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U.S. Department of Homeland Security

Citizenship and Immigration Services

ADMINISTRATIVE APPEALS OFFICE
CIS, AAO, 20 Mass, 3/F
425 I Street, N.W.
Washington, DC 20536

[redacted]

FILE: EAC-02-146-52125 OFFICE: VERMONT SERVICE CENTER DATE: FEB 06 2004

IN RE: Petitioner: [redacted]
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)

IN BEHALF OF PETITIONER:

[redacted]

INSTRUCTIONS:

This is the decision 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.

If you believe the law was inappropriately applied or the analysis used in reaching the decision was inconsistent with the information provided or with precedent decisions, you may file a motion to reconsider. Such a motion must state the reasons for reconsideration and be supported by any pertinent precedent decisions. Any motion to reconsider must be filed within 30 days of the decision that the motion seeks to reconsider, as required under 8 C.F.R. § 103.5(a)(1)(i).

If you have new or additional information that you wish to have considered, you may file a motion to reopen. Such a motion must state the new facts to be proved at the reopened proceeding and be supported by affidavits or other documentary evidence. Any motion to reopen must be filed within 30 days of the decision that the motion seeks to reopen, except that failure to file before this period expires may be excused in the discretion of Citizenship and Immigration Services (CIS) where it is demonstrated that the delay was reasonable and beyond the control of the applicant or petitioner. *Id.*

Any motion must be filed with the office that originally decided your case along with a fee of $110 as required under 8 C.F.R. § 103.7.

Robert P. Wiemann, Director
Administrative Appeals Office

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

The petitioner is a wood and laminate flooring products company that employs five persons and has an undisclosed gross annual income. It seeks to employ the beneficiary as an import-export wholesale manager. The director denied the petition because the petitioner failed to establish that the proffered position qualified as a specialty occupation.

On appeal, counsel submits a brief. Counsel states, in part, that the Immigration and Naturalization Service (the Service), now Citizenship and Immigration Services (CIS), erred as a matter of law and abused its discretion in stating that the proffered position did not qualify as a specialty occupation.

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), provides for the classification of qualified nonimmigrant aliens who are coming temporarily to the United States to perform services in a specialty occupation.

The issue to be discussed in this proceeding is whether the position offered to the beneficiary qualifies as 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:

> 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:

> (*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.

The petitioner's letter accompanying the I-129 petition described the beneficiary's duties. According to the letter, the beneficiary will: expand the company's export markets; establish import protocols to increase distribution within the United States; coordinate international shipping activities; negotiate terms between foreign and domestic shippers; assist in expanding import and export operations; establish procedures for international freight shipping and receiving, documentation, waybilling, assessing charges, and collecting fees for shipments; negotiate with domestic customers, as the intermediary for foreign customers, to resolve problems and arrive at mutual agreements; examine invoices and shipping manifests for conformity to tariff and customs regulations; contact customs officials to effect release of incoming freight and resolve customs delays; prepare transaction reports to facilitate billing of shippers and foreign carriers; research new international flooring products and additional flooring import opportunities; visit international trade shows and negotiate with suppliers about purchasing terms and conditions; make purchasing decisions and transportation and customs decisions; and handle direct sales, dealer sales, and establish procedures for managing flooring inventory control. The letter stated a candidate must possess a bachelor's degree or its equivalent in business administration, international business, or a related field.

The letter explained that the petitioner imports its proprietary wooden floor products into the United States, and is part of a three company flooring organization designed to import, export, and wholesale proprietary flooring products, such as laminated and engineered flooring, into the United States.

On April 5, 2002, the director requested additional evidence that would show that the proffered position qualifies as a specialty occupation. The director also sought a detailed job description; a certified labor condition application; and letters of employment from the beneficiary's prior employers.

In response, counsel submitted a letter, dated May 10, 2002, and a letter and resume from Professor Jonathan P. Doh, Assistant Professor of Management in the College of Commerce and Finance at Villanova University. Professor Doh's letter of May 10, 2002 stated, in part, that the professional position of import-export wholesale manager typically requires a bachelor's degree or its equivalent in economics, business administration, or international business administration. Professor Doh stated further that the proffered position is relatively sophisticated and complex, requiring a candidate with a bachelor's degree or the equivalent.

The petitioner's letter of April 10, 2002, delineated the beneficiary's workweek.

On May 20, 2002, the director issued a second request for evidence. In response, counsel submitted a letter, dated May 29, 2002, stating that Professor Doh confirmed that a candidate for the proffered position must possess a bachelor's degree in business administration, international business administration, or economics. Counsel also submitted documentation regarding the petitioner's business.

On July 26, 2002, the director denied the petition, finding that the proffered position did not qualify as a specialty occupation. The director stated that Professor Doh seemed qualified to assess the position, and that CIS concurred that some import-export wholesale manager positions require a bachelor's degree; however, the director found that the proffered position, functioning within a newly created company with only five employees, was not a specialty occupation. The director noted that the title of the position alone does not determine whether a position is a specialty occupation; the duties must be considered as well. Finally, the director stated that the submitted evidence did not validate the petitioner's statements.

On August 28, 2002, counsel submitted a brief. Counsel contends that CIS erred as a matter of law and abused its discretion by stating that the proffered position was not a specialty occupation. Counsel asserts that CIS did not properly weigh the expert opinion letter. Counsel contends further that the director's decision is based on internally inconsistent and contradictory findings and that CIS misapplied the regulations at 8 C.F.R. § 214.2(h)(4)(iii)(A). Finally, counsel contends that, in finding the duties are not sufficiently complex, CIS erroneously applied the law and abused its discretion.

Counsel claims that Professor Doh's expert opinion letter establishes that a bachelor's degree or its equivalent is normally the minimum requirement for entry into the proffered position.

Counsel's claim is not persuasive. Professor Doh's letter is relevant; however, his assertions are not supported by any documentary evidence. *See Matter of Treasure Craft of California*, 14 I&N Dec. 190 (Reg. Comm. 1972). 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. The 2002-2003 edition of the Department of Labor's *Occupational Outlook Handbook* (the *Handbook*) is instructive in determining whether a position requires a baccalaureate or higher degree or its equivalent for entry into the occupation.

According to the *Handbook*, the duties of the proffered position parallel those performed by sales representatives (wholesale and manufacturing) and manufacturers' agents.

With respect to training, qualifications, and advancement, at pages 369-370, the *Handbook* explains:

> The background needed for sales jobs varies by product line and market. Most firms require a strong educational background and increasingly prefer or require a bachelor's degree as the job requirements have become more technical and analytical. Nevertheless, many employers still hire individuals with previous sales experience who do not have a college degree. . . .

The *Handbook* reports that a bachelor's degree is not the minimum entry requirement for the proffered position: most employers require candidates to have a strong educational background; however, they do not require a bachelor's degree. Accordingly, the petitioner fails to establish the first criterion.

The petitioner also fails to establish the second criterion under 8 C.F.R. § 214.2(h)(4)(iii)(A) because the *Handbook* reveals that the degree requirement is not common to the industry in parallel positions among similar organizations or that the duties of the proffered position are so complex or unique that they can be performed only by a person with a degree.

Nor does the petitioner establish the third criterion at 8 C.F.R. § 214.2(h)(4)(iii)(A), namely, that it normally requires a degree or its equivalent for the position.

Finally, the petitioner does not establish that 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. As already related in this proceeding, the duties of proffered position parallel those performed by sales representatives (wholesale and manufacturing) and manufacturers' agents. Accordingly, the fourth criterion at 8 C.F.R. § 214.2(h)(4)(iii)(A) is not satisfied.

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.