



U.S. Citizenship  
and Immigration  
Services

identifying data deleted to  
prevent clearly unwarranted  
invasion of personal privacy

**PUBLIC COPY**



*Dz*

FILE: EAC 03 229 50834 Office: VERMONT SERVICE CENTER Date: **OCT 17 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 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 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 diamond wholesaler that seeks to employ the beneficiary as a buyer. 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 on the basis that the petitioner had failed to establish that the proposed position qualifies for classification as a specialty occupation.

On appeal, counsel contends that the proposed position qualifies as a specialty occupation, and that the director erred in denying the petition. Counsel asserts that in denying the petition, the director acted in an arbitrary and capricious manner, and that his decision “totally goes against the spirit of the applicable law and regulations.”

Section 214(i)(1) of the Immigration and Nationality Act (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:

An 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 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 proposed position.

In determining whether a proposed position qualifies as a specialty occupation, CIS does not rely simply upon the position’s title. The specific duties of the proposed position, combined with the nature of the petitioning entity’s business operations, are factors to be considered. CIS must examine the ultimate employment of the beneficiary and make a determination as to whether the proposed position in fact qualifies for classification 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 nor 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.

The record of proceeding before the AAO contains (1) the Form I-129 and supporting documentation; (2) the director’s denial letter; (3) the director’s request for evidence (RFE); (4) the RFE response and supporting documentation; and (5) the Form I-290B and supporting documentation. The AAO reviewed the record in its entirety before issuing its decision.

In the petitioner’s letter of support, the duties of the proposed position were set forth as follows:

1. Coordinate activities involved with procuring goods and services, such as raw materials, equipment, tools parts, and advertising, for establishment; reviews requisition;
2. Confer with vendors to obtain product or service information, such as price, availability, and delivery schedule;
3. Select products for purchase by testing, observing, or examin[ing] items;
4. Estimate values according to knowledge [of] market price;
5. Determine methods of procurement, such as direct purchase or bid;
6. Prepare purchase orders or bid request;
7. Review bid proposals and negotiate contracts with budgetary limitations and scope of authority;
8. Maintain manual or computerized procurement records, such as items or services purchased costs, delivery, product quality or performance and inventories [sic];
9. Discuss defective or unacceptable goods or services with inspection or quality control personnel, users, vendors, and other to determine source of trouble and take corrective action;

Previous counsel offered an expanded listing of duties in response to the director’s request for evidence. However, on appeal newly-retained counsel states that prior counsel submitted this response without consulting with the petitioner. Newly-retained counsel states that previous counsel’s response was incomplete and unauthorized. As such, the AAO will not consider the RFE response submitted by previous counsel.

On appeal, both the petitioner and newly-retained counsel restate the duties listed above and attempt to add more responsibilities to the proposed position. For example, counsel states that the duties of the proposed position are two-fold: purchasing and marketing. However, marketing functions were not reflected in the job description that was provided in the initial filing or the RFE response. In the appellate brief, counsel labels the first portion of the duties as those of a “buyer,” and the second portion of the duties as those of a “business analyst.”

On appeal, a petitioner cannot offer a new position to the beneficiary, or materially change a position’s title, its level of authority within the organizational hierarchy, or the associated job responsibilities. The petitioner must establish that the position offered to the beneficiary when the petition was filed merits approval. *Matter of Michelin Tire Corp.*, 17 I&N Dec. 248, 249 (Reg. Comm. 1978). A petitioner may not make material changes to a petition in an effort to make a deficient petition conform to CIS requirements. *See Matter of Izummi*, 22 I&N Dec. 169, 176 (Assoc. Comm. 1998).

If significant changes are made to the initial request for approval, the petitioner must file a new petition rather than seek approval of a petition that is not supported by the facts in the record. The information provided by the petitioner and counsel on appeal does not clarify or provide more specificity to the original duties of the petition, but rather adds new duties to the job description. Therefore, the analysis of the first criterion set forth at 8 C.F.R. § 214.2(h)(4)(iii)(A) will be based on the job description submitted with the initial petition.

In determining whether a proposed 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 Department of Labor’s *Occupational Outlook Handbook* (the *Handbook*) for its information about the duties and educational requirements of particular occupations.

A review of the duties of the proposed position finds them closely aligned to the responsibilities of purchasing managers, buyers, and purchasing agents<sup>1</sup>. As discussed in the *Handbook*:

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. 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.

