from the University of St. La Salle (located in Barcolod), which is in the field of commerce, with a major in agri-business management. This degree is dated March 17, 2002. The director found that given the location of the two universities, it was not possible for the beneficiary to attend both universities. The director stated that the beneficiary had asserted, in response to the director's notice of intent to deny, that the computer science degree was fraudulent and that the beneficiary had no knowledge of it. The director stated that the petitioner did not submit evidence that would establish which diploma the beneficiary held or whether the beneficiary had earned a baccalaureate degree.

On appeal, counsel states that the beneficiary acted in good faith in submitting his true credentials to the prior petitioner and that the prior petitioner made fraudulent documents on the beneficiary's behalf. Counsel states that the beneficiary's genuine educational documents were submitted for the instant petition.

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.

The petitioner seeks to employ the beneficiary as a purchasing manager. Evidence of the beneficiary's duties includes: the Form I-129; the attachments accompanying the Form I-129; the petitioner's support letter; and the petitioner's response to the director's request for evidence. According to this evidence, the beneficiary would perform duties as follows: develops annual contracts for services and prepares and evaluates bids for commodities and services; plans, organizes, manages, coordinates, and evaluates the petitioner's purchasing activities; authorizes purchase orders in compliance with the petitioner's policies and state laws; prepares major purchase orders; analyzes bids, proposals, and specifications to determine supply sources; interviews vendors and inspects facilities; evaluates products and services and establishes pricing guidelines and specifications; creates and maintains records; prepares reports and correspondence and reviews and analyzes contracts and other data; advises management on issues and problems relating to purchasing policies and procedures and recommends solutions; manages and supervises purchasing and warehousing activities; defines/develops procedures for a purchasing process and other support services; and prepares, manages, and plans the purchasing budget. For the proposed position the petitioner requires a bachelor's degree in a related field.

To establish that the proposed position is a specialty occupation at 8 C.F.R. §§ 214.2(h)(4)(iii)(A)(1) or (2), the petitioner must show that a baccalaureate or higher degree or its equivalent is the normal minimum requirement for entry into the particular position; 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 often considered by CIS when determining these criteria include: whether the 2006-2007 edition of the *Handbook* 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)).

In determining whether a position qualifies as a specialty occupation, CIS looks beyond the title of the position and determines, from a review of the duties of the position and any supporting evidence, whether the position actually requires the theoretical and practical application of a body of highly specialized knowledge, and the attainment of a baccalaureate degree in a specific specialty as the minimum for entry into the occupation as required by the Act.

The AAO routinely consults the *Handbook* for its information about the duties and educational requirements of occupations. The AAO concurs with counsel in that the beneficiary's duties are encompassed within the

Handbook's category "Purchasing Managers, Buyers, and Purchasing Agents." The *Handbook* describes this job classification as follows:

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. *Wholesale and retail buyers* purchase goods for resale, such as clothing or electronics and *purchasing agents* buy goods and services for use by their own company or organization such as raw materials for manufacturing or office supplies. *Purchasing agents and buyers of farm products* purchase goods such as grain, Christmas trees, and tobacco for further processing or resale. Purchasing professionals consider price, quality, availability, reliability, and technical support when choosing suppliers and merchandise. They try to get the best deal for their company, meaning the highest quality goods and services at the lowest possible cost to their companies. In order to accomplish these tasks successfully, purchasing managers, buyers, and purchasing agents study sales records and inventory levels of current stock, identify foreign and domestic suppliers, and keep abreast of changes affecting both the supply of, and demand for, needed products and materials.

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.

Purchasing specialists who buy finished goods for resale are employed by wholesale and retail establishments, where they commonly are known as *buyers* or *merchandise managers*. Wholesale and retail buyers are an integral part of a complex system of distribution and merchandising that caters to the vast array of consumer needs and desires. Wholesale buyers purchase goods directly from manufacturers or from other wholesale firms for resale to retail firms, commercial establishments, institutions, and other organizations. In retail firms, buyers purchase goods from wholesale firms or directly from manufacturers for resale to the public. Buyers largely determine which products their establishment will sell. Therefore, it is essential that they have the ability to predict what will appeal to consumers. They must constantly stay informed of the latest trends, because failure to do so could jeopardize profits and the reputation of their company. They keep track of inventories and sales levels through computer software that is linked to the store's cash registers. Buyers also follow ads in

newspapers and other media to check competitors' sales activities, and they watch general economic conditions to anticipate consumer buying patterns. Buyers working for large and medium-sized firms usually specialize in acquiring one or two lines of merchandise, whereas buyers working for small stores may purchase the establishment's complete inventory.

