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U.S. Citizenship
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APR 02 2007

FILE: SRC 05 222 52638 Office: TEXAS SERVICE CENTER Date:

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.

Robert P. Wiemann, Chief
Administrative Appeals Office

DISCUSSION: The Director, Texas 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 sells imports and manufactures rugs, has six employees and \$1.4 million in gross income when the petition was filed. It seeks to employ the beneficiary as a product manager. Accordingly, 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).

On October 7, 2005, the director denied the petition determining that the record did not establish the proffered position as a specialty occupation. On appeal, counsel for the petitioner asserts the director erred when failing to recognize the proffered position is a specialty occupation.

The record of proceeding before the AAO contains: (1) the Form I-129 petition filed August 9, 2005 and supporting documentation; (2) the director's August 19, 2005 request for evidence (RFE); (3) counsel's September 22, 2005 response to the director's RFE with documentation; (4) the director's October 7, 2005 denial decision; and, (5) the Form I-290B and counsel's brief in support of the appeal. The AAO reviewed the record in its entirety before issuing its decision.

The issue in this matter is whether the petitioner has established that the proffered position is 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:

An 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 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 above criteria to mean not just any baccalaureate or higher degree, but one in a specific specialty that is directly related to the proffered position.

The petitioner seeks the beneficiary's services as a product manager. In an August 8, 2005 letter appended to the Form I-129 petition, the petitioner indicated some of the major duties of the position included:

- Inspect, order, and supervise production of Tibetan rugs from Nepalese weavers at favorable prices, ensuring consistency with quality, quantity, specification requirements, and client designs;
- Communicate with Nepal manufacturers in Nepali and Tibetan languages about pending orders, negotiating prices and transportation arrangements;
- Liaison with current vendors to determine trends in consumer patterns, and develop long-standing and professional relationships with vendors;
- Educate prospective clients about the product, the process of manufacturing Tibetan rugs, and the quality of the rugs;
- Analyze and monitor trends in rug purchasing to create new rug designs that are at the forefront of consumer buying patterns;
- Supervise incoming shipments of rugs to ensure timely receipt of rug orders, authorize payment of invoices, and supervise return of merchandise;
- Supervise inventory and shipment of product to clients;
- Train sales and purchasing personnel regarding Tibetan rugs and marketing the product to clients.

The petitioner asserted that the duties of the position were complex and required a minimum of a baccalaureate degree in the field of business management, a directly related field, or the equivalent. The petitioner also attached six job announcements for the positions of: (1) buyer for a produce company that required a bachelor's degree from a four-year college or university with a major in agriculture preferred; (2) product manager for a medical device manufacturer that does not specify the type of bachelor's degree and does not indicate if the degree is preferred or required; (3) product manager for a furniture company that indicates a bachelor's degree is required; (4) a senior buyer for an arts and craft retailer that indicates the best candidate would be a degreed professional and associate buyer that indicates the best candidate would have

experience in the retail industry; (5) product development manager for a travel and leisure marketing agency that does not specify the type of bachelor's degree or indicate if the degree is preferred or required; and (6) retail buyer for footwear and accessories company that does not specify the type of bachelor's degree or indicate if the degree is preferred or required.

In a September 22, 2005 response to the director's RFE, counsel for the petitioner attached excerpts from the Department of Labor's *Occupational Information Network (O*Net)* and the Department of Labor's *Occupational Outlook Handbook (Handbook)* regarding the occupations of wholesale retailer, buyer, purchasing manager/agent. Counsel noted that the *Handbook* reported that retail and wholesale firms prefer to hire applicants who have college degrees and are familiar with the merchandise they sell. The petitioner also included an article prepared by a marketing firm listing its results from a product management salary survey that indicated under the heading "Profile of a product manager" 90 percent have completed college.

The petitioner also attached 20 additional job advertisements for a variety of "buyer" positions. The advertisements were from a variety of organizations including a bar-code labeling company, information technology organizations, suppliers of multi-sensory gift cards, a biomedical organization, an automotive lighting manufacturer, wiring and engineering systems providers, electronics manufacturers, supplier of building products, supplier of swimming pool products, an optical transport equipment vendor, glass and crystal products distributor, a management services provider, and a food packing company. The educational requirements for the positions advertised varied, some organizations requiring a bachelor's degree in a specific discipline, some organizations specifying a bachelor's degree but not listing a specific discipline, some organizations indicating a bachelor's degree would be preferred but not listing a specific discipline, some organizations indicating a bachelor's degree would be preferred and listing a specific field of endeavor, and some organizations indicating that a bachelor's degree or experience would suffice to fulfill the educational requirements.

