



U.S. Citizenship  
and Immigration  
Services

identifying data deleted to  
prevent clearly unwarranted  
invasion of personal privacy

PUBLIC COPY



D2

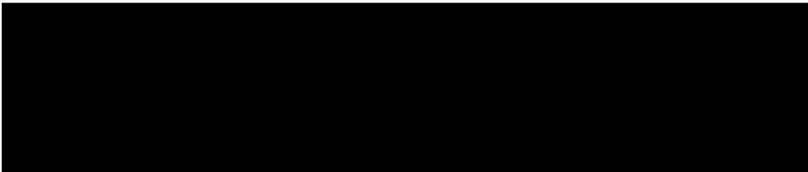
FILE: EAC 06 182 53519 Office: TEXAS SERVICE CENTER Date: **JAN 31 2008**

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, Chief  
Administrative Appeals Office

**DISCUSSION:** The Director, Texas 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 an internet-based provider of home goods established in 2000. It employs an indeterminate number of employees and has an estimated \$2.5 – 3 million stated gross income.<sup>1</sup> It seeks to employ the beneficiary as an art appraiser/researcher. 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 because the petitioner failed to establish that the proffered position qualifies for classification as a specialty occupation. On appeal, counsel contends that the director erred in denying the petition, and that the proposed position qualifies for classification as a specialty occupation.

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

The issue before the AAO is whether the petitioner's proffered position qualifies as a specialty occupation. To meet its burden of proof in this regard, a 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 Immigration and Nationality Act (the Act), 8 U.S.C. § 1184(i)(1) defines the term "specialty occupation" as one 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.

---

<sup>1</sup> On the Form I-129, the petitioner stated that it employs 13 individuals "including independent contractors."

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 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.

The petitioner states that it is seeking the beneficiary’s services as an art appraiser/researcher. Evidence of the beneficiary’s duties includes: the addendum to the Form I-129; counsel’s response to the director’s RFE; and counsel’s appeal brief. The duties listed in the addendum to the Form I-129 and counsel’s appeal brief are identical and state the following duties:

The art appraiser/researcher at 1stdibs will be responsible for evaluating both vendors and objects. First, this requires familiarity with different artistic periods and styles that can only be obtained through appropriate study and experience. One must be able to identify a period piece in its historical, political, artistic position context in the demanding and competitive world of high quality art and design. An appraiser must be able to establish the provenance and pedigree of valuable antiques.

In his response to the director’s RFE, counsel adds the following: “the 1stdibs.com art appraiser must apply his skills in research methodology and extensive knowledge of valuation theory in order to provide an analysis and evaluation that can be trusted by the many vendors and buyers whose business 1stdibs.com relies upon.”

To make its determination as to whether the employment described in the record qualifies as a specialty occupation, the AAO turns to the criteria at 8 C.F.R. §§ 214.2(h)(4)(iii)(A)(1) and (2) which require that a baccalaureate or higher degree or its equivalent is the normal minimum requirement for entry into the particular position, or that 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 considered by the AAO when determining these criteria include: whether the Department of Labor's *Occupational Outlook Handbook (Handbook)*, on which the AAO routinely relies for the educational requirements of particular occupations, reports 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 proposed 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 *Handbook* does not provide a discussion for the position of art appraiser and therefore, the AAO will rely on the minimum requirements for art appraisers as determined by The Appraisal Foundation and the Appraisers Association of America and the industry letters provided by counsel.

The Appraisal Foundation established the Appraiser Qualification Board (AQB), an organization that is Congressionally authorized as the source of appraisal standards and appraiser qualifications. The AQB adopted "The Personal Property Appraiser Minimum Qualification Criteria" on July 30, 1998. The AQB determined that the minimum educational requirement for a personal property appraiser, the type of appraiser most similar to the proffered position, is a total of 120 classroom hours which may be obtained through different means including through personal property appraisal organizations.<sup>2</sup> The AAO notes that the qualifications for personal property appraisers as determined by the AQB are not mandatory, but rather a "minimum criteria with which personal property appraisers may voluntarily wish to comply."<sup>3</sup> The minimum requirement for membership as an associate in the Appraisers Association of America is a minimum of three years experience as a professional appraiser.<sup>4</sup>

The duties for the position are similar to those of a personal property appraiser, as described by The Appraisal Foundation and the Appraisers Association of America. The two organizations do not indicate that a baccalaureate degree is the minimum educational requirement for a personal property appraiser and only require classroom hours or work experience. Accordingly, the listed duties do not establish the proffered position as a specialty occupation under the criterion at 8 C.F.R. § 214.2(h)(4)(iii)(A)(I): that a baccalaureate or higher degree or its equivalent is the normal minimum requirement for entry into the particular position.

