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U.S. Citizenship
and Immigration
Services

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FILE: LIN 05 256 54264 Office: NEBRASKA SERVICE CENTER Date: **MAR 05 2009**

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.

If you believe the law was inappropriately applied or you have additional information that you wish to have considered, you may file a motion to reconsider or a motion to reopen. Please refer to 8 C.F.R. § 103.5 for the specific requirements. All motions must be submitted to the office that originally decided your case by filing a Form I-290B, Notice of Appeal or Motion, with a fee of \$585. Any motion must be filed within 30 days of the decision that the motion seeks to reconsider or reopen, as required by 8 C.F.R. § 103.5(a)(1)(i).

John F. Grissom, Acting 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 a comprehensive trade service company that seeks to employ the beneficiary as its director of supply chain management. 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, finding that (1) the proffered position is not a specialty occupation; and (2) the beneficiary did not possess education, specialized training and/or experience equivalent to the training acquired by the attainment of a United States baccalaureate degree in the specialty occupation.

Section 214(i)(1) of the Immigration and Nationality Act (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.

Pursuant to 8 C.F.R. § 214.2(h)(4)(ii):

Specialty occupation means an occupation which requires theoretical and practical application of a body of highly specialized knowledge in field 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 also 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.

United States Citizenship and Immigration Services (USCIS) 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 (RFE) dated November 30, 2005; (3) the petitioner’s response to the director’s RFE dated January 5, 2006; (4) the director’s denial letter dated March 3, 2006; 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 supply chain manager. Evidence of the beneficiary’s duties includes: the I-129 petition; the petitioner’s September 1, 2005 letter in support of the petition; and the petitioner’s response to the director’s request for evidence. According to the petitioner’s September 1, 2005 letter, the beneficiary would perform the following duties:

1. Creatively develop and promote international logistics and supply chain integration solutions for customers worldwide, based on the company’s Internet-based EDI system – www.navegate.com.
2. Establish and maintain good working relationships with key account customers, their vendors, distributors and freight forwarders in the U.S. and other countries, especially in China and Taiwan.
3. Effectively coordinate the implementation of integrated international logistic operations.
4. Facilitate training and technical support for vendors and distributors using North Star’s EDI system.
5. Provide vendor management for key account customers in the United States.
6. Conduct a thorough assessment of a customer’s supply chain operations and identify areas for improvement.
7. Develop and monitor standardized operation processes for the key parties in a supply chain.

The petitioner indicated that a qualified candidate for the job would possess a bachelor’s degree in business administration, economics, or a closely related field.

The director found that the proffered position was not a specialty occupation because the job appears to combine the duties of a supply chain manager with those of a general manager. Citing to the Department of Labor’s (DOL) *Occupational Outlook Handbook (Handbook)*, the director noted that the minimum requirement for entry 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, counsel for the petitioner contends that the director's decision was erroneous, and claims that the director overlooked the fact that supply chain management was an emerging position in the petitioner's industry. Moreover, the petitioner claimed that the proffered position was more akin to a purchasing manager than that of a general manager, and urges reevaluation of the director's findings.

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 has not been established to be 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; and 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 USCIS when determining these criteria include: whether the *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. Nor does the AAO concur with the assertion by [REDACTED] Marketing Professor at the University of St. Thomas, that a candidate for the proffered position of supply chain manager should have a degree in business administration or marketing, and more preferably, a Masters in Business Administration (MBA).

In reaching its own conclusions regarding the nature of the proffered position, the AAO has reviewed the discussion of general and operations managers under the "Top Executives" category, as described by the 2008-2009 edition of the *Handbook*. It has taken particular note of the following section of that discussion:

General and operations managers plan, direct, or coordinate the operations of companies or public and private sector organizations. Their duties include formulating policies, managing daily operations, and planning the use of materials and human resources, but are too diverse and general in nature to be classified in any one area of management or administration, such as personnel, purchasing, or administrative services. In some organizations, the duties of general and operations managers may overlap the duties of chief executive officers.

