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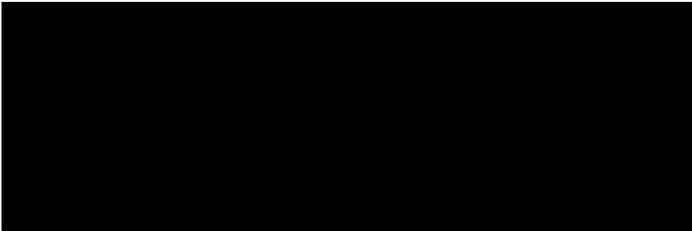
DZ

FILE: WAC 04 058 51617 Office: CALIFORNIA SERVICE CENTER Date: OCT 31 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, 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 federal contractor. It seeks to hire the beneficiary as an electronics communications bidding analyst. The director denied the petition based on his determination that the petitioner had failed to establish that its proffered position was a specialty occupation.

The record of proceeding before the AAO contains: (1) Form I-129 and supporting documentation; (2) the director's request for evidence; (3) counsel's response to the director's request for evidence; (3) the director's denial letter; and (4) Form I-290B, with counsel's brief and documentation. The AAO reviewed the record in its entirety before reaching its decision.

The issue before the AAO is whether the proffered position qualifies as a specialty occupation. To meet its burden of proof in this regard, a petitioner must establish that the job it is offering to the beneficiary meets the following statutory and regulatory requirements.

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 one 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 above criteria to mean not just any baccalaureate or higher degree, but one in a specific specialty that is directly related to the proffered position.

To determine whether a particular job qualifies as a specialty occupation, CIS does not simply rely on a position's title. The specific duties of the proffered 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 alien, and determine whether the position qualifies as a specialty occupation. *Cf. Defensor v. Meissner*, 201 F. 3d 384 (5<sup>th</sup> 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 petitioner states that it is seeking the beneficiary's services as an electronics and communications bidding analyst. Evidence of the beneficiary's duties includes: the Form I-129; the petitioner's December 11, 2003 letter of support and a May 24, 2004 letter from the petitioner.

At the time of filing, the petitioner stated that the beneficiary's duties entail: (1) determining the orders for electronic communications equipment from the weekly publications of CB Disk which publish all orders from the Federal Agencies during the week; participating in the formulation, development and recommendation to management of a system or program by which purchase requests, including requests for quotes, bids and proposals are coordinated and reviewed; receiving and evaluating proposals, quotations and components from manufacturers, suppliers and wholesalers (15% of time); (2) researching, analyzing, studying and being familiar with electronic communication equipment and spare parts to be procured by the petitioner through reading books, the Thomas register, journals, brochures, publications and attendance at trade fairs and seminars sponsored by the suppliers and wholesalers (10% of time); (3) conducting test product analysis of equipment and spare parts according to prescribed standards such as Military specifications; evaluating and reporting results of tests on samples submitted for quality assurance testing (20% of time); (4) researching, studying and assisting in the development and recommendation of the implementation of a program or policy involving the selection of cost effective shipping sources and identifying the most efficient modes of transportation; (5) ensuring that the petitioner is purchasing and buying electronic communications equipment and spare parts at the most competitive levels available; maintaining competitive bid or purchasing process to ensure most competitive pricing levels (10% of time); (6) participating in drafting, execution of contracts or agreements with respect to procurement and purchase of electronic communications equipment and spare parts; maintaining and reviewing contracts and agreements (20% of time); (7) performing final quality assurance tests on electronic communications equipment and spare parts purchased by petitioner by checking against invoice to verify conformity (5% of time); (8) and participating in the development of strategic plans in purchasing, budget, and forecast and anticipating price and quality changes in components and related products to be procured or purchased. The petitioner indicated that a bachelor's degree or equivalent and relevant work experience is required for the proffered position.

The director requested additional evidence that the proffered position meets one of the above listed criteria. The director requested a more detailed description of the petitioner's business including copies of company brochures or any other printed work published by the petitioner which outlines, in detail, the products or services provided by its company. The director requested copies of the petitioner's signed income tax returns that have been certified by the IRS with all required schedules. The director requested an explanation from

the petitioner, which has filed over 35 H-1B petitions and indicated that it had 36 employees on the Form I-129. The director requested the current employment status and location for all previously approved and/or listed H-1B and locally hired employees. The director requested copies of the Form 941, quarterly wage reports for the last three quarters, Form DE-6, Quarterly Wage Report for the last 6 quarters, payroll summary, list of all employees including names, job titles and current immigration status, and the petitioner's organizational chart that includes the current names of all executives, managers, supervisors, and employees within each department or job title. The director requested specifically that the beneficiary's position be listed in the chart. The director requested a list of all employees by name and job title including a brief description of duties, educational level, annual salaries and immigration status for all employees in the organizational chart. The director requested copies of all Forms I-797A, notice of action, approval notices issued to the petitioner's H or L nonimmigrant employees and if these are not available, a list of the names of employees, the positions and CIS receipt numbers. The director requested photographs of the business premises, and copies of the business licenses. The director requested a complete copy of the lease that indicates total square footage, including all office, production, manufacturing, and/or warehouse space. The director requested a copy of the petitioner's floor plan(s) for all spaces including office, warehouse, and production spaces. The director requested a copy of the petitioner's telephone directory listing.

