**U.S. Department of Homeland Security**
20 Mass, Rm. A3042, 425 I Street, N.W.
Washington, DC 20529

Identifying data deleted to prevent clearly unwarranted invasion of personal privacy

U.S. Citizenship and Immigration Services

**PUBLIC COPY**

D2

MAY 19 2004

[redacted]

FILE: EAC 02 253 53113 Office: VERMONT 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:

[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. The petitioner submitted a motion to reopen and reconsider which the director subsequently dismissed. 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 company that imports ladies apparel. It seeks to employ the beneficiary as a product market research analyst. 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 proffered position, does not appear to be a specialty occupation because the duties were not those of research market analyst. On appeal, counsel asserts that the position is a specialty occupation even if the job combines duties of buyers and market analysts.

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 petitioner's letter of support; (3) the director's request for additional evidence; (4) the petitioner's undated letter that responds to the director's request; (5) the director's denial letter; (6) the petitioner's motion to

reopen and reconsider dated September 17, 2002; (7) the director's decision, dated February 18, 2003, that affirmed the previous decision; and (8) Form I-290B and supporting documentation. The AAO reviewed the record in its entirety before issuing its decision.

The petitioner is seeking the beneficiary's services as a product market research analyst. Evidence of the beneficiary's duties includes: the I-129 petition; the director's request for further evidence; and the petitioner's letters in support of the petition and in response to the director's request for further evidence. According to the initial petition, the beneficiary would determine market conditions to determine potential sales of junior and missy knitwear product lines. This primary responsibility would include the identification and forecasting of colors and trends through trade publications, trade shows, supplier information, and sample shopping; interpretation of color, fabric and styling trends for specific customers; assisting in the development of brand equity by creating and developing private label programs; and consulting with overseas resources for potential strategic relationships.

In the petitioner's response to the director's request for further evidence, the petitioner further explained that it was expanding into new product areas including junior and missy lines for both cut and sew knits as well as sweaters. It was also attempting to provide customers with analyses of purchasing trends in the hopes that they would purchase complete lines of clothing as opposed to individual orders. It identified the following five areas in which the beneficiary would work for equal amounts of time on a weekly basis: forecasting of fashion, color and fabric trends; editing and preparing information gathered to create comprehensive trend reports; developing a new product line for junior and missy customers; preparing and executing presentations based upon the compilation and analysis of information; and collaborating with specific customers to develop and enhance brand equity. The petitioner indicated that the position required a baccalaureate degree.

The director determined that the duties of the proffered position appeared more analogous to those of a buyer, combined with some duties of a marketing manager or market research manager. The director referred to the classifications of buyer and market research manager in the Department of Labor's (DOL) *Occupational Outlook Handbook (Handbook).* According to the director, the *Handbook* did not indicate that either classification required a bachelor's degree in a specific field of study, but rather that employers preferred a wide range of educational backgrounds or they promoted individual from within companies. The director also stated that the petitioner's line of business, namely the import of ladies apparel, did not appear to be the type of business that would require a full-time employee who only performs market research analyst duties. The director also noted that the petitioner had filed two petitions for the same position simultaneously, and questioned the need for two individuals only engaged in market research analyst duties. The director found further that the petitioner failed to establish any of the criteria found at 8 C.F.R. § 214.2(h)(4)(iii)(A).

On motion, counsel stated that even if the duties were not primarily those of a market research analyst position, and did include duties associate with a marketing manager and buyers, the position would still qualify as a specialty occupation. Counsel referred to excerpts from the *Handbook* classifications of marketing managers and buyers that stated that some employers in either classification preferred to hire individuals with bachelor's degrees. Counsel submitted eight job vacancies for either marketing managers or buyers to establish that parallel positions in similar firms require a baccalaureate in a specific specialty. The director denied the motion and stated that the vacancy announcements did not establish that a baccalaureate degree in a directly related field was required for parallel positions in similar firms.

On appeal, counsel reiterates assertions made on motion and in response to the director's request for further evidence. Counsel submits no further documentation.

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.

Factors often considered by CIS when determining these criteria 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)).

The AAO routinely consults the *Handbook* for its information about the duties and educational requirements of particular occupations. With regard to the proffered position, as correctly noted by the director, the duties appear to be those of a buyer or marketing manager. In addition, as the director also pointed out in his decision, neither of these job categories requires a baccalaureate degree in a specific specialty. The *Handbook* clearly states that employers hire persons with a wide range of academic degrees. Without more persuasive evidence, neither the *Handbook* nor the petitioner has established that a baccalaureate degree in a specific specialty is required for entry into the proffered position.

