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**U.S. Citizenship
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Services**

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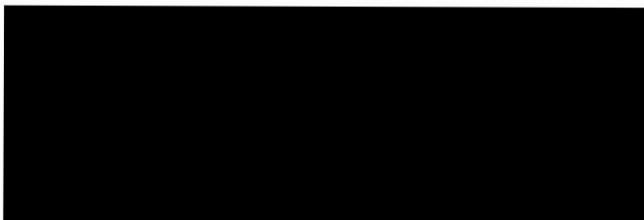
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FILE: WAC 04 232 50820 Office: CALIFORNIA SERVICE CENTER Date: APR 03 2006

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.

for *Michael T. Kelly*
Robert P. Wiemann, Director
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 a remainder bookseller that seeks to employ the beneficiary as a purchasing agent and to classify him 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 grounds that the petitioner failed to establish that the proposed position meets the definition of specialty occupation at 8 C.F.R. § 214.2(h)(4)(iii)(A). On appeal, the petitioner submits a letter and additional 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 bachelor's or higher degree, but one in a specific field of study that is directly related to the proposed 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) the Form I-290B with supporting documentation. The AAO reviewed the record in its entirety before issuing its decision.

The petitioner seeks the beneficiary's services as a purchasing agent. Evidence of the beneficiary's duties includes Form I-129 with attachments and the petitioner's response to the RFE. According to this

evidence, the beneficiary's duties would include: assisting in activities involved with selecting and procuring remainder books in religious, business, and specialty titles for distribution in the retail and wholesale book sales market; assisting in assessing the value and selection of remainder publications for purchase by communicating, in person or in writing, with book publishers and buying their remainder books for sales in large retail and wholesale U.S. and international book sales markets; examining and evaluating all publisher remainder lists; calculating profit margins and other financial formulas, and under close supervision apply them to the prices the petitioner pays for publisher's remainder books; participating in all available publisher bid lists and offerings, calculating correct purchase prices, which are in line with the petitioner's specific profit margins and also the marketability of a specific remainder book title; searching database records to find previous bids and purchase successes, and under close supervision relating and adjusting current bids to reflect these; looking up remainder book ISBN numbers on the Internet; under close supervision bidding on publisher's remainder lists, and negotiating prices for remainder book purchases with publishers; under close supervision, negotiating payment terms for remainder book purchases with publishers; making payments for remainder book inventory received, including the wiring of funds to publishers for advance payments; maintaining a weekly and monthly schedule for publishers' remainder bid offerings and lists; referring to this schedule frequently and under close supervision bidding on the appropriate remainder books on their specific ending dates; under close supervision constructing and maintaining a purchasing budget, and relating that budget to a monthly purchasing plan; discussing the topics of remainder book titles available for purchase with both publishers and customers; research publishing companies for any negative business histories; separating trustworthy and positive publishers from publishers with which the petitioner has had negative experiences in the past; under close supervision, applying this information to both the monthly purchasing plan and also to the petitioner's database of records; maintaining a database, which includes purchasing records, previous prices paid for remainder books, frequency of purchases with publishers, transaction successes and problems, contact names and communication methods; recording any problems that have occurred with publishers in previous purchases, so that these can be noted and avoided in any future business dealings; estimating remainder book market demand for certain titles, and applying that level of demand to a purchasing strategy; researching remainder market trends and current customer demands; talking to retail chain and wholesale clients to find out what kinds of remainder books are currently popular and in demand, and under close supervision adjusting purchasing plan accordingly. The petitioner stated that it required the applicants for the buyer position to have a bachelor's degree in business administration.

The director agreed with the petitioner that the duties reflected those normally performed by purchasing managers, buyers, and/or purchasing agents. The director referred to the *Handbook*, which indicated that there is no requirement of a bachelor's or higher degree in a specialized area for employment for these positions. The director determined that the proposed duties and stated level of responsibility failed to establish that the position met any of the required criteria for classification as a specialty occupation.

