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U.S. Department of Homeland Security
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Washington, DC 20529

U.S. Citizenship and Immigration Services

[redacted]

FILE: EAC 03 107 50445 Office: VERMONT SERVICE CENTER Date: JUN 08 2004

IN RE: Petitioner: [redacted]
Beneficiary

PETITION: Petition for a Nonimmigrant Worker Pursuant to Section 101(a)(15)(H) of the Immigration and Nationality Act, 8 U.S.C. § 1101(a)(15)(H)

ON BEHALF OF PETITIONER:

SELF-REPRESENTED

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.

Marie Johnson

for Robert P. Wiemann, Director
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 international trading business that seeks to employ the beneficiary as a shipping manager. 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 proffered position is not a specialty occupation and the beneficiary is not qualified to perform a specialty occupation. On appeal, the petitioner submits additional information.

The AAO will first address the director's conclusion that the position is not a specialty occupation.

Section 214(i)(l) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1184 (i)(l), 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) 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) 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 shipping manager. Evidence of the beneficiary's duties includes the I-129 petition and the petitioner's response to the director's request for evidence. According to this evidence, the beneficiary would perform duties that entail: supervising international trading, shipping, and receiving of wholesale goods; and utilizing foreign language proficiency in the area of trade. The petitioner indicated that a qualified candidate for the job would possess experience in administration, accounting, information systems, international trade regulations and procedures, and written and spoken Arabic fluency.

The director found that the proffered position was not a specialty occupation because the proposed duties are not so complex as to require a baccalaureate degree in a specific specialty. The director further found that the duties of the proffered position are comparable to the duties of purchasing managers, buyers, and purchasing agents. Citing to the Department of Labor's (DOL) *Occupational Outlook Handbook* (*Handbook*), 2000-2001 edition, the director noted that the minimum requirement for the entry of purchasing managers, buyers, and purchasing agents into the position was not a baccalaureate degree or its equivalent in a specific specialty. The director found further that the petitioner failed to establish any of the criteria found at 8 C.F.R. § 214.2(h)(4)(iii)(A).

On appeal, the petitioner states, in part, that all of the petitioner's shipping managers have held or hold baccalaureate degrees. The petitioner further submits attestations to demonstrate that parallel businesses have a baccalaureate degree requirement, and newspaper advertisements to demonstrate that the petitioner normally requires experience at least at the baccalaureate level.

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 turns first to 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 DOL's *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.Min. 1999)(quoting *Hird/Blaker Corp. v. Slattery*, 764 F. Supp. 872, 1102 (S.D.N.Y. 1991)).

The AAO routinely consults the *Handbook* for its information about the duties and educational requirements of particular occupations. The AAO does not concur with the petitioner that the proffered position is a specialty occupation. A review of the Purchasing Managers, Buyers, and Purchasing Agents job descriptions in the *Handbook* confirms the accuracy of the director's assessment to the effect that, the job duties parallel those responsibilities of purchasing managers, buyers, and purchasing agents. No evidence in the *Handbook*, 2004-2005 edition, indicates that a baccalaureate or higher degree, or its equivalent, is required for these positions. Furthermore, the petitioner also has not established that the beneficiary's duties as an interpreter/translator are of such complexity that a baccalaureate degree in a specific specialty, as distinguished from familiarity with the English and Arabic languages or a less extensive education, is necessary for the successful completion of

its duties. Thus, the petitioner has not shown that a bachelor's degree or its equivalent is required for the position being offered to the beneficiary.

Regarding parallel positions in the petitioner's industry, the petitioner submits amendments to three letters that were previously submitted and an additional letter from a business in Saudi Arabia. All of the writers state that a baccalaureate degree is required for positions similar to the proffered position. They do not indicate, however, that a baccalaureate degree in a specific specialty is required. Furthermore, they do not provide evidence in support of their assertions. Simply going on record without supporting documentary evidence is not sufficient for the purpose of meeting the burden of proof in these proceedings. *Matter of Treasure Craft of California*, 14 I&N Dec. 190 (Reg. Comm. 1972).

The record also does not include any evidence from professional associations regarding an industry standard, or documentation to support the complexity or uniqueness of the proffered position. The petitioner has, thus, not established the criteria set forth at 8 C.F.R. § 214.2(h)(4)(iii)(A)(*1*) or (*2*).

The AAO now turns to the criterion at 8 C.F.R. § 214.2(h)(4)(iii)(A)(*3*) – the employer normally requires a degree or its equivalent for the position. On appeal, the petitioner states that all of the petitioner's employees who have held or still hold the position of shipping director hold degrees. The petitioner submits evidence that three of its four former and present shipping directors held/hold a related baccalaureate degree. CIS must examine the ultimate employment of the alien, and determine whether the position qualifies as a specialty occupation, regardless of the petitioner's past hiring practices. *Cf. Defensor v. Meissner*, 201 F. 3d 384 (5th Cir. 2000). The critical element is not the title of the position or an employer's self-imposed standards, but whether the position actually requires the theoretical and practical application of a body of highly specialized knowledge, and the attainment of a baccalaureate or higher degree in the specific specialty as the minimum for entry into the occupation as required by the Act.[1] In this regard, the petitioner fails to establish that the shipping manager position it is offering to the beneficiary entails the theoretical and practical application of a body of highly specialized knowledge.

