



U.S. Citizenship
and Immigration
Services

**identifying data deleted to
prevent clearly unwarranted
invasion of personal privacy**

PUBLIC COPY

D2

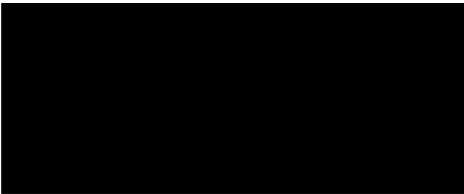


FILE: EAC 04 225 52625 Office: VERMONT SERVICE CENTER Date: JUN 06 2006

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, Chief
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 furniture retailer that seeks to employ the beneficiary as a lead warehouse clerk. 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 because the proffered position is not a specialty occupation. Counsel submits a timely appeal.

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) the 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) the 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 lead warehouse clerk. Evidence of the beneficiary's duties includes: the Form I-129; the attachments accompanying the Form I-129; the petitioner's support letter; and the petitioner's response to the director's request for evidence. According to this evidence, the beneficiary would perform duties that entail: managing the computerized inventory management system including data input, reconciliation, and adjustments; integrating all processes involved in supply-chain, goods, and information; creating a supply chain management strategy and coordinating customer demand and suppliers; overseeing and coordinating the receipt of shipments from vendors; monitoring the quality, cost, and efficiency of the movement and storage of goods; coordinating and controlling the order cycle and associated information systems; analyzing data to monitor performance and plan improvements; analyzing logistics problems and producing new solutions; performing audits and inventory checks; receiving incoming shipments and arranging for and overseeing unloading and handling of goods; verifying shipping documents; managing temporary warehouse workers; pricing new inventory; and coordinating the return of damaged merchandise and getting replacements for customers. For the proposed position, the petitioner asserts that it requires a bachelor's degree in the field of business management and administration.

The director stated that the proposed duties are clerical in nature and are not those of a specialty occupation. The director found the job postings unpersuasive in establishing that the offered position would require a bachelor's degree in a specific specialty. The director concluded that the petitioner satisfied none of the four criteria outlined in 8 C.F.R. § 214.2(h)(4)(iii)(A).

On appeal, counsel states that the petitioner's vice-president holds a baccalaureate degree, and that he had previously performed the proposed duties. Counsel points to the submitted job postings to show that the offered position qualifies as a specialty occupation. Counsel contends that the offered position is not clerical in nature as it is an entry-level management position. Characterizing the business as a "small furniture store" does not signify that the petitioner does not require professional and skilled positions, counsel states. According to counsel, the beneficiary will develop programs that enhance the movement of goods to and from the warehouse facility.

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 first 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 2006-2007 edition of 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)).

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. 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.

Counsel's assertion that the proposed position is a specialty occupation requiring a baccalaureate degree in business management and administration is not persuasive. The *Handbook* reveals that the proposed duties reflect those of shipping, receiving, and traffic clerks, and the *Handbook* describes those occupations as follows:

Shipping, receiving, and traffic clerks keep records of all goods shipped and received. Their duties depend on the size of the establishment they work for and the level of automation used. Larger companies typically are better able to finance the purchase of computers and other equipment to handle some or all of a clerk's responsibilities. In smaller companies, a clerk maintains records, prepares shipments, and accepts deliveries. In both environments, shipping, receiving, and traffic clerks may lift cartons of various sizes.

Shipping clerks keep records of all outgoing shipments. They prepare shipping documents and mailing labels and make sure that orders have been filled correctly. Also, they record items taken from inventory and note when orders were filled. Sometimes they fill the order themselves, obtaining merchandise from the stockroom, noting when inventories run low, and wrapping or packing the goods in shipping containers. They also address and label packages, look up and compute freight or postal rates, and record the weight and cost of each shipment. In addition, shipping clerks may prepare invoices and furnish information about shipments to other parts of the company, such as the accounting department. Once a shipment is checked and ready to go, shipping clerks may move the goods from the plant—sometimes by forklift—to the shipping dock and direct their loading.

Receiving clerks perform tasks similar to those of shipping clerks. They determine whether orders have been filled correctly by verifying incoming shipments against the original order and the accompanying bill of lading or invoice. They make a record of the shipment and the condition of its contents. In many firms, receiving clerks either use hand-held scanners to record barcodes on incoming products or manually enter the information into a computer. These data then can be transferred to the appropriate departments. The shipment is checked for any discrepancies in quantity, price, and discounts. Receiving clerks may route or move shipments to the proper department, warehouse section, or stockroom. They also may arrange

for adjustments with shippers whenever merchandise is lost or damaged. Receiving clerks in small businesses may perform some duties similar to those of stock clerks. In larger establishments, receiving clerks may control all receiving platform operations, such as scheduling of trucks, recording of shipments, and handling of damaged goods.