On appeal, the petitioner asserts that position cannot be filled by anyone with less than a bachelor's degree and submits a letter from another remainder bookseller, and two job announcements for buyer positions at another discount bookstore and at the [REDACTED] Hardcover Fiction division of Borders Group. The petitioner asserts that a bachelor's degree in business is required for the position.

Upon review of the record, the AAO concludes that the petitioner has failed to establish that a purchasing agent/buyer position meets any of the four criteria outlined in 8 C.F.R. §214.2(h)(4)(iii)(A). Therefore, the proposed position is not a specialty occupation.

To determine whether or not 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 bachelor's degree in a specific field of study 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 of particular occupations. Based on the petitioner's description and a thorough review of the *Handbook*, the AAO agrees with the director and the petitioner that the duties of the proposed position most resemble those of a buyer for a remainder bookseller. The *Handbook* describes what buyers do in the following way:

Purchasing specialists who buy finished goods for resale are employed by wholesale and retail establishments, where they commonly are known as *buyers* or *merchandise managers*. Wholesale and retail buyers are an integral part of a complex system of distribution and merchandising that caters to the vast array of consumer needs and desires. Wholesale buyers purchase goods directly from manufacturers or from other wholesale firms for resale to retail firms, commercial establishments, institutions, and other organizations. In retail firms, buyers purchase goods from wholesale firms or directly from manufacturers for resale to the public. Buyers largely determine which products their establishment will sell. Therefore, it is essential that they have the ability to predict what will appeal to consumers. They must constantly stay informed of the latest trends, because failure to do so could jeopardize profits and the reputation of their company. They keep track of inventories and sales levels through computer software that is linked to the store's cash registers. Buyers also follow ads in newspapers and other media to check competitors' sales activities, and they watch general economic conditions to anticipate consumer buying patterns. Buyers working for large and medium-sized firms usually specialize in acquiring one or two lines of merchandise, whereas buyers working for small stores may purchase the establishment's complete inventory.

To determine whether the position is a specialty occupation, the AAO turns first to the criterion at 8 C.F.R. § 214.2(h)(4)(iii)(A)(I) - a bachelor's or higher degree is normally the minimum requirement for entry into the proposed position. The *Handbook* notes that educational requirements for retail buyer positions tend to vary with the size of the business:

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 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.

The *Handbook* indicates that jobs in this area do not require specific bachelor's degrees for entry into the field. Some employers prefer, but do not require, buyers to possess bachelor's degrees in business-related fields. The *Handbook* also notes that many employers fill buyer positions by promoting experienced staff

or related personnel. As no specific course of study is required for entry into these occupations and those without specific bachelor's degrees can be promoted into the positions, the petitioner fails to establish that a bachelor's or higher degree in a specific field of study is the normal minimum requirement for entry into the proposed position.

Further, the AAO finds that, due to the petitioner's degree requirement for the proposed position, the position does not qualify as a specialty occupation under the first criterion. The court in *Matter of Michael Hertz Ass.* found that a petitioner's mere requirement of a degree of generalized title, such as business administration, without further specification, did not establish that a position has a specialized area of study. Here, the petitioner stated that it requires a bachelor's degree in business administration, a degree of generalized title, without indicating a specialization in the field. Thus, the proposed position cannot qualify as a specialty occupation under the first criterion at 8 C.F.R. § 214.2(h)(4)(iii)(A).