Many merchandise managers assist in the planning and implementation of sales promotion programs. Working with merchandise executives, they determine the nature of the sale and purchase items accordingly. Merchandise managers may work with advertising personnel to create an ad campaign. For example, they may determine in which media the advertisement will be placed—newspapers, direct mail, television, or some combination of all three. In addition, merchandise managers often visit the selling floor to ensure that goods are properly displayed. Buyers stay in constant contact with store and department managers to find out what products are selling well and which items the customers are demanding to be added to the product line. Often, assistant buyers are responsible for placing orders and checking shipments.

Evaluating suppliers is one of the most critical functions of a purchasing manager, buyer, or purchasing agent. Many firms now run on a lean manufacturing schedule and use just-in-time inventories so any delays in the supply chain can shut down production and cost the firm its customers and reputation. Purchasing professionals use many resources to find out all they can about potential suppliers. The Internet has become an effective tool in searching catalogs, trade journals, and industry and company publications, and directories. Purchasing professionals will attend meetings, trade shows, and conferences to learn of new industry trends and make contacts with suppliers. Purchasing managers, agents, and buyers will usually interview prospective suppliers and visit their plants and distribution centers to assess their capabilities. It is important to make certain that the supplier is capable of delivering the desired goods or services on time, in the correct quantities without sacrificing quality. Once all of the necessary information on suppliers is gathered, orders are placed and contracts are awarded to those suppliers who meet the purchaser's needs. Most of the transaction process is now automated using electronic purchasing systems that link the supplier and firms together through the Internet.

Purchasing professionals can gain instant access to the specifications for thousands of commodities, inventory records, and their customers' purchase records to avoid overpaying for goods and to avoid shortages of popular goods or surpluses of goods that do not sell as well. These systems permit faster selection, customization, and ordering of products, and they allow buyers to concentrate on the qualitative and analytical aspects of the job. Long-term contracts are an important strategy of purchasing professionals because it allows purchasers to consolidate their supply bases around fewer suppliers. In today's global economy purchasing managers, buyers, and purchasing agents should expect to deal with foreign

suppliers which may require travel to other countries and to be familiar with other cultures and languages.

The educational qualifications for purchasing managers, buyers, and purchasing agents is described in the *Handbook* as follows:

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.

Regardless of academic preparation, new employees must learn the specifics of their employers' business. Training periods vary in length, with most lasting 1 to 5 years. In wholesale and retail establishments, most trainees begin by selling merchandise, supervising sales workers, checking invoices on material received, and keeping track of stock. As they progress, retail trainees are given increased buying-related responsibilities.

Experienced buyers may advance by moving to a department that manages a larger volume or by becoming a merchandise manager. Others may go to work in sales for a manufacturer or wholesaler.

An experienced purchasing agent or buyer may become an assistant purchasing manager in charge of a group of purchasing professionals before advancing to purchasing manager, supply manager, or director of materials management. At the top levels, duties may overlap with other management functions, such as production, planning, logistics, and marketing.

The *Handbook* indicates that a baccalaureate degree in a specific specialty is not normally required for purchasing managers, buyers, and purchasing agents. Furthermore, the petitioner, with 15 employees, is neither a large store nor a distributor, which are entities that the *Handbook* indicates prefer applicants who have completed a bachelor's degree program with a business emphasis. Thus, based on the evidence of record and the *Handbook's* information, the petitioner fails to establish the criterion at

8 C.F.R. § 214.2(h)(4)(iii)(A)(1), which is that a baccalaureate or higher degree or its equivalent in a specific specialty is the normal minimum requirement for entry into the particular position.

The petitioner submitted no evidence to establish the first alternative prong at 8 C.F.R. § 214.2(h)(4)(iii)(A)(2) - that a specific degree requirement is common to the industry in parallel positions among organizations similar to the petitioner.

