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U.S. Citizenship  
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FILE: EAC 04 018 52477 Office: VERMONT SERVICE CENTER Date: JAN 24 2006

IN RE: Petitioner: [Redacted]  
Beneficiary: [Redacted]

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, 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 novelty drink business that seeks to employ the beneficiary as a purchasing manager. The petitioner endeavors to classify the beneficiary as a nonimmigrant worker in a specialty occupation pursuant to § 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)(I) of the Act, 8 U.S.C. § 1184(i)(I), 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 additional evidence; (3) the petitioner's response to the director's request; (4) the director's denial letter; and (5) 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 purchasing manager. Evidence of the beneficiary's duties includes: the I-129 petition; the petitioner's September 30, 2003 letter in support of the petition; and the petitioner's response to the director's request for evidence. According to this evidence, the beneficiary would

perform duties that entail: negotiating favorable contracts with suppliers; preparing, reviewing, and updating cost analysis; supervising the purchasing/buying functions; obtaining the lowest cost for materials, supplies, and services; clarifying invoice discrepancies; creating and tracking purchase orders; and coordinating and monitoring stock inventory levels. Although not explicitly stated, it appears that the petitioner requires a baccalaureate degree or its equivalent in business administration for the proffered position.

The director found that the proffered position was not a specialty occupation because the petitioner has not demonstrated that it requires the theoretical and practical application of a body of highly specialized knowledge. Citing to the Department of Labor's *Occupational Outlook Handbook (Handbook)*, 2002-2003 edition, the director noted that the minimum requirement for entry into the position was not a baccalaureate degree or its equivalent in a specific specialty. 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 appeal, counsel states, in part, that the proposed duties are specialized and complex in nature, thereby requiring that the beneficiary hold a bachelor's degree. Counsel cites to a court decision to state that the petitioner's size is unrelated to whether the position is professional. Counsel states further that the director improperly dismissed all of the job postings and provided only a selective reading of the *Handbook*.

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. Minn. 1999)(quoting *Hird/Blaker Corp. v. Sava*, 712 F. Supp. 1095, 1102 (S.D.N.Y. 1989)).

The AAO routinely consults the *Handbook* for its information about the duties and educational requirements of particular occupations. The AAO does not concur with counsel or the director that the proffered position is primarily that of a purchasing manager, a position that is found primarily in wholesale trade, manufacturing industries, retail trade, hospitals, and different levels of government. In this case, the petitioner is a novelty drink business with five employees and a gross annual income of \$288,000. In the "Nontechnical Description of Job" on Part 5 of the petition, the proposed duties are described as: "Plan[,] direct and coordinate buying activities and supervise related workers." As such, the proffered position is similar to that of a food service manager. No evidence in the *Handbook*, 2004-2005 edition, indicates that a baccalaureate or higher degree in a specific specialty, or its equivalent, is required for a food service manager job.

It is further noted that in his September 30, 2003 letter, the petitioner's owner describes the proposed duties, in part, as: "Further duties include clarifying invoice discrepancies, creating and tracking purchase orders and coordinating/monitoring stock inventory levels to maximize productivity and ensure proper functioning of newspaper." (Emphasis added.) In view of the foregoing, a portion of the proposed duties clearly applies to a

different petitioner and different beneficiary. The AAO notes that the *Handbook* also indicates that a degree in a specific field is not required for purchasing managers. Qualified persons may begin as trainees, purchasing clerks, expeditors, junior buyers or assistant buyers. Thus, the minimum requirement for entry into the occupational field of purchasing managers is not a degree in a specialty and does not qualify a position as a specialty occupation under the first criterion.

Regarding parallel positions in the petitioner's industry, the petitioner submitted Internet job postings for purchasing managers. There is no evidence, however, to show that the employers issuing those postings are similar to the petitioner, or that the advertised positions are parallel to the instant position. One of the advertisements is for a purchasing manager for several restaurants. Another advertisement is for a purchasing manager in the food manufacturing industry. Another is a sourcing and procurement manager for Disneyland Resort. The petitioner has not demonstrated that the proposed duties of the proffered position are as complex as the duties described for the advertised positions. Thus, the advertisements have no relevance.

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, therefore, has 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. On appeal, counsel indicates that the proffered position is a new position. The petitioner, therefore, has not established the criterion set forth at 8 C.F.R. § 214.2(h)(4)(iii)(A)(3).

Finally, the AAO turns to the criterion at 8 C.F.R. § 214.2(h)(4)(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 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. Therefore, the evidence does not establish that the proffered 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 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.