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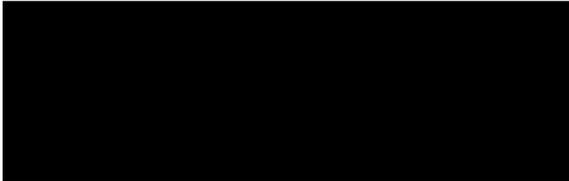
U.S. Department of Homeland Security
20 Mass. Ave., N.W., Rm. 3000
Washington, DC 20529



U.S. Citizenship
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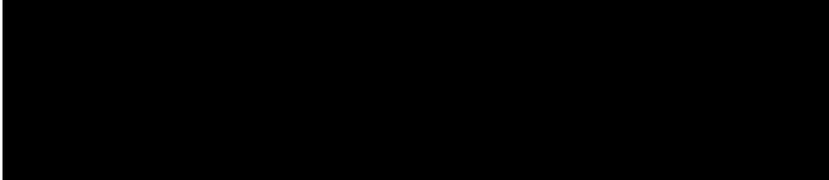


FILE: EAC 06 176 53646 Office: VERMONT SERVICE CENTER Date: FEB 19 2008

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, Chief
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 supplier of pipe and piping components for construction projects. The petitioner seeks to employ the beneficiary as a purchasing agent and endeavors 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 because the petitioner did not respond to a request for evidence. The petition was therefore, deemed abandoned. The petitioner then filed a motion to reopen with information establishing that it had, in fact, responded to the director's request for evidence. The director granted the motion to reopen, and denied the petition on the ground that the proffered position did not qualify as a specialty occupation. On appeal, counsel submits a brief and additional information 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; and (5) 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 a purchasing agent. 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 this evidence the beneficiary would:

- Deal with vendors, contractors, and customers, as well as state and federal regulatory/compliance agencies;
- Generate purchase orders in areas of chemicals, mining, power generation, and oil and gas from international suppliers;
- Purchase the highest quality merchandise at the lowest possible price and in correct amounts;
- Prepare purchase orders, solicit bid proposals and review requisitions for goods and services;
- Research and evaluate suppliers based on price, quality, selection, service, support, availability, reliability, production and distribution capabilities, and the supplier's reputation and history;
- Analyze price proposals, financial reports, and other data and information to determine reasonable prices;
- Monitor and follow applicable laws and regulations;
- Negotiate, or renegotiate, and administer contracts with suppliers, vendors, and other representatives;

- Monitor shipments to ensure that goods come in on time, and in the event of problems trace shipments and follow up undelivered goods;
- Confer with staff, users, and vendors to discuss defective or unacceptable goods or services and determine corrective action;
- Evaluate and monitor contract performance to ensure compliance with contractual obligations and to determine need for changes; and
- Maintain and review computerized or manual records of items purchased, costs, delivery, product performance, and inventories.

The petitioner requires a minimum of a bachelor's degree in business administration with emphasis in international business or trade for entry into the proffered position.

The AAO routinely consults the *Handbook* for information about the duties and educational requirements of particular occupations. The duties of the proffered position are essentially those noted for buyers or purchasing managers. 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 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. In order to accomplish these tasks successfully, purchasing managers, buyers, and purchasing agents study sales records and inventory levels of current stock, identify foreign and domestic suppliers, and keep abreast of changes affecting both the supply of and demand for needed products and materials.

The *Handbook* notes that qualified individuals for purchasing managers, buyers and purchasing agents positions may begin as trainees, purchasing clerks, expeditors, junior buyers, or assistant buyers. Retail and wholesale firms prefer to hire applicants with a college degree and familiarity with the products they sell, as well as wholesale and retail practices. It is also noted, however, that some retail firms promote qualified employees to assistant buyer positions, while others recruit and train college graduates. Most employers use a combination of methods for filling these positions. Educational requirements tend to vary with the size of the organization. Large stores and distributors prefer applicants who have completed a bachelor's degree program with a business emphasis, and many manufacturing firms put 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. The fact remains, however, that while some employers prefer applicants with a bachelor's degree, 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. The petitioner has failed to satisfy the criterion at 8 C.F.R. § 214.2(h)(4)(iii)(A)(1).

The record does, however, establish that the duties of the proffered position are 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 petitioner is an American subsidiary of Groupe Genoyer, and reports gross annual sales of \$14,000,000. It specializes in manufacturing flanges and fittings as well as leading piping packaging internationally, and provides full procurement solutions to construction project managers in various process industries, including oil, gas, power generation, chemicals and mining. The petitioner provided a detailed list of the duties to be performed by the beneficiary, and those duties are, in the petitioner's business environment, so specialized and complex that they would normally be performed by individuals with a baccalaureate level education. As noted in the *Handbook*, many manufacturing firms put a greater emphasis on formal training for purchasing managers, buyers and purchasing agents, preferring applicants with a bachelor's or master's degrees in engineering, business, economics, or some of the applied sciences. The petitioner has, therefore, established that the offered position qualifies as a specialty occupation as it meets the criterion at 8 C.F.R. § 214.2(h)(4)(iii)(A)(4).

The final issue to be determined is whether the beneficiary qualifies to perform the duties of a specialty occupation. The director did not address that issue as the petition was denied on another ground. The record is, however, sufficient for the AAO to make that determination. The petitioner holds a foreign degree from a Mexican university determined by a credentials evaluation service to be equivalent to a bachelor's degree in business administration with a major in international business/trade from a regionally accredited university in the United States. That degree is closely related to the duties of the proffered position and qualifies the beneficiary to perform the duties of the proffered position.

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 and the appeal shall accordingly be sustained.

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