To establish its degree requirement as the norm within its industry under the first prong of the second criterion, the petitioner submits two industry letters. Neither, however, satisfies the requirements for

---

<sup>2</sup> *See* <http://www.appraisalfoundation.org>.

<sup>3</sup> *Ibid.*

<sup>4</sup> *See* <http://www.appraisersassoc.org>.

establishing an industry standard. The content of the letters does not provide a factual foundation for the authors' opinion that the proffered position requires a baccalaureate degree. 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)). Furthermore, both of the authors are members of the Appraisers Association of America and use their membership in the organization as evidence of their expertise, but neither author provides an explanation for their contradictory opinion based on the membership requirements of the organization or those determined by the AQB.

Therefore, the proffered position has not been established as a specialty occupation based on an industry-wide degree requirement. The petitioner has not satisfied the first prong of the criterion at 8 C.F.R. § 214.2(h)(4)(iii)(A)(2).

The second prong of 8 C.F.R. § 214.2(h)(4)(iii)(A)(2) requires that the petitioner prove that the duties of the proposed position are so complex or unique that only an individual with a degree can perform them. The record contains no evidence that would support a finding that the position proposed here is more complex or unique than such positions at organizations not requiring a degree in a specific discipline. Consequently, the petitioner fails to establish the second alternative prong of the regulation at 8 C.F.R. § 214.2(h)(4)(iii)(A)(2).

To determine whether a proffered position may be established as a specialty occupation under the third criterion, which requires that the employer demonstrate that it normally requires a degree or its equivalent for the position, the AAO usually reviews the petitioner's past employment practices, as well as the histories, including names and dates of employment, of those employees with degrees who previously held the position, and copies of those employees' diplomas. Although the petitioner claims to have previously hired another employee with a baccalaureate degree in this position, the record of proceeding does not contain evidence in the form of a copy of the employee's diploma; therefore, eligibility under this criterion cannot be established. 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)). Further, the petitioner indicates that the degree of the previous incumbent was in Education, a field not directly related to the position. Thus, the degreed status of the prior employee does not establish the position's eligibility under the third criterion.

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. Moreover, the critical element is not the title of the position or 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. To interpret the regulations any other way would lead to absurd results. 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 requires a petitioner to establish that the nature of the specific duties of its position is so specialized and complex that the knowledge required to perform these duties is usually associated with the attainment of a baccalaureate or higher degree. To the extent that they are depicted in the record, the duties of the proposed position do not appear so specialized and complex as to require the highly specialized knowledge associated with a baccalaureate or higher degree, or its equivalent, in a specific specialty.

In his response to the director's RFE, counsel states that the United States District Court for the Southern District of New York has specifically cited the occupation of art appraiser as an example of an expert possessing "technical or other specialized knowledge" in *Ephedra Products Liability Litigation*, 393 F. Supp. 2d 181, (2005 U.S. Dist.). However, the court also states that "some opinions...must be excluded in the exercise of the district court's gatekeeping role." *Ephedra Products Liability Litigation*, 393 F. Supp. 2d at 188, (2005 U.S. Dist.). While some art appraisers may be considered experts by the court not all art appraiser will qualify as such. Ultimately, it is in the court's discretion to determine whether an individual qualifies as an expert. Nevertheless, the issue in this case is not whether an art appraiser can be considered an expert, but whether the proffered position qualifies as a specialty occupation. The court in the *Ephedra Products Liability Litigation* did not state that all appraisers have specialized knowledge and did not establish that the position is a specialty occupation.

Although counsel asserts that the beneficiary's position requires specialized knowledge, counsel has not articulated any basis to the claim that the beneficiary is employed in a capacity requiring specialized knowledge. Other than submitting a general description of the beneficiary's job duties, counsel has not identified any aspect of the beneficiary's position which involves special knowledge of the petitioning organization's product, service, research, equipment, techniques, management, or other interests. Counsel has not submitted any evidence of the knowledge and expertise required for the beneficiary's position that would differentiate that employment from the position of art appraiser at other employers within the industry. 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).

The petitioner failed to establish that the proposed position is a specialty occupation under 8 C.F.R. § 214.2(h)(4)(iii)(A)(4).

As related in the discussion above, the petitioner has failed to establish that the proffered position is a specialty occupation. Accordingly, the AAO shall not disturb the director's denial.

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.