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U.S. Citizenship
and Immigration
Services

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[REDACTED]

FILE: WAC 04 242 53954 Office: CALIFORNIA SERVICE CENTER Date: MAR 07 20

IN RE: Petitioner:
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:

[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.

Michael T. Kelly

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 sustained. The petition will be approved.

The petitioner is a garment design, production and trading company that seeks to employ the beneficiary a garment economist. 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 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 garment economist. Evidence of the beneficiary's duties includes: the I-129 petition; the petitioner's August 26, 2004 letter of support; and the petitioner's response to the director's request for evidence. According to this evidence, the beneficiary would perform duties that entail, in part: conducting research; collecting and analyzing data of labor (determination of wages), raw materials (yarns, threads, fabrics), and newly developed machines related to garment production, packing and shipping; monitoring economic trends to ensure that profits can be maximized and the products consumers will demand are within the company's desired price range; studying the market structure of the garment business in terms of the number of competitors; analyzing all global product data to track sales, margin, average selling prices and other related data; gathering marketing data for wholesale and retail; analyzing the competitors' growth and market share and advising the company on how to handle the competition; assessing global economic conditions in order to estimate the economic effects before making investments or developing a new brand; maintaining a markets intelligence database and using a computer to examine, analyze and compile statistical data; and preparing reports, including charts and graphs and presenting recommendations for action plans to management. The petitioner indicated that a qualified candidate for the job would possess a bachelor's degree in economics.

The director found that the proffered position was not a specialty occupation because the job is not an economist position; it is a marketing manager. 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 that the duties are those of an economist and that the director incorrectly analyzed the proffered position as a marketing manager or a market research analyst. Counsel states that the duties are so specialized and complex that the knowledge required to perform them is usually associated with attaining a bachelor's degree.

The AAO agrees with counsel that the proffered position is that of an economist, not a marketing manager or market research analyst. The duties are complex, and while some of the duties overlap with those of a market research analyst, the primary function of the position is as an economist.

Upon review of the record, the petitioner has established one of the four criteria outlined in 8 C.F.R. § 214.2(h)(4)(iii)(A). Therefore, the proffered position is 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 Department of Labor's *Occupational Outlook Handbook* (*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*, 764 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 *Handbook* indicates that a master's degree or Ph.D. in economics is a normal minimum hiring requirement for private-sector economist jobs. Therefore, the evidence establishes that the proffered position is a specialty occupation under 8 C.F.R. § 214.2(h)(4)(iii)(A)(1).

The beneficiary has a master's degree in accounting from a United States university, indicating that he is qualified for this 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 sustained that burden. Accordingly, the appeal will be sustained and the petition will be approved.

ORDER: The appeal is sustained. The petition is approved.