U.S. Department of Justice

Immigration and Naturalization Service

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OFFICE OF ADMINISTRATIVE APPEALS
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[redacted]

identifying data deleted to prevent clearly unwarranted invasion of personal privacy

FILE: SRC 01 267 51112 OFFICE: TEXAS SERVICE CENTER DATE: JAN 10 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 USC 110(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 which 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 which 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 which 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 Acting Director, Texas Service Center, denied the nonimmigrant visa petition and the matter is now before the Associate Commissioner for Examinations on appeal. The appeal will be dismissed.

The petitioner is an import/export firm with nine employees and a gross annual income of $3,484,743. It seeks to employ the beneficiary as an import/export specialist for three years.

The acting director denied the petition because she found that the petitioner had failed to demonstrate that the proffered position is a specialty occupation.

On appeal, counsel submits a letter reiterating his view that the proffered position is a specialty occupation.

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), 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 knowledge 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.

8 C.F.R. 214.2(h)(4)(ii) further 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.

In a letter which accompanied the initial petition, the petitioner described the proffered position as follows:

> Directs foreign sales and service outlets. Directs conversion of products from American to foreign standards

> and specifications to ensure efficient operation under foreign conditions. Arranges shipping details, such as export licenses, customs declarations, and packing, shipping, and routing of product. Directs clerical and technical staff in preparation of foreign language sales manuals. Expedites import-export arrangements and maintains current information on import-export tariffs, licenses, and restrictions. Coordinates activities of international traffic division of import-export agency and negotiates settlements between foreign and domestic shippers(.) Plans and directs flow of air and surface traffic moving to overseas destinations. Supervises workers engaged in receiving and shipping freight, documentation, waybilling, assessing charges, and collecting fees for shipments. Negotiates with domestic customers, as intermediary for foreign customers, to resolve problems and arrive at mutual agreements. Negotiates with foreign shipping interests to contract for reciprocal freight-handling agreements. Examine(s) invoices and shipping manifests for conformity to tariff and customs regulations. Contact(s) customs officials to effect release of incoming freight and resolve customs delays. Prepare(s) reports of transactions to facilitate billing of shippers and foreign carriers.

The petitioner stated that the position requires a minimum of a bachelor's degree in International Trade, and noted that the beneficiary has such a degree. With the petition, the petitioner provided copies of the beneficiary's college transcripts and diploma, with English translations. Those documents indicate that the beneficiary received a bachelor of economics degree with a major in international trade.

The acting director requested the petitioner to submit additional evidence pertinent to the proffered position. Specifically, the acting director requested that the petitioner state why someone without a bachelor's degree in international trade would be incapable of working for the petitioner as an import/export specialist.

In response, the petitioner submitted a letter in which he stated that:

> The position requires knowledge of the systems and environments in which international trade is generated to improve managerial decision processes; knowledge of specialized structures in international trade such as export trading companies, free trade zones, countertrade, and regional trading blocs; knowledge in identifying internal competencies for firms for engaging in trade and opportunity assessment of foreign markets with attention

> to managing foreign exchange risk, pricing, and financing trade; knowledge of interactions among individuals, groups, organizations and cultures in global management practice and business conduct; knowledge of the global business paradigm, culture, multiculturalism, vision/mission, organization structure, leadership, teamwork, learning organizations, negotiation, communication, motivation, ethics/integrity, corporate social responsibility, and change; knowledge of global industries and dynamic marketing opportunities within the value chains of industries and inter-industry competitive sets; international marketing opportunity analysis, segmentation and targeting; establishing and managing international channels of distribution for market entry, penetration and competitive response strategy; pricing and competitive bidding in the international environment; knowledge of foreign exchange risk and in particular how to manage these kinds of exposures; knowledge of custom laws in the (United States) and other countries of trading; knowledge of international transactions taxation; knowledge of US tax treaties with other countries, etc.

The acting director denied the petition on the basis that the petitioner did not establish that the proffered position is a specialty occupation. On appeal, counsel reiterated the belief that the position is a specialty occupation.

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.

Counsel's contention that the proffered position is a specialty occupation is unconvincing. In evaluating whether the proffered

position is a specialty occupation, each of the four criteria listed at 8 C.F.R. 214.2(h)(4)(iii)(A) will be considered separately below.

I. A baccalaureate or higher degree or its equivalent is normally the minimum requirement for entry into the particular position. 8 C.F.R. 214.2(h)(4)(iii)(A)(1).

The Service often consults the U.S. Department of Labor's (DOL) Occupational Outlook Handbook (Handbook) when determining whether a baccalaureate or higher degree in a specific specialty or its equivalent is normally the minimum requirement for entry into a particular position. The position of shipping and receiving supervisor appears to be most similar to the proffered position. Shipping and receiving supervisor positions are included among other Office and Administrative Support Worker Supervisor and Manager positions, and analyzed in the Handbook from page 417 to page 419.

As to the training for such positions, the Handbook states, at page 418, that:

> Most firms fill office and administrative support supervisory and managerial positions by promoting clerical or administrative support workers from within their organizations. To become eligible for promotion to a supervisory position, clerical or administrative support workers must prove they are capable of handling additional responsibilities. When evaluating candidates, superiors look for strong teamwork, problem-solving, leadership, and communication skills, as well as determination, loyalty, pose, and confidence.

The Handbook does not mention any educational requirement for such positions.

II. 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. 8 C.F.R. 214.2(h)(4)(iii)(A)(2).

Factors often considered by the Service when determining the industry standard 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." Shanti, Inc. v. Reno, 36 F.Supp.2d 1151, 1165 (D. Minn. 1999) (quoting Hird/Blaker Corp. v. Slattery, 764 F.Supp.2d 872, 1102 (S.D.N.Y. 1991).

The DOL's conclusions pertinent to a degree requirement for a watchmaker/repairer position were discussed in the previous section, and shall not be repeated here. Neither counsel nor the petitioner presented any evidence that any association of watchmakers/repairers has instituted a degree requirement for membership.

In response to a Request for Evidence, the petitioner described the duties of the proffered position in some depth. None of those duties, however, are so complex that they would necessitate a bachelor's degree in a specific specialty.

III. The employer normally requires a degree or its equivalent for the position. 8 C.F.R. 214.2(h)(4)(iii)(a)(3).

In the letter which accompanied the petition, the petitioner stated that, "The minimum requirement for performance of the job duties is a Bachelor's degree in International Trade." However, the petitioner submitted no evidence that it has, in the past, only hired import/export specialists with such a degree.

IV. 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. 8 C.F.R. 214.2(h)(4)(iii)(A)4).

Despite a detailed exposition of the duties of the proffered position, the petitioner has failed to demonstrate that those duties are so specialized and complex that the requisite knowledge to perform those duties is usually associated with the attainment of a bachelor's degree.

Based upon the evidence in the record, the petitioner has not established that the proffered position is a specialty occupation. The critical element is not the title of the position, but whether the position actually requires the theoretical and practical application of a body of highly specialized knowledge, and the attainment of a bachelor's degree in the specific specialty as a minimum for entry in the occupation as required by the Act. The Service must examine the ultimate employment of the alien, and determine whether the position qualifies as a specialty occupation. Cf. Defensor v. Meissner, 201 F3d 384 (5th Cir. 2000). In this case, the petitioner has not shown that the practice of the proffered import/export specialist position requires the attainment of a bachelor's degree in a specific specialty.

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.