In a September 13, 2005 letter included in the response to the RFE, the petitioner stated that neither the president nor the vice-president had college educations but indicated that three of its employees and a previous bookkeeper had bachelor's degrees in fields relevant to the design and sale of the petitioner's carpets. The petitioner provided copies of resumes and diplomas for three individuals, one with a bachelor's of fine arts, one with a bachelor's of visual arts, and one with a bachelor's of arts degree in interdisciplinary studies with a concentration in human resource management. In the same letter the petitioner indicated that the beneficiary had begun working for the petitioner and an affiliate in Nepal and that his careful note-taking, photographs of rugs, and correspondence had reduced errors in the manufacturing process and that it was decided that he would be the ideal liaison for the petitioner in Nepal.

On October 7, 2005, the director denied the petition. The director determined: that the petitioner had not established that the minimum requirement for entry into the proffered position as it relates to the petitioner is a bachelor's or higher degree; that a bachelor's degree is common to the industry in parallel positions among similar organizations or that the particular position is so complex or unique that only an individual with a degree can perform the duties of the position; or that the record demonstrated that the petitioner had hired individuals in the past to perform the proffered position and had required a baccalaureate degree.

On appeal, counsel for the petitioner asserts that the *Handbook*, the excerpt from the Watson Wyatt Data Services on the occupation of "buyer," and the advertisements provided demonstrate that a bachelor's degree is a common requirement for a buyer position. Counsel also submits an additional five job postings for purchasing manager or buyer.

The AAO has fully considered all the petitioner's evidence submitted and does not find counsel's assertion persuasive. The AAO routinely consults the *Handbook* for its information about the duties and educational requirements of particular occupations. The 2006-2007 edition of the *Handbook* reports that purchasing managers, buyers, and purchasing agents buy the goods and services the company or institution needs to either resell to customers or for the establishment's own use. The *Handbook* further notes:

[P]urchasing professionals consider price, quality, availability, reliability, and technical support when choosing suppliers and merchandise. They try to get the best deal for their company, meaning the highest quality goods and services at the lowest possible cost to their companies. 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.

The proffered position falls within the parameters of the occupation of buyer or purchasing manager. The *Handbook* includes the following regarding training and other qualifications for purchasing managers, buyers, and purchasing agents:

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.

As the *Handbook* indicates, there are a variety of avenues available to obtain a position as a purchasing manager, buyer, or purchasing agent. The *Handbook* does not indicate that the position of purchasing manager requires a degree in a specific discipline. When a job, like that of a buyer, can be performed by a range of degrees or a degree of generalized title, without further specification, the position does not qualify as a specialty occupation. *Matter of Michael Hertz Associates*, 19 I&N Dec. 558 (Comm. 1988). To prove that a job requires the theoretical and practical application of a body of specialized knowledge as required by Section 214(i)(1) of the Act, a petitioner must establish that the position requires the attainment of a bachelor's or higher

degree in a specialized field of study. As observed above, CIS interprets the degree requirement at 8 C.F.R. § 214.2(h)(4)(A)(1) to require a degree in a specific specialty that is directly related to the proffered position.

The AAO notes counsel's assertion that the job announcements provided substantiate that businesses now require that their purchasing managers and buyers have a bachelor's degree. Upon review of the job announcements, the AAO finds that the majority of the job announcements provided do not indicate that a bachelor's degree is required, and even if a bachelor's degree is preferred, do not indicate that the bachelor's degree must relate to a specific field of study. The AAO observes that requiring a bachelor's degree in a generalized discipline, such as business, also fails to provide the specificity necessary to establish a position as a specialty occupation. *See Matter of Michael Hertz Associates*, 19 I&N Dec. at 558.

The AAO acknowledges the excerpt from the *O*NET* for the position of wholesale and retail buyer. However, the AAO does not consider the *O*NET* to be a persuasive source of information as to whether a job requires the attainment of a baccalaureate or higher degree (or its equivalent) in a specific specialty. The *O*NET* provides only general information regarding the tasks and work activities associated with a particular occupation, as well as the education, training, and experience required to perform the duties of that occupation. An SVP rating is meant to indicate only the total number of years of vocational preparation required for a particular occupation. It does not describe how those years are to be divided among training, formal education, and experience and it does not specify the particular type of degree, if any, that a position would require. Again, the record does not demonstrate that the occupation of a buyer would require the beneficiary to have attained a bachelor's degree or its equivalent in a specific specialty.

The AAO also examined the excerpt from Watson Wyatt Data Services, provided by the petitioner. Said report provides a brief description of the responsibilities of a buyer. However, the general description does not contribute to an understanding of the duties of the proffered position as those duties relate to the petitioner's operations. The brief information provided regarding potential occupations does not establish that the petitioner's proffered position meets any of the criteria set forth at 8 C.F.R. § 214.2(h)(4)(iii)(A).

The record does not establish that the proffered position requires the attainment of a baccalaureate or higher degree or its equivalent as the minimum for entry into the position. The petitioner has failed to satisfy the requirement of the criterion at 8 C.F.R. § 214.2(h)(4)(iii)(A)(1).

