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FILE: WAC 04 025 51989 Office: CALIFORNIA SERVICE CENTER Date: DEC 22 2005

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 materials 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. The matter is now on appeal before the Administrative Appeals Office (AAO). The appeal will be dismissed. The petition will be denied.

The petitioner is a designer, manufacturer, wholesaler, and retailer of garments. It seeks to employ the beneficiary as a contract specialist and to classify her 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 on the ground that the record did not establish that the proffered position qualifies as 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.

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 (RFE); (3) the petitioner's response to the RFE; (4) the notice of decision; and (5) Form I-290B and an appeal brief. The AAO reviewed the record in its entirety before issuing its decision.

The petitioner describes itself as a designer, manufacturer, wholesaler, and retailer of ladies apparel with a clientele that includes department stores, supermarkets, and retail outlets. The petitioner states that it was established in 1992, has 45 employees, and earns a gross annual income of around \$15 million. To facilitate further business growth the petitioner declares that it seeks to hire the beneficiary as a contract specialist. The duties of the position, and the percentage of the beneficiary's time they require, are listed as follows:

- 20% Determine the orders for our product lines from our existing traditional distributors, suppliers, retailers, agents or affiliates. Participate in tapping new ones through formulation, development, and recommendation of a system or program by which purchase requests, including requests for quotes, bids and proposals, are coordinated and reviewed. This duty also includes receiving and evaluating proposals, quotations and bids for required products and services from manufacturers, suppliers, and wholesalers.
- 20% Research, analyze, study, and be familiar with products and materials to be procured by our company needed for productions, garnishment, or essential components in our textile manufacturing lines through reading books, the Thomas Register, journals, brochures, publications, and attendance in trade fairs and seminars sponsored by suppliers and wholesalers, paying attention to price, materials, quality, quantity, and brand.
- 20% Research, study, and assist in the development and recommendation of the implementation of programs or policies involving the selection of cost-effective shipping sources and most efficient transportation modes, work scheduling, contract terms and formulation of budget. This also includes maintenance of communication with suppliers during the course of procurement to ensure timely delivery in compliance with the contract or agreement of sale and monitoring of shipments and deliveries.
- 15% Participate in drafting, review, and finalization of contracts or agreements with respect to procurement and purchase of products or services, as well as sale, consignment, and distribution of our finished products. Maintain and review these contracts and agreements to ensure that the terms and stipulations therein are complied with and adhered to by all parties involved.
- 10% Perform quality assurance evaluation procedures on products and services acquired by our company by checking against invoices to verify conformity of the products and services as to names, count, and labeling.
- 10% Participate in the development of strategic plans in purchasing, budgeting, and forecasting, anticipating price and quality changes in the products and services to be procured or purchased.

- 5% Ensure that our company is always purchasing and procuring products and services at the most competitive levels available. Maintain competitive bids, contract terms and conditions, purchasing processes, delivery modes and schedule to ensure most competitive pricing labels.

The petitioner states that the beneficiary is qualified for the job by virtue of her bachelor of commerce degree, with a major in accounting, from Saint Michael's College of Laguna in the Philippines, granted on March 21, 1985, in addition to more than 17 years of work experience in the Philippines focused on similar types of jobs in the garments industry.

The director found that the position offered to the beneficiary did not qualify as a specialty occupation. The director determined that the duties of the proffered position fit within the occupational category of purchasing managers, buyers, and purchasing agents, as described in the Department of Labor (DOL)'s *Occupational Outlook Handbook (Handbook)*. The director quoted information in the *Handbook* indicating that a baccalaureate level of training is not a normal industry-wide requirement for entry into the occupation. The petitioner submitted internet job announcements from other companies seeking contract specialists, but the director found that they failed to demonstrate that a degree requirement is common to the petitioner's industry in parallel positions among similar organizations. The evidence of record did not show that the proffered position is so unique or specialized that it can only be performed by an individual with a specialty degree, the director declared, or that the petitioner normally requires applicants for the position to have at least a baccalaureate degree in the field. Lastly, the director was not persuaded by the evidence of record that the duties of the proffered position are so specialized and complex that knowledge usually associated with a baccalaureate degree is required to perform them. The director concluded that the proffered position does not qualify as a specialty occupation under any of the criteria enumerated at 8 C.F.R. § 214.2(h)(4)(iii)(A).

On appeal counsel asserts that the documentation of record establishes that the contract specialist position is a specialty occupation. According to counsel, the director made an unjust generalization about the educational requirements of the occupation, based on the DOL *Handbook*. Counsel asserts that the contract specialist position was previously filled by an individual with a bachelor's degree in business administration, and that the technical and highly responsible scope of the job duties, as described by the petitioner and documented in previously submitted materials, shows that the position is a specialty occupation.

In determining whether a position meets the statutory and regulatory criteria of a specialty occupation, CIS routinely consults the DOL *Handbook* as an authoritative source of information about the duties and educational requirements of particular occupations. Factors typically considered are whether the *Handbook* indicates a degree is required by the industry; 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)). CIS also scrutinizes the specific duties and complexity of the position at issue, with the *Handbook's* occupational descriptions as a reference, as well as the petitioner's past hiring practices for the position. See *Shanti, Inc. v. Reno, id.*, at 1165-66.

The AAO agrees with the director that the duties of the proffered position reflect those of a purchasing manager, buyer, or purchasing agent, as described in the DOL *Handbook*, 2004-05 edition, at 61:

Purchasing managers, buyers, and purchasing agents seek to obtain the highest quality merchandise at the lowest possible purchase cost for their employers. In general, *purchasers* buy goods and services for use by their company or organization, whereas *buyers* typically buy items for resale. Purchasers and buyers determine which commodities or services are best, choose the suppliers of the product or service, negotiate the lowest price, and award contracts that ensure that the correct amount of the product or service is received at the appropriate time

Purchasing managers, buyers, and purchasing agents evaluate suppliers on the basis of price, quality, service support, availability, reliability, and selection Once all of the necessary information on suppliers is gathered, orders are placed and contracts are awarded to those suppliers who meet the purchaser's needs.

