

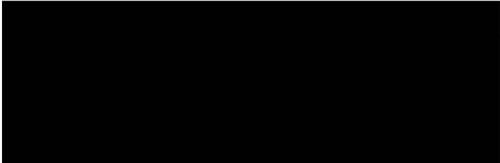
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U.S. Citizenship  
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FILE: WAC 05 028 50557 Office: CALIFORNIA SERVICE CENTER Date: OCT 06 2006

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:

SELF-REPRESENTED

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, California Service Center, denied the nonimmigrant visa petition. 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 wholesaler of textiles and fabrics, employs 23 people, and has gross annual sales of approximately 18 million dollars. It seeks to employ the beneficiary as an international trade and purchasing specialist. Accordingly, the petitioner endeavors to classify the beneficiary as a nonimmigrant 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 determining that the position was not a specialty occupation.

The record of proceeding before the AAO contains: (1) the Form I-129 with supporting documentation; (2) the director's November 22, 2004 notice of intent to deny (NOID); (3) counsel's<sup>1</sup> December 18, 2004 response to the director's NOID; (4) the director's January 7, 2005 denial decision; and (5) the Form I-290B and counsel's brief in support of the appeal. The AAO reviewed the record in its entirety before issuing its decision.

The issue before the AAO is whether the proffered position qualifies as a specialty occupation. To meet its burden of proof in this regard, the 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 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:

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<sup>1</sup> The petitioner's attorney, \_\_\_\_\_ is not longer an active member of the California State Bar. All representations will be considered; however, counsel will not receive a notice of these proceedings.

- (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.

In an October 5, 2004 letter appended to the petition, the petitioner indicated that the beneficiary in the proffered position would spend 50 percent of his time developing a company purchasing system and strategy, including purchase price analysis, requisition review, cost estimation, and sourcing. The petitioner noted that: purchase price analysis included compiling and analyzing statistical data to determine the feasibility of buying and distributing products and to establish price objectives for contract transactions; requisition review included conferring with foreign suppliers/vendors to obtain product information, such as price, availability, and delivery schedule, as well as reviewing bid proposals and negotiating contracts; cost estimation included analyzing fabric specifications, proposals, and other documentation to prepare time, cost, and labor estimates for product procurement; and effective sourcing included devising means for a more cost reducing sourcing for the company. The petitioner indicated that the beneficiary would spend 30 percent of his time researching and analyzing existing international trade laws affecting the business, including researching existing international laws, foreign trade policies, and regulations relevant to international trade. The petitioner indicated that the beneficiary would spend 20 percent of his time on logistics monitoring, control and preparation of reports on his findings as well as recommending participation in international textile trade promotion programs.

In the November 22, 2004 NOID, the director determined that the petitioner's description of the duties of the proffered position reflected the duties of a purchasing manager or agent as listed under the section "Purchasing Managers, Buyers and Purchasing Agents" in the Department of Labor's *Occupational Outlook Handbook*. The director noted that although a baccalaureate level of training was preferred, the occupation of purchasing manager did not require a baccalaureate level of education in a specific specialty as a normal, minimum requirement for entry into the occupation. The director also found that the record did not contain sufficient evidence to establish that a degree requirement is common to the industry in parallel positions among similar organizations, that the duties of the position were unique or complex so that only an individual with a degree in a specific specialty could perform them, that the petitioner normally required a degree or its equivalent in a specific specialty for the position, or that the nature of the duties to be performed are so

specialized and complex that the knowledge required to perform the duties would be associated with the attainment of a baccalaureate or higher degree in a specific specialty. The director afforded the petitioner 30 days to submit additional information, evidence, or argument to support the approval of the petition.

