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U.S. Department of Homeland Security
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U.S. Citizenship
and Immigration
Services

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FILE: WAC 04 014 54458 Office: CALIFORNIA SERVICE CENTER Date: FEB 07 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 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 director of the service center 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 Japanese restaurant that seeks to employ the beneficiary as a purchasing agent. The petitioner, therefore, 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 states that the petitioner normally requires a bachelor's degree for the proffered position, and submits additional and previously submitted evidence.

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 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 agent. Evidence of the beneficiary's duties includes: the Form I-129; the attachments accompanying the Form I-129; the company support letter; and the petitioner's response to the director's request for evidence. According to this evidence, the beneficiary would perform duties that entail collaborating with the company president to set up objectives, formulate policies, and direct the operations of the purchasing department; analyzing purchasing systems and operations; identifying problem areas and recommending improvements; providing statistical analyses and reports; ensuring compliance with laws and regulations regarding food quality; maintaining or exceeding the monthly budgeted variable operation; attending trade shows and other activities; evaluating suppliers and examining products and services; overseeing and inspecting seafood; redistributing seafood and produce to different restaurants; and maintaining the lowest possible food cost for overall operations. The petitioner stated that a candidate for the proffered position must possess a bachelor's degree in supply chain management or a related business field.

The director determined that the proffered position was not a specialty occupation. The director found that the duties of the proffered position are performed by a purchasing manager, buyer, or purchasing agent, and that the Department of Labor's (DOL) *Occupational Outlook Handbook* (the *Handbook*) explains that there is no industry-wide requirement of a bachelor's degree in a specific specialty. The director found the submitted evidence did not indicate that the petitioner normally requires candidates to possess a bachelor's or higher degree in the field. The director found that the submitted evidence did not confirm the position held by Sung Eun Kim, and that the organizational chart did not respond to the request for evidence that sought information about the educational level of employees. Finally, the director concluded that the proposed duties and stated level of responsibility did not indicate a complexity or authority beyond what is normally encountered in the occupational field.

On appeal, counsel states that the petitioner normally requires a bachelor's degree for the proffered position, and submits additional and previously submitted evidence.

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.

Counsel submitted evidence that showed that CIS approved other, similar petitions in the past. This record of proceeding does not, however, contain all of the supporting evidence submitted to the California Service Center in the prior cases. In the absence of all of the corroborating evidence contained in the other records of proceeding, the documents submitted by counsel are not sufficient to enable the AAO to determine whether the original H-1B petitions were approved in error. Furthermore, each nonimmigrant petition is a separate proceeding with a separate record. See 8 C.F.R. § 103.8(d). In making a determination of statutory eligibility, CIS is limited to the information contained in the record of proceeding. See 8 C.F.R. § 103.2(b)(16)(ii).

Although the AAO may attempt to hypothesize as to whether the prior approvals were granted in error, no such determination may be made without review of the original record in its entirety. If the prior petitions were approved based on evidence that was substantially similar to the evidence contained in this record of proceeding that is now before the AAO, however, the approval of the prior petitions would have been erroneous. CIS is not required to approve petitions where eligibility has not been demonstrated, merely because of prior approvals that may have been erroneous. See, e.g., *Matter of Church Scientology International*, 19 I. & N. Dec. 593, 597 (Comm. 1988). Neither CIS nor any other agency must treat acknowledged errors as binding precedent. *Sussex Engg. Ltd. v. Montgomery* 825 F.2d 1084, 1090 (6th Cir. 1987), cert. denied, 485 U.S. 1008 (1988).

The AAO next considers 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.Min. 1999)(quoting *Hird/Blaker Corp. v. Slattery*, 764 F. Supp. 872, 1102 (S.D.N.Y. 1991)).

In determining whether a position qualifies as a specialty occupation, CIS looks beyond the title of the position and determines, from a review of the duties of the position and any supporting evidence, whether the position actually requires the theoretical and practical application of a body of highly specialized knowledge, and the attainment of a baccalaureate degree in a specific specialty as the minimum for entry into the occupation as required by the Act. The AAO routinely consults the *Handbook* for its information about the duties and educational requirements of particular occupations.

The *Handbook* discloses that the duties of the proffered position are performed by purchasing managers and agents who seek to obtain the highest quality merchandise at the lowest possible purchase cost. The *Handbook* states:

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. . . . At meetings, trade shows, conferences, and suppliers' plants and distribution centers, they examine products and

services, assess a supplier's production and distribution capabilities, and discuss other technical and business considerations that influence the purchasing decision. . . .

