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**U.S. Citizenship
and Immigration
Services**

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FILE: LIN 06 050 51317 Office: NEBRASKA SERVICE CENTER Date: **JUN 05 2007**

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.

Michael T. Kelly
/s/ Robert P. Wiemann, Chief
Administrative Appeals Office

DISCUSSION: The Director, Nebraska 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 an import broker and distributor, claims to employ between two and six personnel, and claims \$200,000 in gross annual income. It seeks to employ the beneficiary as an import buyer - Asia. 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 January 30, 2006, 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 that it is clear the proffered position qualifies as a specialty occupation.

The record of proceeding before the AAO contains: (1) the December 7, 2005 Form I-129 petition and supporting documentation; (2) the director's December 12, 2005 request for evidence (RFE); (3) counsel's January 11, 2006 response to the director's RFE; (4) the director's January 30, 2006 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 an import buyer – Asia. On the Form I-129 the petitioner indicated it currently employed two personnel. On Supplement H to the Form I-129, the petitioner described the duties of the position as:

Perform Import and related administrative functions for a U.S. Import Broker including: administrative requirements relating to financing; documentation and customs reporting procedure; identification of sources; management of purchases and arrangement of import logistics. Use of Chinese language with procurement activities from manufacturers in China.

In a November 14, 2005 letter appended to the petition, the petitioner stated that the duties of the position would include:

Locating and Identifying sources for manufactured parts for resale at the OEM, Distributor or Large Retailer level. Arranging and Managing Import Logistics including Customs Clearance. Managing Purchasing including Letter of Credit Coordination.

In its January 11, 2006 response to the director's request for a more detailed description of the proposed duties of the position, counsel for the petitioner repeated the description included in the November 14, 2005 letter in support and added:

Manages supplier sourcing and cost planning. Manages supplier relationships ensuring acceptable quality, delivery, terms and total cost. Negotiates the cost of packaging, shipping quantities, and freight.

Counsel also included numerous job postings from the Internet listing positions for a "buyer," from businesses involved in pharmaceuticals, chemicals, electronics, automotive, industrial equipment, retail, education, machine components, metal, and specialty equipment. Many of the advertisements provided detailed, lengthy job descriptions and most indicated that a bachelor's of science or a bachelor's of art degree would be

preferred or, in some instances, required. All of the listings, except one, failed to identify a specific field of study. The one listing that identified a discipline for the bachelor's degree indicated the degree could be in business or engineering.

Counsel for the petitioner included a reference to the Department of Labor's *Occupational Outlook Handbook's (Handbook)* discussion of the occupation of buyer and asserted that this discussion indicated 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. Counsel also included a copy of the petitioner's organizational chart showing the petitioner employed six personnel as of December 22, 2005, in the positions of president, marketing representative, secretary/treasurer, and two project managers as well as the beneficiary in the proffered position.

On January 30, 2006, the director denied the petition. The director observed that although the *Handbook* reported that a degree was preferred for the position of "buyer," the *Handbook* did not report that a degree was required. The director also observed that the job advertisements submitted did not contain sufficient detail to determine the nature of the advertising businesses, and that the job advertisements did not specify a degree should be in a specialty. The director determined that the petitioner had not established that the proffered position's title and duties required the successful candidate to hold a bachelor's degree. The director also determined that the petitioner had not established that the industry required a degree in a specific field of study for entry into the position of "buyer." The director noted the petitioner's inconsistent information regarding its number of employees and also determined that the petitioner did not have sufficient history to conclude that it required a bachelor's degree in a specific discipline for the proffered position. The director further determined that the petitioner's description of the duties of the proffered position was too vague to enable CIS to determine that the job duties were complex. The director concluded that the petitioner had not established that the proffered position encompassed the duties of a specialty occupation.

On appeal, counsel for the petitioner asserts that the *Handbook* reports that retail and wholesale firms prefer to hire applicants who have a bachelor's degree, but that the *Handbook* indicates 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. Counsel asserts that the petitioner's operations are clearly within the manufacturing arena and places management level responsibilities within the duties of the proffered position. Counsel concludes that the proffered position is a specialty occupation.

Counsel's assertion and conclusion are not 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 that a company or institution needs, either for resale 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 AAO notes that the petitioner's broadly described position falls within the parameters of the occupation of buyer. It is not clear from the description of the position that the duties of the position also include managerial responsibilities. 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, and counsel seems to acknowledge, there are a variety of avenues available to obtain a position as a buyer. As counsel observes many manufacturers prefer to hire employees with a bachelor's or master's degree in a specific discipline. However, employer preference is not synonymous with the normally required language of 8 C.F.R. § 214.2(h)(4)(iii)(A)(1). Moreover, the petitioner has not provided adequate evidence establishing that its business is primarily involved in manufacturing. Rather, the petitioner describes itself as an import broker and distributor. The record is insufficient to place the petitioner within the manufacturing sector as discussed in the *Handbook*. The AAO finds that the petitioner has not established that the proffered position is a position that normally requires the attainment of a bachelor's degree or its equivalent as a minimum for entry into the occupation. The petitioner has not established 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, in the alternative, that 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 has determined that there is no evidence to establish that any of the advertisers are similar to the petitioner in size, scope, and scale of operations, business efforts, and expenditures. Further, the petitioner's brief description of the duties of the proffered position does not establish that the proffered position is parallel to any of the advertised positions. 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, upon review of the job announcements, the AAO finds that the majority of the job announcements provided do not indicate that the bachelor's degree, even when required, must relate to a specific field of study. 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. The record is insufficient to establish that a degree requirement in a specific discipline 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 appear to seek to establish the second prong at 8 C.F.R. § 214.2(h)(4)(iii)(A)(2) which requires a demonstration 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, buyer positions, 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. 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 indicate that the successful applicant will perform administrative functions relating to importing and importing logistics, will identify sources and manage purchases, as well as manage supplier relationships including quality, delivery, terms and cost and negotiate shipping quantities, packaging, and freight. The description of these duties is vague and do not include details demonstrating that the duties are sufficiently specialized or complex so that only an individual with knowledge associated with the attainment of a baccalaureate degree or higher could perform them. The petitioner has not offered evidence or explanations that provide a comprehensive understanding of the daily duties included within the broad description

provided. 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.