With regard to parallel positions in similar wholesale import companies, the petitioner submitted eight Internet job vacancy announcements for jobs, such as product line manager, marketing manager, buyer, and retail analyst. Although all job vacancy announcements stated that a bachelor's degree was required, only one identified a specific baccalaureate degree as the minimum requirement for entry into the position. In addition, several businesses, such as Lord and Taylor, a department store, do not appear to be engaged in business activities similar to the petitioner's business. The petitioner also submitted a letter from James Chang, Vice President, Regent Park, LLC. This letter stated that Regent Park is in the business of ladies outerwear and has 16 employees. Mr. Chang further stated that his business required a college degree or the equivalent for the position of product/market research analyst. This documentation is not viewed as persuasive evidence. First, the letter writer did not establish that a baccalaureate degree in any specific specialty is required for a market research analyst position with Regent Park. Second, a letter from one company, whose similarity to the petitioner is not clearly established in the record, would not be sufficient to establish a nationwide industry standard for the proffered position. The record also does not include any evidence from professional associations regarding an industry standard, or documentation to support the complexity or uniqueness of the proffered position. The petitioner has, thus, not established the criteria set forth at 8 C.F.R. § 214.2(h)(4)(iii)(A)(*1*) or (*2*).

The AAO now turns to 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. The petitioner stated in its petition that it had one employee, which would suggest that the proffered position is new. It provided no documentation as to the academic credentials of

any other employee who may have performed the duties of the proffered position previously. Therefore the petitioner can not met this criterion.

Finally, the AAO turns to 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 the 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 position appear routine for positions involving marketing and buyer responsibilities. While the petitioner stated that it was interested in expanding its business, it is not clear that the new business operations of selling lines of clothes rather than individual orders is any more complicated than the petitioner's present business operation. Without more persuasive evidence, the petitioner has not established that the nature of the duties of the proffered position are 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. Thus, the petitioner has not established the fourth criterion of 8 C.F.R. § 214.2(h)(4)(iii)(A).

Beyond the decision of the director, the petitioner did not establish that the beneficiary is qualified to perform the duties of the position. The petitioner submitted an educational and work experience evaluation written by Dr. M. Sambandham for Multinational Education and Information Services, Inc., Atlanta, Georgia, a company that specializes in evaluating academic credentials. In his evaluation, Dr. Sambandham determined that the beneficiary had the equivalent of three years of academic studies in economics at an accredited U.S. university. Dr. Sambandham then evaluated the beneficiary's work experience and determined that the combination of the beneficiary's studies and her work experiences in management and merchandising was the equivalent of a baccalaureate in business administration from an accredited U.S. institution. However, this evaluation is based upon the beneficiary's education, training and work experience. A credentials evaluation service may not evaluate an alien's work experience or training; it can only evaluate educational credentials. *See* 8 C.F.R. § 214.2(h)(4)(iii)(D)(*3*). Thus, the evaluation carries no weight in these proceedings. *Matter of Sea, Inc.*, 19 I&N Dec. 817 (Comm. 1988).

Since the beneficiary does not possess a foreign baccalaureate degree that has been determined to be the equivalent of a U.S. baccalaureate in the same or related field, the petitioner has to provide sufficient documentation to meet the regulatory criteria outlined in 8 C.F.R. § 214.2(h)(4)(iii)(C)(*4*) and in 8 C.F.R. § 214.2(h)(4)(iii)(D).

Pursuant to 8 C.F.R. § 214.2(h)(4)(iii)(D)(*2*), the petitioner can submit an evaluation from an official who has authority to grant college-level credit for training and/or experience in the specialty at an accredited college or university which has a program for granting such credit based on an individual's training and/or work experience. The present educational and work experience equivalency evaluation written by Dr. Sambandham is not sufficient to establish this criterion. The record is devoid of any information that Dr. Sambandham is affiliated with a university that has a program to grant college credit for work experience, and that this same university presently gives him the authority to grant such credit. In addition, the petitioner did not provide sufficient documentation to establish that the beneficiary's work experience is adequate to met the regulatory criteria outlined in 8 C.F.R. § 214.2(h)(4)(iii)(D)(*5*). For this additional reason, the petition may not be approved.

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 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.