The *Handbook* reports that employers do not require a specific bachelor's degree for these occupations; it states:

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.

The petitioner fails to establish that a baccalaureate or higher degree or its equivalent in a specific specialty is the normal minimum requirement for entry into the particular position because the *Handbook* reveals that the proffered position's duties are similar to those of a purchasing manager and agent, occupations that do not require a bachelor's degree in a specific specialty.

To establish the second criterion - that a specific degree requirement is common to the industry in parallel positions among similar organizations - the evidentiary record contains job postings. This evidence is not persuasive for various reasons. AG Research International and Disneyland Resort prefer, but do not require, a specific bachelor's degree. Children's Hospital of Orange County, Robeks, Progressive Los Angeles Area Restaurant Group, Inc., International House of Pancakes, the aerospace company, International E-Z UP, Inc., and Lockheed Martin Corporation do not require a bachelor's degree in a specific specialty. In addition, some of the companies such as Lockheed Martin Corporation, Children's Hospital of Orange County, and the aerospace company differ in nature from the petitioning entity, a restaurant. Only two of the postings, Panera Bread/Saint Louis Bread Co. and Integris Consulting Group, indicated that a candidate must possess a bachelor's degree in a specific specialty. Just two postings are not sufficient to establish that a specific degree requirement is common to the industry in parallel positions among similar organizations. Accordingly, the petitioner fails to satisfy the regulation at 8 C.F.R. §§ 214.2(h)(4)(iii)(A)(2).

No evidence is in the record that would show the proffered position is so complex or unique that it can be performed only by an individual with a degree. Again, the *Handbook* reveals that the proffered position is performed by purchasing managers and agents, occupations that do not require a bachelor's degree in a specific specialty.

Counsel claims that the petitioner established the third criterion at 8 C.F.R. § 214.2(h)(4)(iii)(A): that the petitioner normally requires a bachelor's degree or its equivalent in a specific specialty for the position. The

evidentiary record contains documents relating to former employees of the petitioner: [REDACTED]. The AAO notes that the H-1B petition filed by the petitioner on behalf of [REDACTED] is not relevant in this proceeding given that it indicated that the petitioner sought an operations manager, not a purchasing agent. Although CIS issued an approval notice on behalf of [REDACTED] this record of proceeding does not contain the H-1B petition upon which the approval was based. Thus, the AAO cannot determine the nature of the position held by [REDACTED]. The H-1B petition that the petitioner filed on behalf of [REDACTED] sought a purchasing agent. However, the petitioner's creation of a position with a perfunctory bachelor's degree requirement will not mask the fact that the position is not a specialty occupation. CIS must examine the ultimate employment of the alien, and determine whether the position qualifies as a specialty occupation. *Cf. Defensor v. Meissner*, 201 F. 3d 384 (5th Cir. 2000). The critical element is not the title of the position or an employer's self-imposed standards, but whether the position actually requires the theoretical and practical application of a body of highly specialized knowledge, and the attainment of a baccalaureate or higher degree in the specific specialty as the minimum for entry into the occupation as required by the Act.¹ To interpret the regulations any other way would lead to absurd results: if CIS were limited to reviewing a petitioner's self-imposed requirements, then any alien with a bachelor's degree could be brought into the United States to perform a menial, non-professional, or an otherwise non-specialty occupation, so long as the employer required all such employees to have baccalaureate or higher degrees. *See id.* at 388. As already discussed, the *Handbook* reveals that the proffered position is performed by purchasing managers and agents, occupations that do not require a specific bachelor's degree.

The fourth criterion at 8 C.F.R. § 214.2(h)(4)(iii)(A) requires that the petitioner establish that the nature of the specific duties is so specialized and complex that the knowledge required to perform the duties is usually associated with the attainment of a baccalaureate or higher degree. Once again, the *Handbook* reveals that the proffered position is performed by purchasing managers and agents, occupations that do not require a bachelor's degree in a specific specialty.

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.

¹ The court in *Defensor v. Meissner* observed that the four criteria at 8 C.F.R. 214.2(h)(4)(iii)(A) present certain ambiguities when compared to the statutory definition, and "might also be read as merely an additional requirement that a position must meet, in addition to the statutory and regulatory definition." *See id.* at 387.