

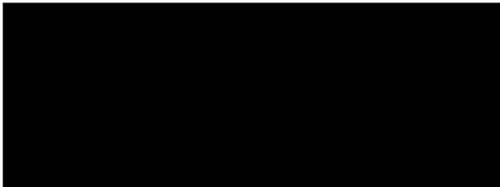
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U.S. Department of Homeland Security
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U.S. Citizenship
and Immigration
Services

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FILE: SRC 04 243 50366 Office: TEXAS SERVICE CENTER Date: **JUL 26 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:



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 
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 fine arts and furniture dealer 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) and that the beneficiary is not qualified to perform the duties of any specialty occupation. On February 1, 2005, counsel submitted a timely Form I-290B and indicated that he would send a brief and/or additional evidence to the AAO within 30 days. As of this date, the AAO has not received a brief or any additional evidence. Therefore, the record is complete.

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) 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: coordinating activities involved with the procurement of fine furniture, antiques, and the raw materials needed in order to run the petitioner's custom design of furniture and accessories; reviewing requisitions as well as conferring with vendors to obtain raw material information, such as price, availability, and delivery schedule; selecting fine furniture and antiques for purchase by observing and examining the goods; estimating value according to knowledge of market prices; maintaining manual and/or computerized procurement records, such as goods purchased, costs, delivery, quality, and inventories. The petitioner stated that the position requires a bachelor's degree or its equivalent in business administration, marketing, or a related field.

The director concluded that the record contained no evidence showing that the proposed position requires the attainment of a bachelor's degree or higher in a specific specialty. The director also found that, while the beneficiary was qualified for the job, the job itself was not a specialty occupation and the beneficiary's education and work experience were not the equivalent of a U.S. bachelor's degree.

On appeal, counsel asserts that the director failed to consider the two expert credentials evaluations. Counsel further asserts that the director did not consider the Department of Labor's *Occupational Outlook Handbook (Handbook)* and the other job ads submitted when deciding that the proposed position was not a specialty occupation.

The petitioner need only satisfy one of the criteria at 8 C.F.R. 214.2(h)(4)(iii)(A) to establish that a position is a specialty occupation. Upon a thorough review, the AAO concludes that the petitioner has failed to establish that its proposed purchasing agent 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 a position qualifies as a specialty occupation, CIS looks beyond the title of the position and determines, from a review of the duties and any supporting evidence, if the position 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.

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 finds that the proposed position closely reflects the duties of purchasing agents, who, according to the *Handbook*, buy the goods and services a company needs to either resell to customers or for the establishment's own use. They also consider price, quality, availability, reliability, and technical support when choosing suppliers and merchandise. They try to get the best deal for their company, by studying sales records and inventory levels of current stock, identifying foreign and domestic suppliers, and keeping abreast of changes affecting both the supply of, and demand for, needed products and materials. According to the petitioner's description, the beneficiary will coordinate "activities involved with the procurement of fine furniture, antiques, and the raw materials needed in order to run the petitioner's custom design of furniture and accessories," confer with "vendors to obtain raw material information, such as price, availability, and delivery schedule," and estimate "value according to his knowledge of market prices."

The petitioner fails to establish that the position is a specialty occupation under any of the criteria set forth in the regulations.

To determine whether the proposed position qualifies as a specialty occupation under the criterion at 8 C.F.R. 214.2(h)(4)(iii)(A)(1) – a bachelor's or higher degree or its equivalent is normally the minimum requirement for entry into the particular position – the AAO turns to the *Handbook's* discussion of the educational requirements for purchasing agents. The *Handbook* indicates that retailers prefer, but do not require, applicants with college degrees. In addition, the *Handbook* does not specify whether those degrees are from 2-year or 4-year colleges. Although the *Handbook* indicates that large stores prefer their purchasing agents to have degrees with a business emphasis, it does not indicate that this is normally required. As noted above, for a position to be considered a specialty occupation under this first criterion, a bachelor's degree in a specific field of study must be the normal minimum requirement for entry into the occupation. Accordingly, the petitioner has not established that the proposed position is a specialty occupation under this criterion.

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. To determine if a position is a specialty occupation under this criterion, CIS generally considers whether or not letters or affidavits from companies or individuals in the industry attest that such companies “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 job announcements the petitioner submitted are not probative. Several of these employers only required general, four-year bachelor's degrees for the advertised positions. They did not specify that those bachelor's degrees must be in a business-related field. Also, the jobs described in these announcements are distinct from the instant position in several significant ways. The announcements either do not describe the job duties with sufficient particularity to determine if they are similar to the proposed duties, or are from companies dissimilar to the petitioner, a fine arts and furniture dealer with four employees. Counsel asserts that the *Handbook* supports his assertion that purchasing agent positions require bachelor's degrees in a specialty field. As mentioned above, the *Handbook* says that employers prefer but do not require college degrees and that they do not require the degrees to be in a specific specialty. Therefore, the proposed position does not qualify as a specialty occupation under the first alternative prong at 8 C.F.R. § 214.2(h)(4)(iii)(A)(2).

The AAO now turns to the criterion at 8 C.F.R. § 214.2(h)(4)(iii)(A)(3) – the employer normally requires at least a bachelor's degree or its equivalent, in a specific field of study, for the position. To determine if 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. In the absence of an employment history for the proposed position, the petitioner cannot establish that its proposed 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 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 record does not indicate that the proposed duties are distinguishable from those of a typical purchasing agent, an occupation the *Handbook* says can be performed by individuals with associate degrees or through advancement.

No evidence contained in the record demonstrates that the proposed position is a specialty occupation. The petitioner has not overcome the director's decision in this regard.

With respect to the beneficiary's qualifications, the AAO has determined that the petition cannot be approved on the basis that the proposed position is not a specialty occupation. Therefore, it will not address the issue of the beneficiary's qualifications. A beneficiary's credentials to perform a particular job are relevant only when a job is found to be a specialty occupation.

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.