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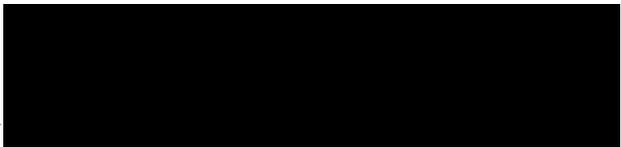
APR 07 2005

FILE: WAC 03 023 52142 Office: CALIFORNIA SERVICE CENTER Date:

IN RE: Petitioner:
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:



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

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 an auto parts manufacturer and wholesaler and seeks to employ the beneficiary as an inventory analyst. 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 does not qualify as a specialty occupation. The petitioner then filed a motion to reopen/reconsider. The director again denied the petition. On appeal, counsel submits a brief stating that the offered position qualifies as a specialty occupation.

The issue to be discussed in this proceeding is whether the proffered position qualifies as a specialty occupation.

Section 101(a)(15)(H)(i)(b) of the Act, 8 U.S.C. § 1101(a)(15)(H)(i)(b), provides, in part, for the classification of qualified nonimmigrant aliens who are coming temporarily to the United States to perform services in 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:

[A]n 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 are 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) the 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; (5) the petitioner's motion to reopen/reconsider with accompanying brief; (6) the director's decision granting the petitioner's motion to reopen/reconsider and denying the petition; and (7) the Form I-290B with supporting documentation. The AAO reviewed the record in its entirety before issuing its decision.

The petitioner is seeking the beneficiary's services as an inventory analyst. Evidence of the beneficiary's duties includes the Form I-129 petition with attachment and the petitioner's response to the director's request for evidence. According to the record the beneficiary would: track daily sales and inventory stock by everyday back-up reports to monitor any significant customer demands for stock so that purchase orders may be submitted in a timely manner; analyze weekly and monthly sales using Microsoft excel; forecast sales demands and evaluate performance measured against inventory budgets; check inventory safety stock by running the MS-90 Inventory Management System; compare current stock levels and forecasted demands to determine the optimal order quantity; issue purchase orders to the Taiwan factory under supervision of the chief financial officer; communicate with the Taiwan factory addressing purchase order issues; update cost sheets for all products after receiving sales order confirmation from Taiwan; obtain pricing and material information for new products to establish cost; obtain new part numbers when needed; input specification information for products as required; obtain customer information about volume, packaging requirements, prints, deliver dates, etc; ensure that the estimated time of product arrival meet company requirements; achieve customer requirements by monitoring lead-time required; propose sales for slow moving merchandise; prepare special pricing of products for customers; review requests for pricing and match with capabilities; monitor discrepancies between stock quantity showing in the computer system and actual quantity in the warehouse; and adjust inventory levels to avoid discrepancies. The petitioner requires a minimum of a bachelor's degree in business administration or economics for entry into the proffered position.

Upon review of the record, the petitioner has failed to establish that a baccalaureate or higher degree or its equivalent is normally the minimum requirement for entry into the offered position, or that a degree requirement is common to the industry in parallel positions among similar organizations. 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 an industry 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/Baker Corp. v. Sava*, 712 F. Supp. 1095, 1102 (S.D.N.Y. 1989)).

The AAO routinely consults the *Handbook* for information about the duties and educational requirements of particular occupations. The duties of the proffered position are varied but essentially duties performed by procurement clerks in small to medium size firms with additional duties typically performed by sales managers. A baccalaureate degree in a specific specialty is not the minimum requirement for entry into either of these positions. Procurement clerks are not normally degreed individuals and a high school diploma is sufficient for entry into most positions. The *Handbook* notes that for sales management positions, some employers prefer a bachelor's or master's degree in business administration with an emphasis on marketing. In highly technical industries a bachelor's degree in engineering or science combined with a master's degree in business administration is often preferred. Other employers prefer employees with experience plus a broad liberal arts background. Degrees in sociology, psychology, literature, journalism or philosophy, among other subjects is acceptable. Requirements vary depending upon the particular job. It is apparent, however, that a degree in a specific specialty is not normally the minimum requirement for entry into offered position. The petitioner has failed to establish the criterion at 8 C.F.R. § 214.2(h)(4)(iii)(A)(1).

The petitioner asserts that a degree requirement is common to the industry in parallel positions among similar organizations. 8 C.F.R. § 214.2(h)(4)(iii)(A)(2). In support of this assertion, the petitioner submitted copies of two job advertisements for inventory analysts. Those advertisements require degrees in accounting, business, or supply chain management for entry into the positions advertised. The submission of two advertisements, however, is insufficient in scope to establish the educational requirements for the position in the industry. Furthermore, the *Handbook* notes that a degree in a specific specialty is not common to the industry for position offered, which combines the duties of a procurement clerk, and a sales manager. A procurement clerk's duties are similar to those of a buyer in small and medium sized firms. The *Handbook* notes that while some employers prefer applicants with a bachelor's degree for buyer positions, a degree requirement in a specific specialty is not the minimum requirement for entry into the offered position. Many employers still fill buyer positions by promoting experienced employees who qualify for the position through work experience and training rather than a bachelor's level education in a specific specialty. Educational requirements for buyers in the manufacturing industry, in companies that require formal education, find acceptable degrees ranging from business to engineering, or one of the applied sciences. As noted above, sales managers routinely work in the industry with degrees ranging from liberal arts to business. The petitioner has failed to establish that a degree requirement, in a specific specialty, is common to the industry in parallel positions among similar organizations. The petitioner has not satisfied the criterion at 8 C.F.R. § 214.2(h)(4)(iii)(A)(2).

The petitioner states that it normally requires a degree for entry into the proffered position, but offers no evidence in this regard. Simply going on the record without supporting documentary evidence is not sufficient for the purpose of meeting the burden of proof in these proceedings. *See Matter of Treasure Craft of California*, 14 I&N Dec. 190 (Reg. Comm. 1972). The petitioner has not established the criterion at 8 C.F.R. § 214.2(h)(4)(iii)(A)(3).

Finally, the duties of the proffered position are routine for procurement clerks and sales managers in the industry. They are not so complex or unique that they can be performed only by an individual with a degree

in a specific specialty. Nor are they so specialized and complex that knowledge required to perform them is usually associated with the attainment of a baccalaureate or higher degree in a specific specialty. The duties of the position are routinely performed by individuals in the industry who have less than a baccalaureate level education, as well as by degreed individuals with education in a wide range of educational disciplines. The petitioner has failed to establish the referenced criteria at 8 C.F.R. § 214.2(h)(4)(iii)(A)(2) and (4).

The petitioner has failed to establish that any of the four factors enumerated above are present in this proceeding. It is, therefore, concluded that the petitioner has not demonstrated that the offered position is a specialty occupation within the meaning of the regulations.

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 and the appeal shall accordingly be dismissed.

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