



U.S. Citizenship
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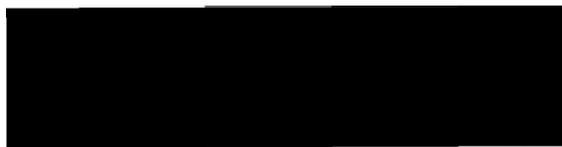
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FILE: WAC 04 172 53335 Office: CALIFORNIA SERVICE CENTER Date: **SEP 13 2006**

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:

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

Robert P. Wiemann, Chief
Administrative Appeals Office

DISCUSSION: The nonimmigrant visa petition was denied by the Director, California Service Center, and is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be sustained. The petition will be approved.

The petitioner is engaged in the importation of dishracks, wastecans, sure-fit liners, food canisters, etc. from Taiwan and China. It desires to employ the beneficiary temporarily in the United States as a contract (bilingual) administrator, at an annual salary of \$30,000, for three years. The director determined that the petitioner did not establish that the proffered position qualifies as a specialty occupation as enumerated in the regulations at 8 C.F.R. § 214.2(h)(4)(iii)(A) and denied the petition.

The petitioner submits a brief in support of the appeal. In its brief, the petitioner states that since the attainment of a bachelor's degree or higher degree in business administration or other related fields such as economics or international business is the minimum educational requirement for entry into contract specialist or coordinator positions, the position qualifies as a specialty occupation in accordance with the regulations.

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), defines an H-1(b) temporary worker as:

an alien . . . who is coming temporarily to the United States to perform services in a specialty occupation described in section 214(i)(1) . . . and with respect to whom the Secretary of Labor determines and certifies to the Attorney General that the intending employer has filed with the Secretary an application under section 212(n)(1) . . .

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.

Similarly, the regulation at 8 C.F.R. § 214.2(h)(4)(ii) provides that:

Specialty occupation means 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.

The regulation at 8 C.F.R. § 214.2(h)(4)(iii)(A) establishes four standards, one of which an occupation must meet to qualify as a specialty occupation:

- (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.

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

The petitioner is seeking the beneficiary’s services as a contract (bilingual) administrator. In determining whether a position qualifies as a “specialty occupation” for purposes of the nonimmigrant H-1B visa, CIS will examine whether there is a general requirement of specialized study for the position, coupled with whether the position has complex and discretionary duties normally associated with the position. *Shanti, Inc. v. Reno*, 36 F. Supp. 2d 1151, 1165 (D. Minn. 1999).

The Petition for a Nonimmigrant Worker (Form I-129) was filed on June 1, 2004. The petition indicates that the petitioner currently employs 20 employees. The petitioner’s 2003 U.S. Return of Partnership Income reflects its gross receipts or sales as \$24,693,472.

The duties of the position are described in the petitioner’s letter of support. According to this evidence, the beneficiary will be coordinating all materials, parts and services for pre-execution, execution and post project execution including the issuance of all purchase orders, proactive expedites and generation of turnaround progress reports. The beneficiary will prepare requests for proposal and invitations for bid by reviewing technical specifications and drawings and distribution to qualified vendors. She will perform cost and price analysis of various proposals and bids, and represent the company in the negotiation process with the product’s supplier or buyers to determine the pricing of products and the terms of the agreement. She will establish strategic contracts with suppliers and vendors in Taiwan or China, develop drafts of contracts, sub-contracts and agreements, and make sure that all contracts adhere to the company’s policies and guidelines, as

well as achieve production and quality standards. The beneficiary will clarify the contract terms, conditions and intent for all parties involved, negotiate change orders and evaluate contractor and vendor claims and submit for approval, analyze and review all terms and conditions of each specific contract to determine advantages and disadvantages, apply risk management techniques to perform analysis and resolve or negotiate solutions to production, delivery, quality, payment, and other problems affecting contract execution. The beneficiary will also prepare reports including conclusions and recommendations to resolve contract administration problems and present reports to executive management level for review. The beneficiary will not supervise any other employees.

In determining whether a position meets the statutory and regulatory criteria of a specialty occupation, CIS routinely consults the Department of Labor (DOL)'s *Occupational Outlook Handbook (Handbook)*, as an authoritative source of information about the duties and educational requirements of particular occupations. Factors typically considered are whether the *Handbook* indicates a degree is required by the industry; 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)). CIS also analyzes the specific duties and complexity of the position at issue, with the *Handbook's* occupational descriptions as a reference, to determine whether the degree requirement is common in the industry in parallel positions among similar organizations and the petitioner's past hiring practices for the position. See *Shanti, Inc. v. Reno*, at 1165-66.

The Form I-129 indicates that the proffered position is that of a contract (bilingual) administrator. The director indicates in his decision that the description of the duties provided for the position of contract administrator is similar to the job of an Administrative Services manager, which does not require a baccalaureate level of education in a specific specialty.

The AAO finds that the beneficiary's duties include those that the *Handbook* describes for a contract administrator, which is a sub-category listed under Administrative Services Managers in the *Handbook*. The *Handbook*, 2006-07 edition, gives the following information about the educational requirements for contract administration:

Specific requirements vary by job responsibilities. . . Managers of highly complex services, such as contract administration, generally need at least a bachelor's degree in business, human resources, or finance. . . .

Based on the foregoing information, the AAO concludes that the proffered position qualifies as a specialty occupation under 8 C.F.R. § 214.2(h)(4)(iii)(A)(I).

The record includes a copy of the beneficiary's academic degree showing that she earned a Bachelor of Science degree in business administration (international business), from San Francisco State University, on August 19, 2001. Based on the foregoing documentation, the AAO determines that the beneficiary is qualified to perform services in the specialty occupation, in accordance with 8 C.F.R. § 214.2(h)(4)(iii)(C)(I).

Thus, the record establishes that the proffered position is a specialty occupation and that the beneficiary is qualified to perform the services of that occupation.

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 met that burden. Accordingly, the AAO will sustain the appeal.

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