Counsel responded to the director's request. The petitioner did not submit an explanation as to having filed 35 H-1B petitions and having 36 employees listed on the Form I-129. The petitioner did not indicate where its H-1B employees were working. It is incumbent upon the petitioner to resolve any inconsistencies in the record by independent objective evidence. Any attempt to explain or reconcile such inconsistencies will not suffice unless the petitioner submits competent objective evidence pointing to where the truth lies. *Matter of Ho*, 19 I&N Dec. 582, 591-92 (BIA 1988). The petitioner did submit its tax returns which indicated approximately 66 to 71 employees.

Counsel responded to the director's request and the petitioner added to the job description. The petitioner submitted Form 941 quarterly federal tax returns for three quarters indicating approximately 71 employees. The petitioner submitted an organizational chart with fourteen job titles. The petitioner submitted a Form 1065 U.S. Return of Partnership Income which indicated gross receipts or sales of \$29,963,480 for tax year 2003. The Form 1065 also indicated salaries and wages of \$3,360,264. In response to the director's request for additional information about the petitioner such as printed materials and brochures, the petitioner submitted a statement indicating that it is licensed to sell goods and services to Federal Agencies of the United States government and provided an item code list of the goods and services. The petitioner provided a list of clients and contact information at different federal agencies. Additionally, the petitioner submitted a copy of its lease with an addendum indicating an office space of 425 square feet.

The director referred to the Department of Labor's *Occupational Outlook Handbook* (the *Handbook*) and indicated that the duties of the position described by the petitioner appear to reflect many of those performed by market research analysts. The director stated that he was not convinced that the beneficiary would perform the claimed duties. The director found that the evidence failed to establish that the petitioner engages in the type of business for which a market research analyst would normally be required. The director found that many of the listed duties are performed by advertising, marketing, promotions, public relations, and sales managers and those occupations do not require a baccalaureate degree in specific specialty. Therefore the proffered position is not a specialty occupation.

On appeal, counsel notes that the petitioner needs to expand its work force in order to work with more government agencies. Counsel explains that the petitioner needs to source quality materials or service

packages from suppliers and due to the complexity and highly technical nature of the tasks to be performed, the petitioner needs the beneficiary who has a background in electronics and communications engineering.

The AAO notes that the petitioner indicated that it is a federal contractor. The petitioner submitted no evidence that it has contracts with the federal government. 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)).

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.

The AAO 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.Minn. 1999)(quoting *Hird/Blaker Corp. v. Sava*, 812 F. Supp. 872, 1102 (S.D.N.Y. 1989)).

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.

Upon review of the record, the petitioner has failed to establish that the proffered position qualifies as a specialty occupation. The AAO routinely consults the *Handbook* for information about the duties and educational requirements of particular occupations. The duties of the proffered position resemble those of a purchasing agent as described in the *Handbook*. The *Handbook* indicates the following duties:

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

Purchasing specialists employed by government agencies or manufacturing firms usually are called purchasing directors, managers, or agents; buyers or industrial buyers; or contract specialists. These workers acquire materials, parts, machines, supplies, services, and other inputs to the production of a final product. Some purchasing managers specialize in negotiating and supervising supply contracts, and are called contract or supply managers. Purchasing agents and managers obtain items ranging from raw materials, fabricated parts, machinery, and office supplies to construction services and airline tickets. The flow of work—or even the entire production process—can be slowed or halted if the right materials, supplies, or equipment are not on hand when needed. To be effective, purchasing specialists must have a working technical knowledge of the goods or services to be purchased.

According to the *Handbook*:

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.

Similarly, the beneficiary will participate in ensuring that the petitioner is purchasing and buying electronic communications equipment and spare parts at the most competitive levels available; and maintaining the competitive bid or purchasing process to ensure the most competitive pricing levels.

The *Handbook* reports:

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 the first criterion because the *Handbook* states that large stores and distributors prefer, but do not require, applicants with bachelor's degrees with a business emphasis and that retail and wholesale firms prefer, but do not require, applicants who have a college degree, though not necessarily in a specific specialty. The *Handbook* explains that a bachelor's degree is not required for a purchasing manager position. Accordingly, the petitioner cannot establish that a baccalaureate or higher degree or its equivalent in a specific specialty is the normal minimum requirement for entry into the proffered position.

The petitioner has not provided evidence to establish the second criterion - that a specific degree requirement is common to the industry in parallel positions among similar organizations.

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 duties of the proffered

position are performed by a purchasing manager, a position that does not require a bachelor's degree in a specific specialty.

Nor is there evidence in the record to establish the third criterion at 8 C.F.R. § 214.2(h)(4)(iii)(A): that the petitioner normally requires a degree or its equivalent for the position.

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. The petitioner has not described the specific duties and responsibilities to be performed by the beneficiary in relation to its particular business interests. It has not provided evidence of government contracts or the complexity of the contracts. The petitioner indicated that the beneficiary would conduct test product analysis of equipment and spare parts according to prescribed standards such as Military specifications. The petitioner has not described how the beneficiary would perform this duty when the record indicates that the petitioner has an office space of 425 square feet and employs approximately 70 persons. Doubt cast on any aspect of the petitioner's proof may, of course, lead to a reevaluation of the reliability and sufficiency of the remaining evidence offered in support of the visa petition. *Matter of Ho*, 19 I&N Dec. 582, 591 (BIA 1988).

It cannot be concluded 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 duties of the proffered position are performed by purchasing managers, an occupation not requiring 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.