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U.S. Citizenship and Immigration Services

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FILE: EAC 02 265 52276 Office: VERMONT SERVICE CENTER Date: APR 27 2004

IN RE: Petitioner [redacted]
Beneficia[redacted]

PETITION: Petition for a Nonimmigrant Worker Pursuant to Section 101(a)(H)(i)(b) of the Immigration and Nationality Act, 8 U.S.C. § 1101(a)(H)(i)(b)

ON BEHALF OF PETITIONER:

[redacted]

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.

Mari Johnson

for Robert P. Wiemann, Director
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 dismissed. The petition will be denied.

The petitioner is a corporation doing business as an importer/exporter and wholesale distributor of linen goods and towels. In order to employ the beneficiary as an assistant export manager, the petitioner endeavors to classify her 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 had failed to establish that the proffered position is a specialty occupation. On appeal, counsel submits a Form I-290B and a letter from the petitioner's president.

The AAO has determined that the director's decision to deny the petition was correct, because the petitioner has not presented an adequate evidentiary basis for classifying the proffered position as a specialty occupation in accordance with any criterion at 8 C.F.R. § 214.2(h)(4)(iii)(A).

In reaching its decision, the AAO considered the entire record of proceeding, including: (1) the petitioner's Form I-129 and supporting documentation; (2) the director's request for additional evidence (RFE); (3) the matters submitted in response to the RFE; (4) the director's denial letter; and (5) the Form I-290B and the letter in support of the appeal from the petitioner's president.

Section 214(i)(l) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1184 (i)(l), 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.

The offer of employment (letter from the petitioner's president to the beneficiary, dated May 22, 2002) described the proposed duties as follows:

> [Y]our responsibilities include, among others, dealing with overseas customers with different languages; inventory control of export goods[;] customs declaration and other matters dealing with custom authorities[;] providing samples to customers[;] collection of money[;] and export administration such as invoicing, letter[s] of credit. You are likewise responsible to communicate with forwarding agent[s], order, book, and release of [sic] containers.

The record also indicates that fluency in several languages is a prime requirement for the position, and that it is contemplated that the beneficiary's language skills would be used on overseas business trips to assist the petitioner in meetings with customers and manufacturers on the review of business plans and projects. The beneficiary would also "interface" with the petitioner's departments, especially those devoted to import, design and marketing, packaging, and logistics.

The criterion at 8 C.F.R. § 214.2 (h)(4)(iii)(A)(*1*) is satisfied where the evidence establishes that a baccalaureate or higher degree or its equivalent is the normal minimum requirement for entry into the particular position. The evidence of record here does not reach this threshold.

The AAO recognizes the Department of Labor's (DOL) *Occupational Outlook Handbook (Handbook)* as an authoritative source on the duties and educational requirements of a wide variety of occupations. As described in the evidence of record, the proffered position does not comport with any position for which the *Handbook* reports a requirement for a bachelor's degree or higher, or the equivalent, in a specific specialty.

Next, the petitioner has not presented evidence that would qualify the proffered position under either prong of 8 C.F.R. § 214.2 (h)(4)(iii)(A)(*2*).

The record contains no evidence to satisfy the first prong of 8 C.F.R. § 214.2 (h)(4)(iii)(A)(*2*) by establishing that a degree requirement is common to the industry in parallel positions among similar organizations.

In determining whether there is such a common degree requirement, factors often considered by CIS include: whether 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.Min. 1999) (quoting *Hird/Blaker Corp. v. Slattery*, 764 F. Supp. 872, 1102 (S.D.N.Y. 1991)).

As just discussed, the *Handbook* does not report that the proffered position requires a degree in a specific specialty. Also, there are no submissions from individuals, other firms, or professional associations in the petitioner's industry.

The AAO also found that the evidence of record does not qualify the proffered position under the second prong of 8 C.F.R. § 214.2 (h)(4)(iii)(A)(*2*), which provides that "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." The evidence of record does not indicate that the beneficiary's work, which centers on her linguistic abilities and knowledge of import/export administrative matters, would be either so unique or so technically demanding as to require a bachelor's or higher degree in a specific specialty.

Next, the criterion at 8 C.F.R. § 214.2(h)(4)(iii)(A)(*3*) – the employer normally requires a degree or its equivalent for the position – is not a factor in this proceeding, as the petitioner presents no evidence in this regard.

Finally, the evidence does not satisfy the criterion at 8 C.F.R. § 214.2(h)(iii)(A)(*4*) – the nature of the specific duties is so specialized and complex that knowledge required to perform them is usually associated with the attainment of a baccalaureate or higher degree. Performance of the proposed position depends primarily on the application linguistic and administrative skills to the import and export of non-technical goods. The record does not demonstrate that the beneficiary would have to apply knowledge that is usually associated with a baccalaureate or higher degree in any specific specialty.

Because the petitioner has failed to establish that the proffered position is a specialty occupation within the meaning of any criterion of 8 C.F.R. § 214.2 (h)(4)(iii)(A), 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.