With respect to the educational requirements of the occupation, the *Handbook* states the following:

Qualified persons may begin as trainees, purchasing clerks, expeditors, junior buyers, or assistant buyers. Retail and wholesale firms prefer to hire applicants who have a college degree and who are familiar with the merchandise they sell and with wholesaling and retailing practices. Some retail firms promote qualified employees to assistant buyer positions; others recruit and train college graduates as assistant buyers. Most employers use a combination of methods.

Educational requirements tend to vary with the size of the organization. Large stores and distributors, especially those in wholesale and retail trade, prefer applicants who have completed a bachelor's degree program with a business emphasis. Many manufacturing firms put yet a greater emphasis on formal training, preferring applicants with a bachelor's or master's degree in engineering, business, economics, or one of the applied sciences. A master's degree is essential for advancement to many top-level purchasing manager jobs.

Id. at 62-63. Thus, the *Handbook* indicates that a variety of backgrounds can be suitable for a purchaser or buyer, depending on the particular position. Smaller companies tend to be more flexible. They may "prefer" a college degree, but do not always require one, or may not require a degree in a specific specialty. Furthermore, the *Handbook* describes other possible routes to a purchaser or buyer position, such as promotion through the ranks after initial employment at a lower position that does not require a degree. The AAO notes that the proffered position described by the petitioner – entitled contract specialist – does not involve any management responsibilities vis-à-vis other employees in the company. (See petitioner's organizational chart.)

Based on the foregoing analysis, the AAO determines that a baccalaureate or higher degree in a specific specialty is not the normal minimum requirement for entry into the proffered position. Accordingly, the position does not meet the first alternative criterion of a specialty occupation at 8 C.F.R. § 214.2 (h)(4)(iii)(A)(I).

As for the second alternative criterion of a specialty occupation, at 8 C.F.R. § 214.2(h)(4)(iii)(A)(2), the record includes four internet job announcements for contract specialist positions – including two from Northrup Grumman Corporation, one from Lockheed Martin Aeronautics, and one from Kaiser Permanente – requiring a bachelor's degree and/or equivalent experience in a related field. None of these companies bears any similarity to the petitioner with respect to its line of business or the scale of its operations. Accordingly, the job announcements are not persuasive evidence that a degree requirement in a specific specialty is common to the garment industry in parallel positions among similar organizations. Nor has the petitioner shown that the proffered position is so complex or unique that it can only be performed by an individual with a degree in a specific specialty. Thus, the proffered position does not qualify as a specialty occupation under either prong of 8 C.F.R. § 214.2(h)(4)(iii)(A)(2).

As for the third alternative criterion of a specialty occupation, at 8 C.F.R. § 214.2(h)(4)(iii)(A)(3), counsel refers to the petitioner's statement in response to the RFE that it previously hired a contract specialist with a bachelor of science degree in business administration. That individual, [REDACTED] had subsequently been transferred to another position in the company. While Mr. [REDACTED] is identified in the petitioner's organizational chart and its employee list as the cutting manager, there is no other documentation in the record substantiating that [REDACTED] works for the petitioner, that he previously served as the contract specialist, or that he has a bachelor's degree in business administration. Simply going on record without supporting documentary evidence does not satisfy the petitioner's burden of proof. *See Matter of Soffici*, 22 I&N Dec. 158, 165 (Comm. 1998) (citing *Matter of Treasure Craft of California*, 14 I&N Dec. 190 (Reg. Comm. 1972)). Furthermore, the requirement of a bachelor's degree in business administration would not meet the criterion of 8 C.F.R. § 214.2(h)(4)(iii)(A)(3) because a degree of such generalized title, without further evidence of a specific course of study closely related to the proffered position, does not establish that the employer normally requires a baccalaureate or higher degree in a specific specialty, or its equivalent, for the position. *See Matter of Michael Hertz Associates*, 19 I&N Dec. 558, 560 (Comm. 1988). The AAO determines that record fails to show that the petitioner normally requires a degree in a specific specialty for the proffered position, as required for it to qualify as a specialty occupation under 8 C.F.R. § 214.2 (h)(4)(iii)(A)(3).

Lastly, the record does not establish that the duties of the proffered position are so specialized and complex that they require knowledge associated with a baccalaureate or higher degree in a specific specialty. The petitioner has not distinguished its position from the *Handbook's* description of purchasing managers, buyers, and purchasing agents, or shown that the duties of the position could only be performed by an individual with baccalaureate level knowledge in a specific specialty. Therefore, the proffered position does not meet the fourth alternative criterion of a specialty occupation at 8 C.F.R. § 214.2(h)(4)(iii)(A)(4).

For the reasons discussed above, the petitioner has failed to establish that the proffered position qualifies as a specialty occupation under any of the criteria enumerated at 8 C.F.R. § 214.2(h)(4)(iii)(A). The record does not establish that the beneficiary will be coming temporarily to the United States to perform services in a specialty occupation, as required under section 101(a)(15)(H)(i)(b) of the Act, 8 U.S.C. § 1101(a)(15)(H)(i)(b).

The petitioner bears the burden of proof in these proceedings. *See* section 291 of the Act, 8 U.S.C. § 1361. The petitioner has not sustained that burden. Accordingly, the AAO will not disturb the director's decision denying the petition.

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