Purchasing managers, buyers, and purchasing agents evaluate suppliers on the basis of price, quality, service support, availability, reliability, and selection. To assist them in

---

<sup>1</sup> The AAO notes that counsel also drew a parallel between the proposed position and those of purchasing managers, buyers, and purchasing agents, as discussed in the *Handbook*.

their search for the right suppliers, they review catalogs, industry and company publications, directories, and trade journals. Much of this information is now available on the Internet. They research the reputation and history of the suppliers and may advertise anticipated purchase actions in order to solicit bids. 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. 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. Contracts often are for several years and may stipulate the price or a narrow range of prices, allowing purchasers to reorder as necessary. Other specific job duties and responsibilities of purchasing managers, buyers, and purchasing agents vary by employer and by the type of commodities or services to be purchased.

The *Handbook* reports the following educational requirement for individuals seeking employment in this field:

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.

These findings do not support counsel's contention that a bachelor's degree is required for entry into this occupation. The *Handbook* states that educational requirements vary, and that most employers use a combination of internal promotion and hiring individuals with bachelor's degrees in order to fill these positions. Moreover, the fact that many employers "prefer" a degree is not synonymous with the "normally required" standard imposed by the regulation.

The AAO will accord no weight to the information counsel submits from the *Dictionary of Occupational Titles (DOT)*. The *DOT* is not a persuasive source of information regarding whether a particular job requires the attainment of a baccalaureate or higher degree in a specific specialty, or its equivalent, as a minimum for entry into the occupation. It provides an assessment (the S.V.P. rating) that is meant to indicate only the total number of years of vocational preparation required for a particular position. It does not describe how those years are to be divided among training, formal education, and experience, and it does not specify the particular type of degree, if any, that a position would require.

Accordingly, the proposed position does not qualify for classification as a specialty occupation under 8 C.F.R. § 214.2(h)(4)(iii)(A)(1).

Nor does the proposed position qualify as a specialty occupation under either prong of 8 C.F.R. § 214.2(h)(4)(iii)(A)(2). The first prong of this regulation requires a showing that a specific degree requirement is common to the industry in parallel positions among similar organizations.

The AAO has reviewed the job postings submitted by counsel. Counsel, however, has failed to consider the specific requirements at 8 C.F.R. § 214.2(h)(4)(iii)(A)(2) for establishing a baccalaureate or higher degree as an industry norm. To meet the burden of proof imposed by the regulatory language, a petitioner must establish that its degree requirement exists in parallel positions among similar organizations.

No evidence has been submitted to establish that any of these postings are from organizations similar in size or scope of operations to the petitioner, a diamond wholesaler with five employees. No information is submitted regarding Endeveco, except that it is involved in “manufacturing and production.” Eclipsys is a healthcare information technology company. The unnamed company advertising its vacancy through Monster.com is a real estate investment company. Fluke Corporation is a manufacturer of test and measurement equipment. The Wilmington Group is a pharmaceutical company. No information is submitted regarding ITW Magnaflux/Rocol, except that it is involved in “manufacturing and production.” No information is submitted regarding the unnamed company advertising its vacancy through BrilliantPeople.com, except that it is involved in “personal care and service” (two copies of this job posting were submitted). Western Brass Industries is a manufacturing and distribution company. No evidence regarding Adecco Technical is submitted. Thus, there is no evidence to suggest that any of these organizations are in fact “similar” to the petitioner.

The AAO is also unable to verify whether these positions are in fact parallel to the proffered position in terms of their basic qualification requirements. For example, the unnamed company advertising through BrilliantPeople.com requires a degree in chemistry. Also, the postings from Endeveco, Eclipsys, the unnamed real estate investment company, The Wilmington Group, ITW Magnaflux/Rocol, and Western Brass Industries do not require a degree in a specific field. As noted previously, CIS interprets the term “degree” to mean not just any in any field, but one in a specific specialty that is directly related to the proposed position.

The postings are too few in number to be indicative of an industry-wide standard, and they do not indicate a common requirement for a degree in a specific specialty.

The record also contains letters attesting to a common degree requirement in the petitioner’s industry. The petitioner states on appeal that these companies are of “similar size and annual revenues” to the petitioner. However, no evidence is submitted to document this assertion. Simply going on record without supporting documentary evidence is not sufficient for purposes of meeting the burden of proof in these proceedings. *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)). Further, none of the letter writers cites an industry survey or other market data in support of his or her opinion. As the personal opinions of the professionals conflict with the industry-wide data contained in the *Handbook*, the weight of their testimony will be discounted. *See Matter of Caron International*, 19 I&N Dec. 791 (Comm. 1988).