In a December 18, 2004 response, the petitioner contended that recognized authorities indicate an international trade and purchasing specialist is a specialty occupation and is significantly different from a purchasing manager position. The petitioner submitted a December 13, 2004 letter authored by [REDACTED] Ph.D., in which Dr. [REDACTED] concludes that the position of international trade and purchasing specialist within the wholesale textile and fabric industry is a specialty occupation. Dr. [REDACTED] further states: "Virtually every position similar to the International Trade and Purchasing Specialist that I have seen advertised or personally observed, has required a minimum of a bachelor's degree;" that a bachelor's degree is the industry standard for this position; and that the position of international trade and purchasing specialist, as described by the October 5, 2004 letter from United Fabrics International, is significantly different than that of a purchasing manager.

The petitioner also submitted an advisory opinion from the Textile Association of Los Angeles (TALA) dated December 1, 2004, indicating that highly technical positions, with complex and specialized duties including among other positions that of an international trade and purchasing specialist, would usually require candidates with an educational attainment of at least a bachelor's degree. The petitioner provided copies of job announcements for an international purchasing analyst, an international trade specialist, and an import/product acquisition specialist. The job announcements for the international purchasing analyst and the import/product acquisition specialist indicate that the successful candidate will have a bachelor's degree without identifying a specific discipline for the bachelor's degree. The position of international trade specialist indicates that the incumbent will have a bachelor's degree in management or other related courses.

The petitioner also provided three letters from businesses engaged in the distribution of fabrics and textiles. Each of the authors of the letters indicated that its organization employed only qualified individuals with bachelor's degrees for the positions of business analyst, accountant, management consultant/analyst, purchasing specialist, import/export specialist, trade specialist, and international trade and purchasing specialist. One of the authors indicated further that its organization required a bachelor's degree in business, marketing, international studies, and other related fields for these positions.

The petitioner provided a letter indicating that it required a minimum of a bachelor's degree in a related field for positions including import/export specialist, international trade and purchasing specialist, credit analyst, accountant, marketing research analyst, industrial engineer, human resource specialist, and other occupations. The petitioner provided a copy of its job announcement for the proffered position that included a statement that the qualified candidate must have a bachelor's degree in international studies, management, and other related courses. The petitioner also submitted copies of diplomas for other individuals, including an individual depicted on its organizational chart in the position of import specialist. The diploma of the individual in the position of import specialist shows the individual was issued a bachelor's degree in tourism.

The petitioner outlined the elements associated with the occupations of purchasing manager and international trade and purchasing specialist. The description of the occupation of purchasing manager included a general

overview of the occupation and the description for the occupation of international trade and purchasing specialist contained a more in depth analysis corresponding for the most part to the duties listed in the broader outline for the occupation of purchasing manager. The difference between the two descriptions centered on the international trade and purchasing specialist's research and analysis of international laws, foreign trade policies and regulations, and preparation of reports relating to the research. The international trade and purchasing specialist also provided consulting services to coordinate and implement findings to better the company's system of international trade.

On January 7, 2005, the director denied the petition determining that the duties of the proffered position of international trade and purchasing specialist are analogous to those of a purchasing manager, an occupation that did not require a degree in a specific specialty. The director noted the letters from the university professor, the representatives of businesses, and TALA, but observed that the letters did not specify that a degree in a specific specialty was required for the position of international trade and purchasing specialist. The director also found that the list of duties associated with the proffered position was not more unique or complex than other similar positions within the same industry requiring the services of an individual with a degree in a specific specialty. The director noted that the petitioner had initially submitted its newspaper announcement stating the educational requirement for the proffered position was four years of college in any field and that its subsequent job announcement required the successful candidate to have a bachelor's degree in international studies, management, and other related courses. The director also noted that the petitioner had submitted copies of diplomas and transcripts of individuals, including the diploma of one individual listed on the petitioner's organizational chart. The director determined that the information submitted was insufficient to establish that the employer normally required a degree or its equivalent in a specific specialty for the position. The director finally determined that the petitioner had not established that the duties to be performed in the position are so specialized or complex that the knowledge required to perform the duties would be associated with the attainment of a baccalaureate or higher degree in a specific specialty.

