

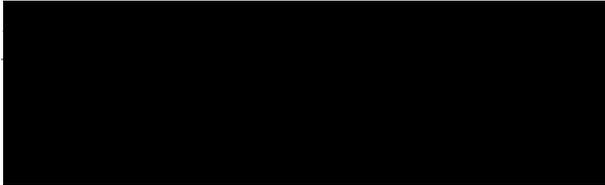
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FILE: EAC/03 129 53331 Office: VERMONT SERVICE CENTER

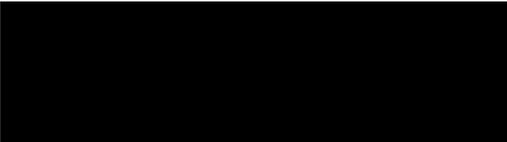
Date: FEB 07 2005

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 materials have been returned to the office that originally decided your case. Any further inquiry must be made to that office.

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 manufacturer and wholesaler of precious gemstones. It seeks to employ the beneficiary as a purchasing agent 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 proffered position is not a specialty occupation. On appeal counsel submits a brief arguing that the subject position, based on its educational requirements and the complexity of its duties, 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 additional evidence (RFE); (3) the petitioner's response to the RFE; (4) the

director's denial letter; and (5) Form I-290B, the appeal brief, and supporting documentation. The AAO reviewed the record in its entirety before issuing its decision.

The petitioner is seeking the beneficiary's services as purchasing agent to assist in the selection of high quality gemstones. The duties of the position were listed as follows in a letter from the petitioner accompanying the Form I-129:

1. Organize sales orders and break them down into stones needed on a monthly basis.
2. Monitor all stones received and match against purchase orders;
3. Study market trends and consumer preferences to evaluate new product opportunities.
4. Prepare market analysis reports.
5. Examine stones to evaluate quality and value, which includes symmetry and polishing of facets, angles of facets and outline of stone.
6. Negotiate contracts with vendors.
7. Apply and document sorted diamonds to the proper orders, in keeping with established packaging procedures.
8. Expedite repair on damaged stones.
9. Work with Gemstone Services Manager to geologically test parcels of diamonds.
10. Contribute in achieving company's financial targets by ensuring customers' satisfaction.

In response to the RFE asking for a demonstration of the complexity of the position's duties, counsel expanded on the petitioner's description, as follows:

A purchasing agent with [the petitioner] is required to keep track of research conducted on properties affecting the appearance of diamonds and other precious stones; color and clarity treatments; identifying treatments and characterizing new synthetic and treated gem materials. The incumbent must have the ability to analyze research findings and apply them to the company's purchasing and marketing strategy. S/he must understand the concept of competitive advantage and how it is achieved. The purchasing agent must be aware of the mechanics of budgets and stock control. S/he must be familiar with basic financial principles that lead to profit and business growth.

The petitioner asserted that a qualified candidate for the job must have at least a bachelor's degree in business administration or its equivalent and two years of experience in grading or purchasing precious stones. The beneficiary, a native of Taiwan, earned a Master of Arts degree from the School of Education, Department of Administration, Leadership and Technology, at New York University (NYU) in January 2002.

The director found that the position offered to the beneficiary did not qualify as a specialty occupation under the Act. Citing to the Department of Labor (DOL)'s *Occupational Outlook Handbook (Handbook)*, 2002-2003 edition, and an internet posting of DOL's Bureau of Labor Statistics, the director concluded that a bachelor's degree in a specific specialty is not an industry-wide requirement for entry into the occupation of purchasing agent. The director also determined that other job announcements submitted by the petitioner requiring bachelor's degrees were not all for purchasing agent positions and did not generally involve companies similar to the petitioner in size and scope. In addition, the director declared that letters from two individuals in the gem industry asserting that a bachelor's degree in business

administration or a related field was required for a purchasing agent position were neither persuasive nor binding on CIS.

In determining whether a position meets the statutory and regulatory criteria of a specialty occupation, CIS routinely consults the *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. Slattery*, 764 F.Supp. 872, 1102 (S.D.N.Y. 1991)). 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, id.*, at 1165-66.