The AAO notes that the wording of the letters from [REDACTED] is identical. This raises the question as to whether these letters were in fact written by the persons signing them, or whether the petitioner provided the signers with “templates” which were simply printed on letterhead and signed. As such, the evidentiary weight of these two letters is diminished.

Accordingly, the proposed position does not qualify as a specialty occupation under the first prong of 8 C.F.R. § 214.2(h)(4)(iii)(A)(2).

The second prong of 8 C.F.R. § 214.2(h)(4)(iii)(A)(2) requires the petitioner to prove that the duties of the proposed position are so complex or unique that only an individual with a degree can perform them. The nature of the duties of the proposed position as set forth in the petition does not support such a finding, as they are similar to those set forth in the *Handbook*, which does not state that a degree is required. The record contains no evidence that would support a finding that the position proposed here is more complex or unique than such positions at organizations similar to the petitioner.

Therefore, the petitioner cannot establish that the proposed position qualifies as a specialty occupation under either prong of 8 C.F.R. § 214.2(h)(4)(iii)(A)(2).

The proposed position does not qualify as a specialty occupation under 8 C.F.R. § 214.2(h)(4)(iii)(A)(3), which requires a showing that the petitioner normally requires a degree or its equivalent for the position. To determine a petitioner's ability to meet this criterion, the AAO normally reviews the petitioner's past employment practices, as well as the histories, including names and dates of employment, of those employees with degrees who previously held the position, and copies of those employees' diplomas.

In order to establish eligibility under this criterion, the petitioner must demonstrate that it normally hires individuals with a bachelor's degree or equivalent for the position. If the petitioner has never before filled the position, then it cannot qualify the position as a specialty occupation under this criterion.

On appeal, counsel asserts the following with regard to this criterion:

[The petitioner] consistently requires that the Buyer delegated to the undertaking of Purchasing/marketing activities possess a Baccalaureate Degree in the related field. Our degree requirement emanates from the fundamentally professional nature of the work. The Buyer assigned to these tasks will be manipulating academic knowledge and purchasing/marketing techniques, normally acquired only through achievement of a bachelor's degree or its equivalent in a business related discipline.

The imposition of degree requirements [sic] as a prerequisite for employment in the offered positions, such as the above described, is, in fact, nearly universal among most of the reputed diamond companies. Indeed, our company has imposed such a requirements since its inception [sic].

In contrast, the petitioner states on appeal that this will be the first time it has employed a buyer.

Without documentary evidence to support his claim, the assertions of counsel will not satisfy the petitioner's burden of proof. The unsupported assertions of counsel do not constitute evidence. *Matter of Obaigbena*, 19 I&N Dec. 533, 534 (BIA 1988); *Matter of Laureano*, 19 I&N Dec. 1 (BIA 1983); *Matter of Ramirez-Sanchez*, 17 I&N Dec. 503, 506 (BIA 1980). Since there is no evidence to support counsel's assertion that the petitioner normally requires candidates for the proposed position to possess a bachelor's degree, and the petitioner claims that it has never before employed an individual in the proposed position, the AAO concludes that the proposed position does not qualify as a specialty occupation under this criterion.

Thus, the proposed position does not qualify as a specialty occupation under 8 C.F.R. § 214.2(h)(4)(iii)(A)(3).

Finally, the AAO turns to the criterion at 8 C.F.R. § 214.2(h)(4)(iii)(A)(4), which requires a demonstration that 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.

To the extent that they are depicted in the record, the duties of the proposed position do not appear so specialized and complex as to require the highly specialized knowledge associated with a baccalaureate or higher degree, or its equivalent, in a specific specialty. Again, there is no information in the record to support a finding that the proposed position is more complex or unique than similar positions in other, similar organizations. As the *Handbook* reveals, such organizations do not normally impose a bachelor's degree requirement. Therefore, the evidence does not establish that the proposed position is a specialty occupation under 8 C.F.R. § 214.2(h)(4)(iii)(A)(4).

The proposed position does not qualify for classification as a specialty occupation under any of the four criteria set forth at 8 C.F.R. §§ 214.2(h)(4)(iii)(A)(1), (2), (3), and (4), and the petition was properly denied.

As the position in this petition is not a specialty occupation, the beneficiary's qualifications to perform the duties of a specialty occupation are inconsequential. Accordingly, the AAO will 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.