On appeal, counsel for the petitioner asserts that the letters submitted from experts, the California Employment Development Department (EDD),<sup>2</sup> establish that the proffered position and the position of a purchasing manager are not the same position. Counsel, referencing the TALA letter, job postings submitted, and letters from representatives in the textile industry, contends that the petitioner has submitted sufficient documentation establishing that a degree requirement is common to the industry in parallel positions. Counsel also notes that several colleges indicate that a degree in international relations is preparatory to a number of careers including that of an international trade specialist. Counsel acknowledges that the petitioner has not hired an employee for the proffered position in the past but asserts that the petitioner requires a bachelor's degree for key positions such as the position of international trade and purchasing specialist. Counsel claims that: "the duties of the position, INTERNATIONAL TRADE AND PURCHASING SPECIALIST are so complex that knowledge required to perform the duties is a Bachelor's Degree in International Relations or related." Counsel describes the beneficiary's qualifications and implies that the beneficiary's education has provided the beneficiary with the theoretical and practical knowledge necessary to

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<sup>2</sup> The petitioner submitted its prevailing wage request to the California Employment Development Department (EDD) for the position of international trade specialist and the EDD's prevailing wage determination listing the occupational title of the position as business operations specialist.

fulfill the petitioner's requirements for an international trade and purchasing specialist. Counsel concludes that the proffered position is a specialty occupation.

Counsel's conclusion is not persuasive. The AAO acknowledges that the position of international trade and purchasing specialist contains duties in addition to the routine duties of a purchasing manager. The position of international trade and purchasing specialist is similar to but not the same as that of a purchasing manager. The AAO observes however, that 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 AAO first considers the criteria at 8 C.F.R. §§ 214.2(h)(4)(iii)(A)(I), whether a baccalaureate or higher degree or its equivalent is the normal minimum requirement for entry into the particular position. The AAO routinely consults the *Handbook* for its information about the duties and educational requirements of particular occupations. In this instance, although the *Handbook* reports on the educational requirements for the occupation of purchasing manager, the *Handbook* does not expound upon the educational requirements of an international trade and purchasing manager. As the director noted there is no clear standard for how one prepares for a career as a purchasing manager and there is no requirement for a degree in a specific specialty mentioned as a prerequisite to the occupation.

As the *Handbook* does not outline the educational requirements for an international trade and purchasing specialist, the AAO turns to the December 13, 2004 letter authored by Dr. ██████ for a better understanding of the degree requirements for this specific occupation. Dr. ██████ a recognized authority in the field of business administration, notes that he has reviewed the petitioner's description of the duties for the proffered position, and that based on his experience, the proffered position is similar to but different than that of a purchasing manager. Dr. ██████ proffers his expert opinion that the position of international trade and purchasing specialist within the wholesale textile and fabric industry requires the attainment of a bachelor's or higher degree as a minimum for entry into this occupation. Dr. ██████ however, does not indicate that the occupation of international trade and purchasing specialist requires a degree in a specific specialty. As the AAO has long determined, a generic four-year degree does not qualify a job as a specialty occupation. When a job, like that of an international trade and purchasing specialist, can be performed by a range of degrees or a degree of generalized title, without further specification, the position does not qualify as a specialty occupation. *Matter of Michael Hertz Associates*, 19 I&N Dec. 558 (Comm. 1988). To prove that a job requires the theoretical and practical application of a body of specialized knowledge as required by Section 214(i)(1) of the Act, a petitioner must establish that the position requires the attainment of a bachelor's or higher degree in a specialized field of study. CIS interprets the degree requirement at 8 C.F.R. § 214.2(h)(4)(A)(1) to require a degree in a specific specialty that is directly related to the proffered position.

In this matter, the petitioner on appeal attempts to establish that the beneficiary's education in political science with an emphasis on international relations elevates the proffered position to that of a specialty occupation. However, the test to establish a specialty occupation is not the skill set or education of a proposed beneficiary but whether the particular position itself requires the theoretical and practical application of a body of specialized knowledge obtained by education or extensive training in a specialized area. In this matter, the

petitioner has not provided evidence that the occupation of international trade and purchasing specialist requires the attainment of a baccalaureate or higher degree in a specific specialty. To the contrary, the petitioner's evidence seems to recognize that a general four-year degree is sufficient for entry into this particular occupation. The petitioner has failed to establish that a baccalaureate or higher degree or its equivalent in a specific specialty is the normal minimum requirement for entry into an international trade and purchasing specialist's position. Accordingly, the petitioner has not established the criterion at 8 C.F.R. § 214.2(h)(4)(iii)(A)(1).