Traffic clerks maintain records on the destination, weight, and charges on all incoming and outgoing freight. They verify rate charges by comparing the classification of materials with rate charts. In many companies, this work may be automated. Information either is scanned or is entered by hand into a computer for use by the accounting department or other departments within the company. Traffic clerks also keep a file of claims for overcharges and for damage to goods in transit.

The *Handbook* reports that shipping, receiving, and traffic clerks do not require a bachelor's degree. The beneficiary will manage the computerized inventory management system including data input, reconciliation, and adjustments; oversee and coordinate the receipt of shipments from vendors; monitor the quality, cost, and efficiency of the movement and storage of goods; perform audits and inventory checks; receive incoming shipments and arrange for overseeing the unloading and handling of goods; verify shipping documents; manage temporary warehouse workers; and price new inventory. These duties are encompassed within the *Handbook's* description of shipping, receiving, and traffic clerks. For example, they "keep records of all goods shipped and received"; "record items taken from inventory and note when orders were filled"; note when inventories are low; "make a record of the shipment and the condition of its contents"; and "control all receiving platform operations, such as scheduling of trucks, recording of shipments, and handling of damaged goods."

Some of the beneficiary's duties are not fully described with specificity, although they seem to relate to the duties of shipping, receiving, and traffic clerks. The duty to integrate all processes involved in supply-chain, goods, and information; create a supply chain management strategy with coordinating customer demand and suppliers; coordinate and control the order cycle and associated information systems; analyze data to monitor performance and plan improvements; and analyze logistics problems and produce new solutions are not described with any specificity. The petitioner, for example, does not expound on the processes or products involved in the "supply-chain, goods, and information"; or what the creation of a supply chain management strategy entails. Nor does the petitioner describe in any detail the data and logistics problems to be analyzed by the beneficiary. Because the duties are insufficiently described, the petitioner fails to demonstrate that the proposed duties would actually require baccalaureate-level knowledge in the field of business management and administration.

Based on the evidence in the record, the AAO finds that the petitioner fails to satisfy the criterion at 8 C.F.R. § 214.2(h)(4)(iii)(A)(1), which is that a baccalaureate or higher degree or its equivalent in a specific specialty is the normal minimum requirement for entry into the particular position.

To establish the first alternative prong at 8 C.F.R. § 214.2(h)(4)(iii)(A)(2), that a specific degree requirement is common to the industry in parallel positions among similar organizations, the petitioner submits job

postings. This evidence is not persuasive. Raymour & Flanigan, a furniture retailer, and Total Brand Delivery (which is not described in the posting) do not require a baccalaureate degree in a specific specialty for their positions. Charles Industries, Ltd., a manufacturer of outside plant and access transmission products, and Precision Valve Corporation, a company in aerosol component manufacturing, differ in nature from the petitioner, which is a furniture retailer. Husky Injection Molding Systems is not described in the posting, although the name of the company suggests that it, too, differs in nature from the petitioner. Thus, the submitted job postings fail to establish that a specific degree requirement is common to the industry in parallel positions among organizations similar to the petitioner.

The petitioner has not satisfied the second alternative prong at 8 C.F.R. § 214.2(h)(4)(iii)(A)(2) as no evidence in the record shows the proffered position is so complex or unique that it can be performed only by an individual with a degree. As discussed at 8 C.F.R. § 214.2(h)(4)(iii)(A)(1) in this decision, the duties of the proposed position would not require a baccalaureate degree in a specific specialty. Thus, the petitioner fails to establish the second alternative prong at 8 C.F.R. § 214.2(h)(4)(iii)(A)(2).

No evidence in the record establishes the regulation at 8 C.F.R. § 214.2(h)(4)(iii)(A)(3): that the petitioner normally requires a degree or its equivalent for the position. Although the petitioner asserts that its vice-president who holds a baccalaureate degree previously performed the proposed position, this assertion is insufficient to establish that the petitioner has a past practice of normally requiring a baccalaureate degree *in a specific specialty* such as the field of business management and administration for the proposed position.

To satisfy the regulation at 8 C.F.R. § 214.2(h)(4)(iii)(A)(4), the petitioner must establish that the nature of the specific duties is so specialized and complex that the knowledge required to perform them is usually associated with the attainment of a baccalaureate or higher degree. The AAO has found that the duties of the proposed position would not require a baccalaureate degree in a specific specialty. Accordingly, the petitioner fails to establish the criterion at 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 on this ground.

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.