On appeal counsel asserts that the petitioner is seeking an individual with a bachelor's degree in business administration or its equivalent for the purchasing agent position. What the petitioner must demonstrate, however, is that the proffered position requires a precise and specific course of study that relates directly and closely to the position in question. Since there must be a close corollary between the specialized studies and the proffered position, the requirement of a degree with a generalized title such as business administration, without further specification, does not establish the position as a specialty occupation. See *Matter of Michael Hertz Associates*, 19 I&N Dec. 558 (Comm. 1988).

Counsel asserts that the director misinterpreted the *Handbook* when he determined that a degree in a specific specialty was not required for purchasing agents. The AAO agrees with the director. According to the *Handbook*, 2004-05 edition, which closely tracks the 2002-03 edition:

Retail and wholesale firms prefer to hire applicants who have a college degree and who are familiar with the merchandise they sell and the 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 . . . .

*Handbook* at 62-63. Thus, the *Handbook* clearly indicates that a variety of degrees are viewed favorably by employers hiring purchasing agents. A degree in a specific specialty is not generally required. Though some employers may prefer a bachelor's degree with a business emphasis, the *Handbook* does not indicate that such a degree is always required for a purchasing agent. Furthermore, the *Handbook* describes other possible routes to a purchasing agent position, such as promotion through the ranks after initial employment at lower positions that do not require a degree. Accordingly, the petitioner has not established that a baccalaureate or higher degree in a specific specialty is the minimum requirement for

entry into its purchasing agent position, as required to qualify as a specialty occupation under the first alternative criterion set forth in 8 C.F.R. § 214.2(h)(4)(iii)(A)(1).

As for the second alternative criterion to qualify as specialty occupation, set forth at 8 C.F.R. § 214.2(h)(4)(iii)(A)(2), counsel quotes several excerpts from literature of the Gemological Institute of America stating that specialized business knowledge is essential to stay competitive in the jewelry trade. However, the excerpts do not indicate that a bachelor's degree in a specific specialty, as opposed to a general education and on-the-job experience, are essential for a purchasing agent in the gem industry. Counsel also refers to the previously submitted job announcements and letters from individuals in the industry. With respect to the job announcements, the AAO agrees with the director that the petitioner has not established the similarity of those companies to the petitioner, in terms of the nature of their business and the scale of their business operations, or the similarity of those positions to the position proffered in this case. Moreover, none of the job announcements requires that the applicant have a degree in a specific specialty. As for the two letters from gem industry executives, counsel asserts that they should at least be taken into consideration for their evidentiary value. The first letter, from Anil Ahuja, Market Analyst for Tech-Gem Corporation, states that:

[We] rely on the services of a suitably qualified Purchasing Agent. We have always believed that a Purchasing Agent in the trade should have a bachelor's degree in administration or some other relevant area.

The second letter, from [REDACTED], a partner in Ashi Diamonds, LLC, states that:

[W]e believe the duties of a purchasing agent can best be performed by an individual with a bachelor's degree in management administration, or a related field . . . . Our company employs a purchasing agent with the equivalent of a bachelor's degree in business administration. In our opinion, a bachelor's degree is a prerequisite for the position.

Neither letter definitively states that the company's purchasing agent has a bachelor's degree in a specific specialty directly related to the position. Each letter hints that the purchasing agent has a degree in a business-related field, without identifying the field or providing any further details. The AAO finds that the subject letters have little evidentiary weight. Based on the foregoing analysis, the AAO concludes that the petitioner has not established that a "degree requirement is common to the industry in parallel positions among similar organizations," as required to qualify its purchasing manager position as a specialty occupation under the first prong of 8 C.F.R. § 214.2(h)(4)(iii)(A)(2). Nor has the petitioner shown that its purchasing manager position is so complex or unique that it can only be performed by an individual with a degree in the specific specialty, as required for the position to qualify as a specialty occupation under the second prong of 8 C.F.R. § 214.2(h)(4)(iii)(A)(2).