The AAO now turns to a consideration of the proffered position pursuant to the criteria at 8 C.F.R. § 214.2(h)(4)(iii)(A)(2), whether a degree requirement is common to the industry in parallel positions among similar organizations or that a particular position is so complex or unique that only an individual with a degree can perform the duties associated with the position. Factors often considered by CIS when determining the industry standard include: 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 this matter, the petitioner has submitted an advisory opinion from a textile association, letters from other textile businesses, and job announcements for positions similar to the proffered position. However, the documentary information provided, although recognizing that many employers require a four-year degree for a position similar to that of an international trade and purchasing specialist, does not establish that the four-year degree must be in a specific specialty. The letters suggest that it is the discipline of a four-year course of study that is most relevant to the proffered position; not that the degree must be in a particular discipline. Likewise, the opinion of Dr. [REDACTED] does not associate the attainment of a baccalaureate degree in a specific discipline with the proffered position. Again, a general degree requirement is not sufficient to establish a position as a specialty occupation. The petitioner has failed to establish that the duties of the proffered position are so complex or unique that only an individual with a degree in a specific specialty can perform the duties associated with the position or that a degree in a specific discipline is commonly required in the industry in parallel positions among similar organizations. The petitioner has not established the referenced criterion at 8 C.F.R. § 214.2(h)(4)(iii)(A)(2).

Nor is there evidence in the record to establish the third criterion at 8 C.F.R. § 214.2(h)(4)(iii)(A): that the petitioner normally requires a degree or its equivalent for the position. The petitioner acknowledges that it has not hired an international trade and purchasing specialist previously. The petitioner's submission of diplomas of other employees does not assist in establishing that the petitioner normally hires individuals in specific disciplines for particular positions. For example, the individual shown to hold the position of import specialist has a bachelor's degree in tourism, a major that does not appear to directly relate to the ordinary duties associated with importing goods or services. Although the petitioner has indicated that it prefers to hire individuals with four-year degrees in technical positions, the petitioner does not substantiate that the four-year degrees must be in specific disciplines directly related to the positions.

Moreover, the AAO notes that while a petitioner may believe that a proffered position requires a degree, that opinion cannot establish the position as a specialty occupation. Were CIS limited solely to reviewing a

petitioner's self-imposed requirements, then any individual with a bachelor's degree could be brought to the United States to perform any occupation as long as the employer required the individual to have a baccalaureate or higher degree. *See Defensor v. Meissner*, 201 F. 3d at 384. Accordingly, the petitioner has failed to establish the referenced criterion at 8 C.F.R. § 214.2(h)(4)(iii)(A)(3) based on its normal hiring practices.

The fourth criterion at 8 C.F.R. § 214.2(h)(4)(iii)(A) requires that the petitioner 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 baccalaureate or higher degree. The petitioner has not provided sufficient information in relation to its business to show that the duties of the proffered position correlate to a position that is so complex or unique that only an individual with a degree in a specific specialty can perform them. The duties of the position described correlate to that of a purchasing manager with the added elements of researching and analyzing international laws, foreign trade policies and regulations and preparing reports relating to the research. However, these added elements are insufficient to elevate the position to one that is so specialized or complex, that the knowledge to perform these additional tasks requires the attainment of a baccalaureate or higher degree in a specific specialty. The petitioner has failed to establish the criterion at 8 C.F.R. § 214.2(h)(4)(iii)(A)(4).

Based on the record of proceeding, the AAO has determined that the proffered position is not a specialty occupation. Accordingly, the AAO shall not disturb the director's denial of the petition.

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.