PUBLIC COPY
identifying data deleted to prevent clearly unwarranted invasion of personal privacy

U.S. Department of Justice

Immigration and Naturalization Service

D2

*OFFICE OF ADMINISTRATIVE APPEALS*
*425 Eye Street N.W.*
*ULLB, 3rd Floor*
*Washington, D.C. 20536*

[redacted]

File: LIN-01-150-53805 Office: Nebraska Service Center Date: JAN 0 3 2003

IN RE: Petitioner: [redacted]
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)

IN BEHALF OF PETITIONER:

[redacted]

INSTRUCTIONS:
This is the decision 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.

If you believe the law was inappropriately applied or the analysis used in reaching the decision was inconsistent with the information provided or with precedent decisions, you may file a motion to reconsider. Such a motion must state the reasons for reconsideration and be supported by any pertinent precedent decisions. Any motion to reconsider must be filed within 30 days of the decision that the motion seeks to reconsider, as required under 8 C.F.R. 103.5(a)(1)(i).

If you have new or additional information that you wish to have considered, you may file a motion to reopen. Such a motion must state the new facts to be proved at the reopened proceeding and be supported by affidavits or other documentary evidence. Any motion to reopen must be filed within 30 days of the decision that the motion seeks to reopen, except that failure to file before this period expires may be excused in the discretion of the Service where it is demonstrated that the delay was reasonable and beyond the control of the applicant or petitioner. Id.

Any motion must be filed with the office that originally decided your case along with a fee of $110 as required under 8 C.F.R. 103.7.

FOR THE ASSOCIATE COMMISSIONER,
EXAMINATIONS

Robert P. Wiemann, Director
Administrative Appeals Office

**DISCUSSION:** The nonimmigrant visa petition was denied by the director and is now before the Associate Commissioner for Examinations on appeal. The appeal will be dismissed.

The petitioner imports, wholesales, and retails Asian food. It has 115 employees and a gross annual income of $25 million. It seeks to employ the beneficiary as a purchasing coordinator for a period of three years. The director determined the petitioner had not established that the proffered position is a specialty occupation or that the beneficiary is qualified to perform the duties of a specialty occupation.

On appeal, counsel submits a brief.

8 C.F.R. 214.2(h)(4)(ii) defines the term "specialty occupation" 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.

The director denied the petition because the petitioner had not persuasively demonstrated that the proffered position requires a baccalaureate or higher degree <u>in a specific specialty</u>. The director further found that the beneficiary's degree in marketing does not qualify her to perform the proposed purchasing duties. On appeal, counsel states, in part, that the record contains numerous job advertisements to demonstrate that the proffered position requires a bachelor's degree. Counsel also states that the beneficiary's two years of studies in economics and trading combined with her eight years of relevant work experience qualify her for the proffered position. Counsel further states that the Service has approved a similar petition.

Counsel's statement on appeal is not persuasive. The Service does not use a title, by itself, when determining whether a particular job qualifies as a specialty occupation. The specific duties of the offered position combined with the nature of the petitioning entity's business operations are factors that the Service considers. In the initial I-129 petition, the petitioner described the duties of the offered position as follows:

* Coordinate with marketing personnel and reviews requisitions.

* Review requisitions, and proposes changes according to market condition, product availability, and prices.

* Confers with vendors to obtain product information.

* Select products for purchase by testing, observing or examine items.

* Establish and maintain procurement records.

* Approve invoice for payment.

* Discuss defective or unacceptable goods with quality control personnel, vendors, and the management to determine source of trouble and take corrective action.

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.

The petitioner has not met any of the above requirements to classify the offered position as a specialty occupation.

First, the Service does not agree with counsel's argument that the beneficiary is a purchasing manager, an occupation for which retail and wholesale firms prefer to hire applicants who have a college degree, and are familiar with the merchandise they sell and with wholesaling and retailing practices. In its Occupational Outlook Handbook (Handbook), 2002-2003 edition, at page 80, the Department of Labor (DOL) describes the jobs of a purchaser and buyer, in part, as follows:

> Purchasers and buyers determine which commodities or services are best, choose the suppliers of the product or service, negotiate the lowest price, and award contracts that ensure that the correct amount of the product or service is received at the appropriate time.
>
> At meetings, trade shows, conferences, and suppliers' plants and distribution centers, they examine products and services, assess a supplier's production and distribution capabilities, and discuss other technical and business considerations that influence the purchasing decision.

The record contains no evidence that the position offered includes complex or advanced purchasing and buying duties such as negotiating and awarding contracts or representing the petitioner at trade shows, conferences, suppliers' plants, and distribution centers.

The duties that the petitioner endeavors to have the beneficiary perform are primarily the shipping and receiving transaction reporting duties, which are similar to the duties that a receiving clerk would execute. In contrast to the description of a purchaser or buyer, at pages 414-415 Handbook, the DOL describes the positions of a receiving clerk as follows:

> They determine whether orders have been filled correctly by verifying incoming shipments against the original order and the accompanying bill of lading or invoice...The shipment is checked for any discrepancies in quantity, price, and discounts...The also may arrange for adjustments with shippers whenever merchandise is lost or damaged...In larger establishments, receiving clerks may control all receiving-platform operations, such as truck scheduling, recording of shipments, and handling of damaged goods.

The types of duties the petitioner ascribes to the beneficiary fall within the scope of a receiving clerk position rather than a purchaser or buyer position. For example, the petitioner states that the beneficiary will "[e]stablish and maintain procurement records, [a]pprove invoice for payment, and [d]iscuss defective or unacceptable goods with quality control personnel, vendors, and the management to determine source of trouble and take corrective action." Such transactions are not duties normally associated with a purchaser or buyer. Thus, the petitioner has not shown that a bachelor's degree or its equivalent is required for the position being offered to the beneficiary.

Second, the petitioner has not shown that it has, in the past, required the services of individuals with baccalaureate or higher

degrees in a specialized area such as business administration, for the offered position. Third, although the record contains various job advertisements, the petitioner did not present any documentary evidence that businesses similar to the petitioner in their type of operations, number of employees, and amount of gross annual income, require the services of individuals in parallel positions. Finally, the petitioner did not demonstrate that the nature of the beneficiary's proposed duties is so specialized and complex that the knowledge required to perform the duties is usually associated with the attainment of a baccalaureate or higher degree.

The petitioner has failed to establish that any of the four factors enumerated above are present in this proceeding. The job fits the description of a receiving clerk, rather than a purchaser or buyer. According to the DOL at page 409 of Handbook, the usual requirement for a receiving clerk is a high school diploma or its equivalent. With additional training, some receiving clerks advance to jobs as warehouse manager or purchasing agent. Accordingly, it is concluded that the petitioner has not demonstrated that the offered position is a specialty occupation within the meaning of the regulations.

With respect to counsel's objection to denial of this petition in view of the approval of a similar petition in the past, the Associate Commissioner, through the Administrative Appeals Office, is not bound to follow the contradictory decision of a service center. Louisiana Philharmonic Orchestra v. INS, 2000 WL 282785 (E.D.La. 2000), aff'd, 248 F.3d 1139 (5th Cir. 2001), cert. denied, 122 S. Ct.51 (U.S. 2001).

As the petitioner has not sufficiently established that the proffered position is a specialty occupation, the beneficiary's qualifications need not be examined further in this proceeding.

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.