As for the third alternative criterion of a specialty occupation under 8 C.F.R. § 214.2(h)(4)(iii)(A)(3) – "the employer normally requires a degree or its equivalent for the position" – the petitioner indicates that the purchasing manager position is newly created. However, similar duties were previously carried out by the company's diamond buyer, who received a B.S. degree in engineering from the University of Missouri in 1973. The petitioner has not shown that a bachelor of science in engineering is directly

related to the position of a purchasing agent for gemstones. Thus, the proffered position does not meet the third alternative criterion of a specialty occupation.

Counsel argues that the proffered position meets the fourth alternative criterion to qualify as a specialty occupation, set forth at 8 C.F.R. § 214.2(h)(4)(iii)(A)(4), because it requires specialized knowledge in the areas of sales, marketing and finance which is usually associated with a bachelor's degree in business or a related field. In addition, the position requires extensive knowledge of the jewelry industry and technical skills in grading and testing a broad range of precious stones. The specific duties described by the petitioner and counsel, however, do not appear to be so specialized or complex as to require "theoretical and practical application of a body of highly specialized knowledge" associated with "a bachelor's or higher degree in the specific specialty," within the meaning of section 214(i)(1) of the Act, 8 U.S.C. § 1101(a)(15)(H)(i)(b). Nor does the record support the petitioner's assertion that the position requires a bachelor's degree in business administration or a related field. The diamond buyer previously employed by the petitioner had a B.S. in engineering. The beneficiary has a master of arts degree from the School of Education at NYU. The petitioner has not demonstrated that either of those degrees is closely related to the field of business or the work of a purchasing agent in the gem industry. The duties of the proffered position appear to require, above all, knowledge of the gem industry, particular gemstones, and consumer tastes. This type of knowledge is best acquired on the job and in job-related training courses, as the beneficiary has demonstrated by her diplomas in 1999 from the Gemological Institute of America for courses in colored stones and diamonds and her employment in the gem industry starting in August 1999. Thus, the record indicates that a general education as well as non-degree training courses and work experience in the gem industry are suitable qualifications for the proffered position. The record does not establish that the duties of the position are so specialized and complex that they require knowledge associated with a baccalaureate or higher degree in a specific specialty. Therefore, the proffered position does not qualify as a specialty occupation under 8 C.F.R. § 214.2(h)(4)(iii)(A)(4).

Counsel asserts that the Vermont Service Center has approved several petitions it has filed for similar positions and duties. Counsel has not submitted any of the documentary materials from those cases, however, without which the AAO cannot determine whether the positions are similar to the one proffered by the petitioner in this case. If those petitions were approved based on evidence substantially similar to the evidence submitted in this proceeding, however, the approvals would have been erroneous. CIS is not required to approve petitions when 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). Moreover, the AAO is never bound by a decision issued by a service center or a district director. *See Louisiana Philharmonic Orchestra v. INS*, 2000 WL 282785 (E.D. La.), *aff'd* 248 F.3d 1139 (5th Cir. 2001), *cert. denied*, 122 S.Ct. 51 (2001). Only published precedent decisions are binding on all CIS employees in the administration of the Act. *See* 8 C.F.R. § 103.3(c). Unpublished decisions are not binding. Thus, the approved petitions alleged by counsel have no legal bearing on the AAO's determination of the instant case. Each nonimmigrant petition is a separate proceeding with a separate record. *See* 8 C.F.R. § 103.8(d). The record in this proceeding does not establish that the petitioner's jewelry designer position meets the statutory definition of a specialty occupation under section 214(i)(1) of the Act, 8 U.S.C. § 1184(i)(1).

Counsel argues that a court ruling in 2000 establishes that a position can qualify as a specialty occupation if it requires a general bachelor's degree and some practical training and/or experience. Counsel quotes from an article by an immigration law firm discussing a federal court decision in Massachusetts stating

that the combination of a bachelor's degree and training or experience is equivalent to a degree in a specialty field. The subject case is not specifically identified in the article, however, and counsel has furnished no citation thereof. Thus, the record does not corroborate counsel's claim. Moreover, the case seems to focus on the beneficiary's qualifications to perform the services of a specialty occupation rather than the qualifying criteria of the specialty occupation.

For the reasons discussed above, the petitioner has failed to establish that the purchasing agent position proffered to the beneficiary meets any of the four criteria of a specialty occupation outlined in 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.