The petitioner has not satisfied the second alternative prong at 8 C.F.R. § 214.2(h)(4)(iii)(A)(2) as no evidence in the record shows the proffered position is so complex or unique that it can be performed only by an individual with a degree. The proposed duties are encompassed within the *Handbook's* description of purchasing managers, buyers, and purchasing agents, which are occupations that do not require a baccalaureate degree in a specific specialty. No evidence of record conveys that the proposed duties are more complex or unique from those of the typical purchasing manager, buyer, or purchasing agent. Thus, the petitioner fails to establish the second alternative prong at 8 C.F.R. § 214.2(h)(4)(iii)(A)(2).

No evidence in the record establishes the regulation at 8 C.F.R. § 214.2(h)(4)(iii)(A)(3): that the petitioner normally requires a degree or its equivalent for the position.

To satisfy the regulation at 8 C.F.R. § 214.2(h)(4)(iii)(A)(4), the petitioner must establish that the nature of the specific duties is so specialized and complex that the knowledge required to perform such duties is usually associated with the attainment of a baccalaureate or higher degree. The proposed duties are encompassed within the description of purchasing managers, buyers, and purchasing agents, which are occupations that the *Handbook* explains do not require a baccalaureate degree in a specific specialty. No evidence of record suggests that the proposed duties are so specialized or complex as to differ from those of the typical purchasing manager, buyer, or purchasing agent. Accordingly, the petitioner fails to establish the criterion at 8 C.F.R. § 214.2(h)(4)(iii)(A)(4).

The director also implicitly found the beneficiary unqualified for the position, based on fraudulent information submitted about the beneficiary's credentials in this and in another immigration proceeding.

Contained in the record of proceeding is the beneficiary's December 24, 2003 letter, which was submitted in response to the director's notice of intent to deny. In the letter, the beneficiary stated that he furnished his authentic credential to the prior petitioner; however, without his knowledge, instead of filing the baccalaureate degree in support of the H-1B petition, the petitioner filed fraudulent educational documents. The AAO notes that the fraudulent documents are the baccalaureate degree and transcript in the field of computer science from AMA Computer College in Makati City.

The AAO finds that the evidence in the record, including the beneficiary's December 24, 2003 letter, fails to overcome the director's denial of the instant petition on the ground that fraudulent documents had been filed by the prior petitioner on behalf of the beneficiary.

The petitioner here seeks to employ the beneficiary as a purchasing manager. The director stated that the prior petitioner sought to employ the beneficiary as a systems analyst. The AAO notes that in the December 24, 2003 letter the beneficiary does not explain why he applied for a systems analyst position given that his baccalaureate degree is in commerce (with a major in agri-business management) from the University of St. La Salle (located in Barcolod), and his transcript reveals that he took only two basic computer classes: Basic Computer 1 (Word Processing) and Basic Computer 2 (Lotus 123). The AAO finds that the beneficiary's commerce degree (with a major in agri-business management) is entirely unrelated to the course of study required for a systems analyst. The Department of Labor's *Occupational Outlook Handbook* (the *Handbook*) indicates that for systems analyst positions many employers seek applicants with a "bachelor's degree in computer science, information science, or management information systems (MIS)" or "a master's degree in business administration (MBA), with a concentration in information systems." Furthermore, the record contains evidence of the beneficiary's prior employment, an employment certification from Y2B Enterprises, signed by [REDACTED] Owner/Manager. The employment certification indicates that the beneficiary held a purchasing manager position, not a systems analyst position, with Y2B Enterprises. In light of the evidence pertaining to the beneficiary's educational background and prior work experience, which reveal that the beneficiary does not have the necessary qualifications for a systems analyst position, the beneficiary's failure to explain in his December 24, 2003 letter or on appeal why he applied for a systems analyst position and how he qualified for the position, is inadequate.

Doubt cast on any aspect of the petitioner's proof may, of course, lead to a reevaluation of the reliability and sufficiency of the remaining evidence offered in support of the visa petition. It is incumbent upon the petitioner to resolve any inconsistencies in the record by independent objective evidence, and attempts to explain or reconcile such inconsistencies, absent competent objective evidence pointing to where the truth, in fact, lies, will not suffice. *Matter of Ho*, 19 I&N Dec. 582, 591-92 (BIA 1988). Further, simply going on record without supporting documentary evidence is not sufficient for the purpose 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)). No evidence in the record overcomes the denial of the instant petition on the ground that fraudulent documents had been filed by the prior petitioner on behalf of the beneficiary.

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