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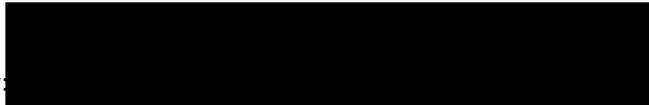
U.S. Citizenship  
and Immigration  
Services

D2



FILE: WAC 04 255 50827 Office: CALIFORNIA SERVICE CENTER Date: **APR 25 2006**

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:

SELF-REPRESENTED

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 dismissed. The petition will be denied.

The petitioner is an importer and distributor of gift and home decoration items and handicrafts. It seeks to employ the beneficiary as a bilingual business contract administrator and advisor. The petitioner endeavors to classify the beneficiary as a nonimmigrant worker in a specialty occupation pursuant to § 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, the petitioner submits a brief.

The record contains a G-28, Notice of Entry of Appearance as Attorney or Representative, signed by Benjamin Pan of the University of Pennsylvania Law School. A review of the *Recognized Organizations and Accredited Representatives Roster*, dated January 3, 2006, of the Department of Justice's Executive Office for Immigration Review, at <http://www.usdoj.gov/eoir/statspub/AC30405.pdf>, does not find the University of Pennsylvania Law School or Benjamin Pan listed as a recognized organization or an accredited representative. Accordingly, the AAO shall treat the petitioner as self-represented and a copy of this decision shall not be forwarded to Mr. Pan.

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 bilingual business contract administrator and advisor. Evidence of the beneficiary's duties includes: the I-129 petition; the petitioner's September 13, 2004 letter in support of the petition; and the petitioner's response to the director's request for evidence. According to this evidence, the beneficiary would perform duties that entail: coordinating the purchase orders and expedites of the petitioner's products and generating progress reports; assisting the general manager in establishing contracts with suppliers and vendors in Europe or China; preparing drafts of contracts, subcontracts, and agreements in Chinese and German; analyzing and reviewing the terms and conditions of each contract; analyzing, resolving, and negotiating solutions to issues related to production, delivery, quality, and payment; preparing reports for executive management related to contract administration; contacting potential business partners and compiling and retrieving the information of future investors; performing profile analysis and risk assessment to seek the best business opportunities; collecting sales and market information related to the gift and decoration industry; assisting the general manager in developing a marketing plan; assisting in the preparation and drafting of the petitioner's standard operational procedures and expansion plan; and assisting the CEO in tracking small business trends. The petitioner indicated that a qualified candidate for the job would possess a bachelor's degree in business administration, marketing, management, or finance.

The director found that the proffered position, which is similar to that of a financial manager, was not a specialty occupation. Citing to the Department of Labor's *Occupational Outlook Handbook (Handbook)*, 2004-2005 edition, the director noted that the minimum requirement for entry into the position was not a baccalaureate degree or its equivalent in a specific specialty. The director found further that the petitioner failed to establish any of the criteria found at 8 C.F.R. § 214.2(h)(4)(iii)(A). The director also found that the petitioner's quarterly wage reports reflect that the petitioner has only three employees, as opposed to the 23 employees that are reflected on its organizational chart.

On appeal, the petitioner states, in part, that the director misinterpreted the evidence. The petitioner states that the evidence reflects that the petitioner has three employees, while its parent company has 23 employees. The petitioner states further that the proffered position combines the duties of a bilingual contract specialist with a business/finance advisor. The petitioner submits three approved petitions as evidence that the degree requirement is common to the industry in parallel positions among similar organizations.

The AAO finds that the appeal has resolved in the petitioner's favor the issue of the discrepancy regarding the number of employees caused by inclusion of the parent company's organizational chart.

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 turns first to 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*, 712 F. Supp. 1095, 1102 (S.D.N.Y. 1989)).

