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U.S. Citizenship and Immigration Services

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[redacted]

FILE: WAC 01 216 52167 Office: CALIFORNIA SERVICE CENTER Date:

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)

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, Director
Administrative Appeals Office

DISCUSSION: The director of the 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 a furniture manufacturer that seeks to employ the beneficiary as an assistant director of sales management. 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 proffered position is not a specialty occupation. On appeal, counsel submits a brief.

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

The petitioner is seeking the beneficiary's services as an assistant director of sales management. Evidence of the beneficiary's duties includes: the Form I-129, the letter accompanying the Form I-129, and the response

to the request for evidence. According to this evidence, the beneficiary would perform duties that entail, in part: marketing the petitioner's product; locating new buyers; and coordinating all documents and shipments of the petitioner's products to Thailand. Moreover, the petitioner requires the candidate be fluent in the English and Thai languages. The petitioner indicated that a qualified candidate for the job would possess a bachelor's degree.

The director found that the proffered position was not a specialty occupation because the petitioner failed to establish any of the criteria found at 8 C.F.R. § 214.2(h)(4)(iii)(A). The director stated that the 2000-2001 edition of the Department of Labor's (DOL) *Occupational Outlook Handbook* (the *Handbook*) reveals that the proffered position's duties are similar to those performed by advertising, marketing, and public relations managers, and that a bachelor's degree is not required to enter these occupations.

On appeal, the petitioner contends that the proffered position qualifies as a specialty occupation. The petitioner reiterates the position's duties, and mentions that the petitioner has added a new duty and requirement: web page design and knowledge about furniture design. The petitioner states that it should modify the position's title to "consultant for sales, design, and manufacturing." Finally, the petitioner states that a candidate must possess a bachelor's degree in business, and have experience in a field working with computer designs and people.

Upon review of the record, the petitioner has established none of the four criteria outlined in 8 C.F.R. § 214.2(h)(4)(iii)(A). Therefore, the proffered position is not a specialty occupation.

The AAO turns first to the criteria at 8 C.F.R. § 214.2 (h)(4)(iii)(A)(*1*) and (*2*): a baccalaureate or higher degree or its equivalent is the normal minimum requirement for entry into the particular position; 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.

By changing the title, and adding new duties and responsibilities to the proffered position on appeal, the petitioner materially changes the position. When responding to a request for evidence or submitting an appeal, a petitioner cannot offer a new position to the beneficiary, or materially change a position's title or its associated job responsibilities. The petitioner must establish that the position offered to the beneficiary is a specialty occupation. *See Matter of Michelin Tire*, 17 I&N Dec. 248, 249 (Reg. Comm. 1978). If significant changes are made to the initial request for approval, the petitioner must file a new petition rather than seek approval of a petition that is not supported by the facts in the record. The AAO, therefore, will consider only the duties as initially described by the petitioner.

The petitioner claims that a bachelor's degree in business is required for the proffered position. The AAO routinely turns to the *Handbook* to provide a comprehensive description of the nature of a particular occupation and the education, training, and experience normally required to enter into an occupation and advance within that occupation. The director correctly concluded that, according to the *Handbook*, the proposed position's duties parallel those performed by advertising, marketing, and public relations managers and that a bachelor's degree is not required to enter these occupations. However, the *Handbook* also conveys that the duty to translate and interpret the Thai language would be performed by a translator, a position that also does not require a bachelor's degree.

There is no evidence in the record to establish that a degree requirement is common to the industry in parallel positions among similar organizations; or the proffered position is so complex or unique that it can be performed only by an individual with a degree. The petitioner claims that Thai businesses would not consider appointing a person without a 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 Treasure Craft of California*, 14 I&N Dec. 190 (Reg. Comm. 1972).

Because this is a newly created position, the employer does not have a past practice of requiring a degree or its equivalent for the proffered position. Nor is there evidence that would show that the nature of the specific duties is so specialized and complex that the position can be performed only by an individual with a degree. As previously discussed above, advertising, marketing, and public relations manager and translator positions do not require bachelor's degrees.

Accordingly, the petitioner fails to establish that the proposed position, assistant director of sales management, qualifies as a specialty 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 not sustained that burden.

ORDER: The appeal is dismissed. The petition is denied.