



U.S. Citizenship  
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Services

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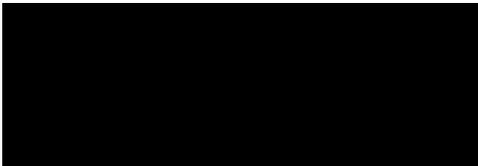


FILE: EAC 04 147 50331 Office: VERMONT SERVICE CENTER Date: JAN 30 2006

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.

Robert P. Wiemann, Director  
Administrative Appeals Office

**DISCUSSION:** The service center director denied the nonimmigrant visa petition by decision dated March 17, 2005 on the grounds of abandonment pursuant to 8 C.F.R. § 103.2(b)(13). The petitioner then filed a motion to reopen or reconsider that decision on April 4, 2005. By decision dated May 5, 2005, the director affirmed its prior decision denying the petition and found that the proffered position did not qualify as a specialty occupation. The petitioner then appealed that decision on June 6, 2005, with the appeal being filed by [REDACTED] a member of the [REDACTED] Law Firm. [REDACTED] of the [REDACTED] Law Firm had properly filed a Form G-28 designating his firm as the petitioner's representative with the filing of the Form I-129 petition. On July 7, 2005, the director rejected the petitioner's appeal on the ground that the person filing the appeal, [REDACTED] was not authorized by the petitioner to represent it in the appeal process. The appeal will be dismissed. The petition will be denied.

The first issue to be considered is the director's decision rejecting the petitioner's appeal on the grounds that Mario L. Bejasa was not authorized by the petitioner to represent it in these proceedings. The regulation at 8 C.F.R. § 103.3(a)(2)(v)(A)(2) provides that if an appeal is filed by an attorney or representative without a properly executed Notice of Entry of Appearance as Attorney or Representative (Form G-28) entitling that person to file that appeal, the appeal is considered improperly filed. In this instance, the appeal was filed by a member of the [REDACTED] Law Firm and a brief submitted in support of the appeal on the law firm's letterhead. A form G-28 had been properly filed of record designating [REDACTED] (the [REDACTED] Law Firm) as the petitioner's authorized representative. As such, the appeal filed by a member of the [REDACTED] Law Firm was properly filed by the petitioner's authorized representative. The director's decision rejecting the petitioner's appeal shall accordingly be withdrawn as the appeal was properly filed.

The final issue to be considered is whether the proffered position qualifies as a specialty occupation. On appeal, counsel submitted a brief and additional information stating that the offered position qualifies as a specialty occupation.

The petitioner is an importer and wholesaler in the retail trade industry and seeks to employ the beneficiary as a wholesaler buyer. The petitioner 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).

Section 101(a)(15)(H)(i)(b) of the Act, 8 U.S.C. § 1101(a)(15)(H)(i)(b), provides, in part, for the classification of qualified nonimmigrant aliens who are coming temporarily to the United States to perform services in 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.

The term "specialty occupation" is further defined at 8 C.F.R. § 214.2(h)(4)(ii) as:

[A]n 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 are 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) the Form I-129 and supporting documentation; (2) the director's requests for additional evidence; (3) the petitioner's response to the director's requests; (4) the director's denial letters; (5) the petitioner's motions to reopen; and (6) the Form I-290B with supporting documentation. The AAO reviewed the record in its entirety before issuing its decision.

The petitioner is seeking the beneficiary's services as a wholesale buyer. Evidence of the beneficiary's duties includes the Form I-129 petition with attachment and the petitioner's response to the director's request for evidence. According to this evidence the beneficiary would:

- Review requisitions with sales and marketing departments;
- Confer with vendors to obtain product or service information, such as price, availability, and delivery schedules;
- Select products for purchase by testing, observing, or examining items;
- Estimate values according to knowledge of market price;
- Determine methods of procurement, such as direct purchase or bid;

- Prepare purchase orders or bid requests;
- Review bid proposals and negotiate contracts within budgetary limitations and scope of authority;
- Maintain a computerized procurement records system to track items such as goods or services purchased, costs, delivery, product quality or performance, and inventories; and
- Discuss defective or unacceptable goods or services with inspection or quality control personnel, users, vendors, and others to determine sources of trouble and take corrective action.

The petitioner requires a minimum of a bachelor's degree in business, economics or a related field for entry into the proffered position.

Upon review of the record, the petitioner has failed to establish that a baccalaureate or higher degree or its equivalent is normally the minimum requirement for entry into the offered position, or that a degree requirement is common to the industry in parallel positions among similar organizations, as asserted by the petitioner. Factors often considered by CIS when determining these criteria include: whether the Department of Labor's *Occupational Outlook Handbook (Handbook)* reports that the industry requires a degree; whether an industry 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)).