At the outset, the AAO notes an inconsistency regarding the number of people that the petitioner employed at the time that the petition was filed. The record contains an inconsistency between the number of employees that is reflected on the petitioner's organizational chart – five - and the number of employees that is reflected on the petitioner's quarterly wage reports - three. 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. It is incumbent upon the petitioner to resolve any inconsistencies in the record by independent objective evidence, and attempts to explain or reconcile such inconsistencies, absent competent objective evidence pointing to where the truth, in fact, lies, will not suffice. *Matter of Ho*, 19 I&N Dec. 582, 591-92 (BIA 1988). The petitioner's general manager asserts on appeal that the organizational chart reflects five employees while the quarterly wage reports reflect only three employees because two of the employees are commission-based and, therefore, "all evidence submitted with the I-129 HB [sic] petition was true and correct." The petitioner's general manager, however, provides no evidence in support of his assertion. Simply going on record without supporting documentary evidence is not sufficient for the purpose 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, a review of the petitioner's list of employees and educational backgrounds finds that the petitioner's owner/general manager holds an associate degree in arts and the petitioner's retail store manager holds a bachelor's degree in music/composing. As the proffered position is newly created, it is presumed that either the owner/general manager or the retail store manager is currently performing the contract-related duties; yet neither employee holds a business-related bachelor's degree. Moreover, the petitioner has not established that the beneficiary's translation duties are of such complexity that a baccalaureate degree in a specific specialty, as distinguished from fluency in the German and Chinese languages, is necessary for the successful completion of its duties.

The AAO routinely consults the *Handbook* for its information about the duties and educational requirements of particular occupations. The AAO does not concur with the petitioner that the proffered position, which appears to be an assistant to the general manager, is a specialty occupation. As reflected in the listing of proposed duties at page two of this decision, the petitioner has described those duties in exclusively generic terms. They neither relate specific work that the beneficiary would perform, elucidate concrete business matters of this particular petitioner that would be the focus of that work, nor exemplify how performance of that work upon those matters would require the theoretical and practical application of at least a bachelor's level of a highly specialized body of knowledge. Consequently, as so generally described, the proposed duties do not comprise a position that meets the first criterion of 8 C.F.R. § 214.2(h)(4)(iii)(A), that is, one for which the normal minimum entry requirement is at least a bachelor's degree, or the equivalent, in a specific specialty.

Regarding parallel positions in the petitioner's industry, the petitioner submits three approved cases, stating that CIS has already determined that the proffered position is a specialty occupation. One of the positions is that of an "information architect/java developer" for a computer services business. Another position is that of a "marketing coordinator" for a leading distributor and manufacturer of audio, video, and CD/DVD blank media. The petitioner has not shown that the proffered position is similar to these positions. The third position

is that of a “bilingual contract specialist or contract administrator/advisor” for an importer and exporter of gifts and housewares. A review of the supporting documentation of this approved petition finds that some of the language of the correspondent June 9, 2004 letter is nearly identical to the language of the September 13, 2004 letter submitted in support of the instant petition. For example, the June 9, 2004 letter states as follows:

Due to the business fast growing in the past three years and due to the business need of expansion plan, we are experiencing an increased work load recently, and we have also notices [sic] discrepancies in the accounting/financial and business expansion plan related matters within the company. Therefore, there is an intensifying need focus [sic] to offer a financial Controller & Business Advisor/Administrator to meet this business need.

In a letter, dated September 13, 2004, submitted with the instant petition, the petitioner’s general manager states:

Since our establishment, our company has experienced steady growth. We are experiencing an increased workload recently, and we have also notices [sic] discrepancies in the business contract’s preparation & analysis related matters within the company. Therefore, there is an intensifying need focus [sic] to offer a Bilingual Business Contract Administrator to meet this business need.

As the above text of the letters is nearly identical with identical grammatical errors, the AAO must question whether the opinions expressed in each letter are the views of each author and whether there is a factual basis for the assertions in the letters. As already noted, 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*.

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). 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). Further, the AAO is never bound by a decision of a service center or district director. *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).

The record also does not include any evidence from firms, individuals, or professional associations regarding an industry standard, or documentation to support the complexity or uniqueness of the proffered position.

The petitioner, therefore, has not established the criteria set forth at 8 C.F.R. § 214.2(h)(4)(iii)(A)(1) or (2).

The AAO now turns to the criterion at 8 C.F.R. § 214.2(h)(4)(iii)(A)(3) – the employer normally requires a degree or its equivalent for the position. As counsel does not address this issue on appeal, it will not be discussed further. The evidence of record does not establish this criterion.

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

To the extent that they are depicted in the record, the duties 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. Therefore, the evidence does not establish that the proffered position is a specialty occupation under 8 C.F.R. § 214.2(h)(4)(iii)(A)(4).

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.