The AAO turns next to the first alternative prong of the second criterion at 8 C.F.R. § 214.2(h)(4)(iii)(A)(2) - the degree requirement is common to the industry in parallel positions among similar organizations. The petitioner asserts that similar booksellers in the remainder book industry require business-related bachelor's degrees for parallel buyer positions. To support this assertion, the petitioner submits, on appeal, a letter from a discount bookseller in Grand Rapids, Michigan, and two job announcements - one from a discount bookseller in Rochester, New York, and another from the [REDACTED] Hardcover Fiction division of Borders Group. The *Handbook* indicates that there is no industry-wide requirement for a business-related bachelor's degree for buyer positions and those requirements depend on the type of seller and the size of the company. The petitioner did not submit a letter from a national association, survey results, or other such documents to establish an industry-wide standard. The letter and two job announcements are not sufficient to establish an industry-wide standard. Going on record without supporting documentation is not sufficient to meet the burden of proof in these proceedings. See *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, the buyer position at [REDACTED] is distinct from the proposed position. [REDACTED] position would require the job applicant to buy books at their original retail price in the broad category of Hardcover Fiction and Literature. The beneficiary in the instant case would buy remainder books with a focus on a handful of specialized subjects, including business and religion [REDACTED] a national retail chain with thousands of employees while the petitioner is a local remainder bookseller with three employees. Moreover, the [REDACTED] announcement does not support the proposition that the bookselling industry, remainder or otherwise, requires a business-related bachelor's degree for its buyer positions. The announcement indicates that [REDACTED] prefers a business-related degree, but does not require it, and requires a bachelor's degree but not in any specific field of study. The announcement does not establish that a bachelor's degree in a specialty is common to the industry in parallel positions among similar organizations.

The letter from [REDACTED] in Grand Rapids, Michigan, mentions a book buyer position that might be more parallel to the proposed position by a bookseller more similar to the petitioner than [REDACTED] but this document is not sufficient to establish an industry-wide business-degree requirement for the proposed position.

The job announcement from the New York bookseller indicates that a wide-range of bachelor's degrees, not just degrees in business-related fields will suffice for its buyer position. The announcement states that job applicants can possess bachelor's degrees in English, liberal arts, or business. This announcement does not list the duties of the position in order to compare them with the duties of the proposed position.

In addition, the New York job announcement is unsupported by the documentary evidence necessary to establish that the advertised position is parallel to the proposed position.

A petitioner may also establish that its proposed position is a specialty occupation if it satisfies the criterion at 8 C.F.R. § 214.2(h)(4)(iii)(A)(3) - the employer normally requires a degree in a specific specialty or its equivalent for the position. To determine whether a petitioner has established this criterion, the AAO generally reviews the petitioner's past employment practices, including the histories of those employees who previously held the position, as well as their names, dates of employment, and copies of their diplomas. In the instant case, the petitioner has submitted no evidence to establish its normal hiring practices for the proposed position. The petitioner mentions that this is not a new position and that, in the past, the position was held by two current employees, but does not submit copies of their degrees. The petitioner has not provided any proof that individuals in this position have possessed bachelor's degrees in a business-related field. Going on record without supporting documentation is not sufficient to meet the burden of proof in these proceedings. *See Matter of Soffici*. In the absence of an employment history for the proposed position, the petitioner failed to establish that the position qualifies as a specialty occupation under the criterion at 8 C.F.R. § 214.2(h)(4)(iii)(A)(3).

Finally, the AAO turns to the criteria related to the complexity, uniqueness, or specialized nature of the proposed position. A petitioner satisfies the second alternative prong of the second criterion at 8 C.F.R. § 214.2(h)(4)(iii)(A)(2) if it establishes that a particular position is so complex or unique that it can be performed only by an individual with a bachelor's degree in a specific field of study. The criterion at 8 C.F.R. § 214.2(h)(4)(iii)(A)(4) requires a petitioner to 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 bachelor's or higher degree in a specific field of study. The petitioner did not establish that the proposed position is so complex or unique that only an individual with a bachelor's degree in a business-related field can perform it. To the extent that the petitioner depicts them in the record, the duties do not appear so specialized and complex as to require the highly specialized knowledge usually associated with a bachelor's or higher degree, or its equivalent, in business or a related field. The duties, as described by the petitioner, appear to be the typical duties of a buyer, a position which the *Handbook* indicates does not require a bachelor's degree in a specific field and can be filled by a non-degreed individual who gets promoted from within based on experience. The petitioner asserts that, due to the complex nature of the proposed duties, it requires a minimum of a bachelor's degree in business administration. The petitioner's assertions are not supported by any document in the record and are not sufficient to meet the burden of proof in these proceedings. *See Matter of Soffici*.

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 failed to sustain that burden and the appeal shall accordingly be dismissed.

ORDER: The appeal is dismissed. The petition is denied.