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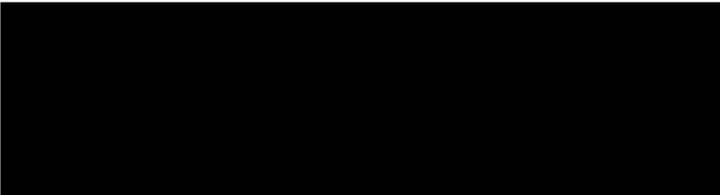
FILE: EAC 02 216 52683 Office: VERMONT SERVICE CENTER Date: SEP 27 2006

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.

A handwritten signature in cursive script, appearing to read "Robert P. Wiemann".

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 sustained. The petition will be approved.

The petitioner operates an international containerport business and seeks to employ the beneficiary as an import/export agent. 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).

The director denied the petition because the position did not qualify as a specialty occupation. On appeal, counsel submits a brief and additional information asserting that the proffered position is a specialty occupation.

The issue to be discussed in this proceeding is whether the proffered position qualifies as a specialty occupation.

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 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 with supporting documentation. The AAO reviewed the record in its entirety before issuing its decision.

The petitioner is seeking the beneficiary's services as an import/export agent. 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:

- Confer with shipping brokers concerning export and import documentation, docking facilities, packing and marking procedures, and bookings;
- Use independent judgment to negotiate rates and logistical issues;
- Advise clients regarding the most cost-effective methods of preparation of freight for shipment, rates to be applied, and mode of transportation to be implemented;
- Analyze tariff rates, freight classifications, delivery schedules, carrier capabilities and transportation regulations;
- Consult with clients regarding packing procedures and inspecting packages for conformance to shipping specifications to prevent damage, delay or penalties;
- Obtain all pertinent information from shippers required for hazardous bookings;
- Submit approval from appropriate personnel in Marseilles following strict guidelines provided by trade lane management;
- Update WTS of the IMO Dangerous Goods Declaration and container packaging certificates to the load ports;
- Update Port Terminal Hazardous Systems when and where required;

- Track and trace equipment activity and adjust booking as required;
- Obtain quotes from Web Simon/Pricing or flex-guide, ensuring quotes are filed when cargo is booked;
- Check the validity of service contracts or TLI numbers in Web Simon once booking is confirmed;
- Take necessary action with complaints from shippers and inform department managers of different issues;
- Obtain "Full Detailed Booking Report" off WTS system five days prior to vessel arrival;
- Cancel rolling or adjusting bookings as requested or approved by the shipper; and
- Release containers for loading in the port terminal system or via phone for Los Angeles, Oakland and Vancouver.

Counsel for the petitioner states that a bachelor's degree is required for entry into the proffered position but states that the degree need not be in any particular field or academic endeavor.

The AAO routinely consults the Department of Labor's *Occupational Outlook Handbook (Handbook)* for information about the duties and educational requirements of particular occupations. The duties of the proffered position are varied and not specifically covered by any specific job classification discussed in the *Handbook*. The record is sufficient, however, to establish that the duties of this particular position are so specialized and complex that knowledge required to perform them is usually associated with attainment of a baccalaureate or higher degree. The beneficiary is required to use independent judgment in negotiating tariff rates and determining logistical issues. The beneficiary must have detailed knowledge of hazardous shipping laws as well as customs regulations for the United States and foreign governments. The duties of the position require great attention to detail regarding international shipping laws and regulations, from determining appropriate packaging and freight classifications for imported/exported items to determining the routing of shipped merchandise internationally, and tracking ultimate delivery of shipped goods to the final recipient. The beneficiary's duties include solving customs issues internationally to prevent delays and financial penalties at various ports of entry. The proffered position qualifies as a specialty occupation as the petitioner has satisfied the criterion at 8 C.F.R. § 214.2(h)(4)(iii)(A)(4).

The final issue to be determined is whether the beneficiary is qualified to perform the duties of the offered position. That issue was not discussed by the director as the petition was denied on another ground. The record is sufficient, however, for the AAO to make that determination. The petitioner submitted an opinion from Dr. [REDACTED] a professor at Seattle University. Dr. [REDACTED] states that the duties of this particular position qualify it as a specialty occupation and that the performance of those duties requires a degree in business or its equivalent. The petitioner submitted several job advertisements for similar positions, many of which require a degree in business for entry into the advertised position. The beneficiary obtained a Bachelor of Science degree in Business from Wake Forest University with sufficient academic course work to meet the academic requirements of the position. *See Matter of Ling*, 13 I&N Dec 35 (Reg. Com. 1968). The

beneficiary is, therefore, qualified to perform the duties of the proffered position. 8 C.F.R. § 214.2(h)(4)(iii)(C)(I).

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 sustained that burden and the appeal shall accordingly be sustained.

ORDER: The appeal is sustained. The petition is approved.