Finally, the AAO turns to the criterion at 8 C.F.R. § 214.2(h)(iii)(A)(*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.

To the extent that they are depicted in the record, the duties do not appear so specialized and complex as to require the highly specialized knowledge associated with a baccalaureate or higher degree, or its equivalent, in a specific specialty. Therefore, the evidence does not establish that the proffered position is a specialty occupation under 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.

The AAO will now address the director's conclusion that the beneficiary is not qualified to perform a specialty occupation.

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[1] The court in *Defensor v. Meissner* observed that the four criteria at 8 C.F.R. § 214.2(h)(4)(iii)(A) present certain ambiguities when compared to the statutory definition, and "might also be read as merely an additional requirement that a position must meet, in addition to the statutory and regulatory definition." *See id.* at 387.

Section 214(i)(2) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1184(i)(2), states that an alien applying for classification as an H-1B nonimmigrant worker must possess full state licensure to practice in the occupation, if such licensure is required to practice in the occupation, and completion of the degree in the specialty that the occupation requires. If the alien does not possess the required degree, the petitioner must demonstrate that the alien has experience in the specialty equivalent to the completion of such degree, and recognition of expertise in the specialty through progressively responsible positions relating to the specialty.

Pursuant to 8 C.F.R. § 214.2(h)(4)(iii)(C), to qualify to perform services in a specialty occupation, an alien must meet one of the following criteria:

> (*1*) Hold a United States baccalaureate or higher degree required by the specialty occupation from an accredited college or university;
>
> (*2*) Hold a foreign degree determined to be equivalent to a United States baccalaureate or higher degree required by the specialty occupation from an accredited college or university;
>
> (*3*) Hold an unrestricted state license, registration or certification which authorizes him or her to fully practice the specialty occupation and be immediately engaged in that specialty in the state of intended employment; or
>
> (*4*) Have education, specialized training, and/or progressively responsible experience that is equivalent to completion of a United States baccalaureate or higher degree in the specialty occupation, and have recognition of expertise in the specialty through progressively responsible positions directly related to the specialty.

The director found that the beneficiary was not qualified for the proffered position because the beneficiary's education and work experience were not equivalent to a baccalaureate degree in a specialty related to the occupation. On appeal, the petitioner submits an employment letter to demonstrate that the beneficiary has sufficient work experience to equate a baccalaureate-level degree. The petitioner further states that the record contains attestations from academic experts in support of its claim.

The record contains the following documentation related to the beneficiary's qualifications:

- Undated certification from the logistics officer of the International Federation of Red Cross and Red Crescent Societies in Amman, Jordan, certifying that the beneficiary performed baccalaureate-level work for its regional delegation from 1987 to 1999, performing the following duties: handling, clearing, and receiving goods from local and international markets;

- Evaluation from J.B. Ringer Credential Evaluation, dated January 20, 2003, concluding that the beneficiary's formal education and 20 years of experience in administrative and managerial positions are the equivalent of a Bachelor of Arts in Business Administration degree with a major in marketing awarded by a regionally accredited university in the United States;

- Documentation confirming the beneficiary's executive secretary training;

- Opinion, dated March 10, 2003, from Ibrahim Affaneh, Ph.D., Department of Finance and Legal Studies, The Eberly College of Business and Information Technology, Indiana University of Pennsylvania, who concludes that the beneficiary's training and work experience are equivalent to a bachelor's degree in business administration conferred by an "accredited American University"; and

- Letter, dated March 10, 2003, from Walid Hasan, Ph.D., who states, in part, that he worked with the beneficiary at "Palestine Authority" where she performed duties "involving international trading, shipping, record keeping" and that "she has acquired more than a BA".

Upon review of the record, the petitioner has failed to establish that the beneficiary is qualified to perform an occupation that requires a baccalaureate degree in a computer-related field. The beneficiary does not hold a baccalaureate degree from an accredited U.S. college or university in any field of study, or a foreign degree determined to be equivalent to a baccalaureate degree from a U.S. college or university in any field of study. Therefore, the petitioner must demonstrate that the beneficiary meets the criterion at 8 C.F.R. § 214.2(h)(4)(iii)(C)(*4*).