The AAO routinely consults the *Handbook* for information about the duties and educational requirements of particular occupations. The duties of the proffered position are essentially those noted for buyers or purchasing managers, and are described in the *Handbook*, 2004-05 edition at p. 61, as follows:

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 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. . . . They research the reputation and history of the suppliers and may advertise anticipated purchase actions in order to solicit bids. . . .

....

Experienced buyers may advance by moving to a department that manages a larger volume or by becoming a merchandise manager. Others may go to work in sales for a manufacturer or wholesaler.

An experienced purchasing agent or buyer may become an assistant purchasing manager in charge of a group of purchasing professionals before advancing to purchasing manager, supply manager, or director of materials management. At the top levels, duties may overlap with other management functions, such as production, planning, logistics, and marketing.

The duties associated with the proffered position are essentially those listed above. The *Handbook* notes that qualified individuals for purchasing manager, buyer and purchasing agent positions may begin as trainees, purchasing clerks, expeditors, junior buyers, or assistant buyers. Retail and wholesale firms prefer to hire applicants with a college degree and familiarity with the products they sell, as well as wholesale and retail practices. It is also noted, however, that some retail firms promote qualified employees to assistant buyer positions, while others recruit and train college graduates. Most employers use a combination of methods for filling these positions. *Id.* at 62. 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, and many manufacturing firms put 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. The fact remains, however, that while some employers prefer applicants with a bachelor's degree, a degree requirement in a specific specialty is not the minimum requirement for entry into the offered position. Many employers still fill buyer positions by promoting experienced employees who qualify for the position through work experience and training rather than a bachelor's level education in a specific specialty. The petitioner has failed to satisfy the criterion at 8 C.F.R. § 214.2(h)(4)(iii)(A)(1).

The petitioner contends that a degree in a specific specialty is common for the position in the industry in parallel positions among similar organizations. In support of that assertion, the petitioner submitted copies of numerous job advertisements. The advertisements submitted, however, do not establish this proposition as the advertisements are not for positions similar to that of the present petition. Further, the advertisements submitted do not appear to be from organizations similar in nature to that of the petitioner, and the majority of advertisements do not establish that a degree in a specific specialty is required for the positions advertised. The petitioner has failed to establish the referenced criterion at 8 C.F.R. § 214.2(h)(4)(iii)(A)(2).

The petitioner offers no evidence to establish that it normally requires a degree in a specific specialty for the offered position as the duties to be performed by the petitioner have traditionally been performed by a long-term employee of the petitioner's parent company. The petitioner states that this employee holds a non-business related degree, but has over 28 years experience in wholesale merchandising. The petitioner does not submit, however, proof of this individual's educational background or related experience. Simply going on the 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 190 (Reg. Comm. 1972)). Further, 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 or 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.<sup>1</sup> To interpret the regulations any other way would lead to absurd results: if CIS were limited to reviewing a petitioner's self-imposed employment requirements, then any alien with a bachelor's degree could be brought into the United States to perform menial, non-professional, or an otherwise non-specialty occupation, so long as the employer required all such employees to have baccalaureate or higher degrees. *See id* at 388. The petitioner has failed to establish the criterion at 8 C.F.R. § 214.2(h)(4)(iii)(A)(3).

Finally, the petitioner has not established that the duties of the proffered position are so specialized and complex that knowledge required to perform them is usually associated with the attainment of a baccalaureate or higher degree in a specific specialty, or that they are so complex or unique that they can only be performed by an individual with a degree in a specific specialty. The duties to be performed by the beneficiary are routine in the industry for the offered position. The petitioner does make reference to the SVP rating assigned to the position by the Department of Labor's *Dictionary of Occupational Titles (DOT)*. The petitioner's assertions in this regard are unpersuasive. An SVP rating is meant to indicate only the total number of years of vocational preparation required for a particular position. The SVP classification does not describe how those years are to be divided among training, formal education, and experience, nor does it specify the particular type of degree, if any, that a position would require. The petitioner has failed to establish the referenced criteria at 8 C.F.R. § 214.2(h)(4)(iii)(A)(2) or (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 failed to sustain that burden and the appeal shall accordingly be dismissed.

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

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<sup>1</sup> The court in *Defensor v. Meissner* observed that the four criteria at 8 C.F.R. 214.2(h)(4)(iii)(A) present certain ambiguities when compared to the statutory definition, and "might also be read as merely an additional requirement that a position must meet, in addition to the statutory and regulatory definition." *See id.* at 387.