The AAO now turns to a consideration of whether the petitioner may qualify the proffered position under 8 C.F.R. § 214.2(h)(4)(iii)(A)(2), whether a degree requirement is the norm within the petitioner's industry or the position is so complex or unique that it may be performed only by an individual with a degree. A review of the evidence of record finds it insufficient to establish the proposed duties as a position that is identifiable with an industry-wide educational standard, or distinguishable, by its unique nature or complexity, from a similar but non-degree-requiring position. The AAO has considered the numerous job announcements submitted and determines that the job announcements do not provide sufficient information to enable the AAO to conclude that the businesses advertising the positions are similar to the petitioner in size, number of employees, or level of business. 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)). Moreover, the job announcements do not provide a standard for entry into the position of buyer; rather, the

job announcements suggest that there are a number of ways to enter into the occupation of buyer, including experience alone, a combination of experience and education, a bachelor's degree in a general field of study, or a bachelor's degree in a particular field of study. The record is insufficient to establish that a degree requirement is common to the industry in parallel positions among similar organizations. The petitioner has not established the first prong of the criterion at 8 C.F.R. § 214.2(h)(4)(iii)(A)(2).

The petitioner in this matter does not seek to establish the second prong at 8 C.F.R. § 214.2(h)(4)(iii)(A)(2) which requires that the proffered position is of such complexity or uniqueness that it can be distinguished from other positions within the same industry. The petitioner has not provided evidence that distinguishes the proffered position as more complex or unique than similar, but non-degreed, employment, as required by the second prong of the criterion at 8 C.F.R. § 214.2(h)(4)(iii)(A)(2).

The record also fails to demonstrate that the petitioner has a history of recruiting and hiring degreed candidates for the proffered position. To determine whether the petitioner has fulfilled the criterion at 8 C.F.R. § 214.2(h)(4)(iii)(A)(3), the AAO normally reviews the petitioner's past employment practices, as well as the histories, including names and dates of employment, of those employees with degrees who previously held the position, and copies of those employees' diplomas. The petitioner does not indicate that it has previously hired individuals to fill this position. In addition, the petitioner has noted that its president and vice-president do not have college degrees and further has failed to identify the positions held by the individuals it states have fine arts degrees. It is not possible to conclude from the petitioner's letter or other information in the record that the petitioner normally requires a degree or its equivalent for the proffered position. The petitioner's September 13, 2005 letter suggests that the proffered position has been tailored to employ this specific beneficiary regardless of the beneficiary's educational background. The AAO notes further that while a petitioner may believe that a proffered position requires a degree, that opinion cannot establish the position as a specialty occupation. Were CIS limited solely to reviewing a petitioner's self-imposed requirements, than any individual with a bachelor's degree could be brought to the United States to perform any occupation as long as the employer required the individual to have a baccalaureate or higher degree. The petitioner has not provided sufficient evidence to establish the criterion at 8 C.F.R. § 214.2(h)(4)(iii)(A)(3).

The AAO now turns to the fourth criterion and whether the petitioner has established that the duties of the proffered position are sufficiently specialized and complex to require knowledge usually associated with the attainment of a baccalaureate degree in a specific discipline and, therefore, establish the proffered position as a specialty occupation under the criterion at 8 C.F.R. § 214.2(h)(4)(iii)(A)(4). The duties of the proffered position show that the beneficiary's tasks relate primarily to the routine tasks of a purchasing agent or buyer. Counsel's assertion that the specific duties of the proffered position are specialized and complex are not substantiated in the record. Without documentary evidence to support the claim, the assertions of counsel will not satisfy the petitioner's burden of proof. The unsupported assertions of counsel do not constitute evidence. *Matter of Obaiqbena*, 19 I&N Dec. 533, 534 (BIA 1988); *Matter of Laureano*, 19 I&N Dec. 1 (BIA 1983); *Matter of Ramirez-Sanchez*, 17 I&N Dec. 503, 506 (BIA 1980). The job description does not provide any information regarding the duties of the position that establish that the duties of the proffered position are so specialized and complex that the knowledge required to perform the duties is usually associated with the attainment of a baccalaureate or higher degree in a specialty.

The beneficiary's actual duties involve the routine tasks of supervising the production of Tibetan rugs at favorable prices, ensuring consistency with quality, quantity, specification requirements, and client designs, negotiating prices and transportation arrangements, meeting with vendors to determine trends, educating clients about the product, supervising incoming shipments, and training sales and purchasing personnel. The petitioner has not established that the tasks associated with the proffered position require the application of specialized or complex knowledge associated with the attainment of a baccalaureate degree or higher degree. In this matter, the petitioner has not established the criterion at 8 C.F.R. § 214.2(h)(4)(iii)(A)(4).

The petition will be denied and the appeal dismissed for the above stated reason. 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.