Pursuant to 8 C.F.R. § 214.2(h)(4)(iii)(D), equating the beneficiary's credentials to a United States baccalaureate or higher degree shall be determined by one or more of the following:

(1) An evaluation from an official who has authority to grant college-level credit for training and/or experience in the specialty at an accredited college or university which has a program for granting such credit based on an individual's training and/or work experience;

(2) The results of recognized college-level equivalency examinations or special credit programs, such as the College Level Examination Program (CLEP), or Program on Noncollegiate Sponsored Instruction (PONSI);

(3) An evaluation of education by a reliable credentials evaluation service which specializes in evaluating foreign educational credentials;

(4) Evidence of certification or registration from a nationally-recognized professional association or society for the specialty that is known to grant certification or registration to persons in the occupational specialty who have achieved a certain level of competence in the specialty;

(5) A determination by the Service that the equivalent of the degree required by the specialty occupation has been acquired through a combination of education, specialized training, and/or work experience in areas related to the specialty and that the alien has achieved recognition of expertise in the specialty occupation as a result of such training and experience.

The record contains an academic opinion from a professor at Indiana University of Pennsylvania. The professor found that the beneficiary's education and experience are equivalent to a bachelor's degree in business administration conferred by an accredited American university. The record, however, does not contain any evidence that the evaluator is an official who has authority to grant college-level credit for

training and/or experience in the specialty at an accredited college or university which has a program for granting such credit based on an individual's training and/or work experience, as required by 8 C.F.R. § 214.2(h)(4)(iii)(D)(1).

The record also contains an evaluation from J.B. Ringer Credential Evaluation, a company that specializes in evaluating academic credentials. The evaluator concluded that the beneficiary possesses the equivalent of a Bachelor of Arts in Business Administration degree in marketing from a regionally accredited U.S. university. However, the evaluation is based upon the beneficiary's education, training and work experience. A credentials evaluation service may not evaluate an alien's work experience or training; it can only evaluate educational credentials. *See* 8 C.F.R. § 214.2(h)(4)(iii)(D)(*3*). Thus, the evaluation carries no weight in these proceedings. *Matter of Sea, Inc.*, 19 I&N Dec. 817 (Comm. 1988).

When CIS determines an alien's qualifications pursuant to 8 C.F.R. § 214.2(h)(4)(iii)(D)(*5*), three years of specialized training and/or work experience must be demonstrated for each year of college-level training the alien lacks. It must be clearly demonstrated that the alien's training and/or work experience included the theoretical and practical application of specialized knowledge required by the specialty occupation; that the alien's experience was gained while working with peers, supervisors, or subordinates who have a degree or its equivalent in the specialty occupation; and that the alien has recognition of expertise in the specialty evidenced by at least one type of documentation such as:

(i) Recognition of expertise in the specialty occupation by at least two recognized authorities in the same specialty occupation[2];

(ii) Membership in a recognized foreign or United States association or society in the specialty occupation;

(iii) Published material by or about the alien in professional publications, trade journals, books, or major newspapers;

(iv) Licensure or registration to practice the specialty occupation in a foreign country; or

(v) Achievements which a recognized authority has determined to be significant contributions to the field of the specialty occupation.

The record also contains two employment letters and evidence of executive secretary training. The documentation does not establish equivalence to a baccalaureate degree in business administration or any other business-related field. The petitioner did not submit any independent evidence to illustrate how the training certificates relate to the completion of a baccalaureate degree in business administration. *See Matter of Treasure Craft of California*, 14 I&N Dec. 190 (Reg. Comm. 1972).

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[2] *Recognized authority* means a person or organization with expertise in a particular field, special skills or knowledge in that field, and the expertise to render the type of opinion requested. A recognized authority's opinion must state: (1) the writer's qualifications as an expert; (2) the writer's experience giving such opinions, citing specific instances where past opinions have been accepted as authoritative and by whom; (3) how the conclusions were reached; and (4) the basis for the conclusions supported by copies or citations of any research material used. 8 C.F.R. § 214.2(h)(4)(ii).

The AAO now turns to the beneficiary's prior work experience, and whether it included the theoretical and practical application of specialized knowledge required by the specialty. As described by the employer and the coworker, the beneficiary's duties did not appear to involve the theoretical and practical application of a business-related field. The employer assigns duties to the beneficiary such as "handling, clearing and receiving goods from local and international market." The coworker indicated that the beneficiary's duties involved "international trading, shipping, record keeping." Both the employer and the coworker describe the beneficiary's duties generically; no specificity to the beneficiary's daily activities or her level of responsibility is provided. Thus, the AAO cannot conclude that the beneficiary's past work experience included the theoretical and practical application of a body of highly specialized knowledge. Furthermore, neither the employer nor the coworker indicates that the beneficiary's work experience was gained while working with peers, supervisors, or subordinates who have a degree or its equivalent in the specialty occupation.

Finally, there is insufficient evidence that the beneficiary has recognition of expertise. The AAO notes that the professor from Indiana University of Pennsylvania cannot be considered a "recognized authority" because he did not describe his experience giving such opinions, citing specific instances where past opinions have been accepted as authoritative and by whom, how his conclusions were reached, and the basis for the conclusions supported by copies or citations of any research material used.

As related in the discussion above, the petitioner has failed to establish that the beneficiary is qualified to perform the duties of the proffered position. Accordingly, the AAO shall not disturb the director's denial of the petition.

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.