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U.S. Citizenship  
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FILE: EAC 05 189 50095 Office: VERMONT SERVICE CENTER Date: DEC 06 2007

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 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 sustained. The petition will be approved.

The petitioner is an importer, wholesaler and distributor of food products and seeks to employ the beneficiary as a director of import operations. The petitioner 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 because the position did not qualify as a specialty occupation. On appeal, the petitioner submits a brief asserting that the proffered position is a specialty occupation.

The issue to be discussed in this proceeding is whether the proffered position qualifies as a specialty occupation.

Section 101(a)(15)(H)(i)(b) of the Act, 8 U.S.C. § 1101(a)(15)(H)(i)(b), provides, in part, for the classification of qualified nonimmigrant aliens who are coming temporarily to the United States to perform services in a specialty occupation.

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:

[A]n 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 are 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) the Form I-129 and supporting documentation; (2) the director's request for additional evidence; (3) the petitioner's response to the director's request; (4) the director's denial letter; and (5) the Form I-290B with supporting documentation. The AAO reviewed the record in its entirety before issuing its decision.

The petitioner is seeking the beneficiary's services as a director of import operations. Evidence of the beneficiary's duties includes the Form I-129 petition with attachment and the petitioner's response to the director's request for evidence. According to this evidence the beneficiary would:

- Establish, review and monitor corporate import operating efficiencies for customs broker-related costs, transportation costs and compliance with the petitioner's purchasing terms and network;
- Supervise one market research analyst, database administrator and import documentation specialist;
- Prepare written internal control procedures for customs compliance for all U.S. importing operations;
- Ensure all imported foods and packing are in compliance with FED registrations and federal food laws and regulations;
- Train employees and implement procedures pertaining to all aspects of import/export logistics;
- Direct sourcing and selection of foreign suppliers, and negotiate contracts with overseas suppliers;
- Prepare cost analysis and manage import budget control;
- Coordinate import activities with foreign parties to ensure proper customs paperwork included and shipment is authorized with proper documentation;
- Identify, collect, and report import/export statistical data to management to measure activity and performance;
- Authorize payment for imported produces according to contractual agreement; and

- HBPrepare monthly and annual import operations reports.

The petitioner requires a minimum of a bachelor's degree in business administration or a related field for entry into the proffered position.

The AAO routinely consults the Department of Labor's *Occupational Outlook Handbook (Handbook)* for information about the duties and educational requirements of particular occupations. The duties of the proffered position are varied and not specifically covered by any specific job classification discussed in the *Handbook*. The record is sufficient, however, to establish that the duties of this particular position are so specialized and complex that knowledge required to perform them is usually associated with attainment of a baccalaureate or higher degree. The beneficiary is required to use independent judgment in negotiating tariff rates and determining logistical issues. The beneficiary must have detailed knowledge of shipping laws as well as customs regulations for the United States and foreign governments in order to solve customs issues internationally, and to prevent delays and financial penalties at various ports of entry and the loss of perishable merchandise. The duties of the position require attention to detail regarding international shipping laws and regulations, from determining appropriate packaging and freight classifications for imported/exported food items to determining the routing of shipped merchandise internationally, and tracking ultimate delivery of shipped goods. The beneficiary must ensure that all customs regulations are complied with and that proper documentation is supplied for the international shipping of food items. Further, the beneficiary must ensure that all imported food items and packaging are in compliance with FED registrations and federal food laws and regulations. It is also the beneficiary's responsibility to identify foreign food suppliers and negotiate contracts for the supply of food products. The proffered position qualifies as a specialty occupation as the petitioner has satisfied the criterion at 8 C.F.R. § 214.2(h)(4)(iii)(A)(4).

The final issue to be determined is whether the beneficiary is qualified to perform the duties of the offered position. That issue was not discussed by the director as the petition was denied on another ground. The record is sufficient, however, for the AAO to make that determination. The petitioner submitted an evaluation of the beneficiary's foreign education from a credentials evaluation service that determined the beneficiary's foreign education to be equivalent to a bachelor's degree in business administration from an accredited college or university in the United States. The educational transcripts submitted by the petitioner establish that the beneficiary completed sufficient course work related to the duties of the proffered position to meet the academic requirements of the position. *See Matter of Ling*, 13 I&N Dec 35 (Reg. Com. 1968). The beneficiary is, therefore, qualified to perform the duties of the proffered position. 8 C.F.R. § 214.2(h)(4)(iii)(C)(2).

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 sustained that burden and the appeal shall accordingly be sustained.

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