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Substantial travel between international, national, regional, and local offices to monitor operations and meet with customers, staff, and other executives often is required of managers and executives. Many managers and executives also attend meetings and conferences sponsored by various associations. The conferences provide an opportunity to meet with

prospective donors, customers, contractors, or government officials and allow managers and executives to keep abreast of technological and managerial innovations.¹

Based on the petitioner's overview of the duties of the proffered position, which include international relations with the petitioner's customers worldwide, the AAO concurs with the director's findings that the proffered position is akin to that of a general manager.

A review of the training required for positions included in the heading of top executives indicates that the formal education of such employees varies widely. Many top executives have a bachelor's degree in business administration or liberal arts. No evidence in the *Handbook* indicates that a baccalaureate or higher degree in a specific specialty, or its equivalent, is required for a top executive or, more specifically, a general manager.

In response to the petitioner's contentions on appeal, the AAO has also examined the *Handbook's* overview of purchasing managers. The AAO still concurs with the director that the duties of the proffered position are more akin to those of a general manager, in light of the above sections. Nevertheless, it should also be noted that, even if the AAO were to find that the proffered position was more akin to that of a purchasing manager, there is still no specific degree requirement for a purchasing manager and therefore, that too would not be considered a specialty occupation for purposes of this analysis.

Regarding parallel positions in the petitioner's industry, the petitioner has provided nine job vacancy postings advertised at www.monster.com. Six of the postings advertise supply chain manager positions. One advertises a global supply chain manager opening, another advertises a supply chain logistics manager position, and the last advertises a supply chain product manager vacancy. Although all of the postings indicate that a bachelor's degree in business administration or a related field is a requirement, the advertisements are for entities that are not similar in scope or focus to the petitioning entity. The petitioner claims to be a comprehensive trade services company focusing specifically on international freight forwarding, customs brokerage and supply chain management services. Specifically, the petitioner claims that it handles complex logistics tasks for U.S. exporters and importers as well as international vendors and distributors.

The job postings submitted, which advertise the open position of supply chain manager, are for (1) YSI, Inc., a sensor technology manufacturer; an unidentified manufacturing company in the aerospace/aviation/defense industry; General Electric's GELcore, focused on the electric and electrical industry; Zetec, Inc., which manufactures industry-driven solutions to help customers inspect metal goods; an unidentified company engaged in purchasing of raw materials, equipment, machinery and supplies; and Warren Equipment Compressor Systems, Inc.'s Caterpillar, a construction equipment company. The remaining three postings submitted are not for the same position offered to the beneficiary.

The wide variety of fields in which the above-referenced companies are engaged does little to persuade the AAO that parallel positions in the petitioner's industry, which is essentially freight forwarding and customs brokerage, require the services of a person possessing a baccalaureate degree in a specific specialty. The

¹ *Occupational Outlook Handbook*, 2008-2009 Edition, at www.bls.gov/oco/ocos012.htm.

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. In its response to the RFE, the petitioner states that the position of supply chain manager is a new position and, therefore, no resumes to demonstrate past hiring practices of the petitioner exist. Consequently, the record does not contain any evidence of the petitioner’s past hiring practices, and therefore, the petitioner has not met its burden of proof in this regard.

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.

The petitioner submits an evaluation from [REDACTED], Marketing Professor at the University of St. Thomas, in support of the contention that the duties of the proffered position are so specialized and complex that knowledge required to perform the duties is usually associated with the attainment of a baccalaureate or higher degree. [REDACTED] states that “a qualified individual for a supply chain management position needs to have many years of managerial experiences across the industries.” He further notes that the petitioner, as an international trade service provider, requires a supply chain manager to develop and promote supply chain solutions. He further claims to perform such tasks, marketing expertise is essential, and advanced training and education in business administration and management, particularly an MBA, would equip the candidate with the necessary knowledge and capability to perform the duties of the position. [REDACTED] concludes by stating that an MBA degree with marketing management concentration is “surely preferable” for this position.

The AAO may, in its discretion, use as advisory opinion statements submitted as expert testimony. However, where an opinion is not in accord with other information or is in any way questionable, the AAO is not required to accept or may give less weight to that evidence. *Matter of Caron International*, 19 I&N Dec. 791 (Comm. 1988). [REDACTED]’s letter in support of the complex knowledge required to perform the duties of the proffered position is generalized and does not specifically evaluate the duties of the proffered position. Instead, it generally discusses the writer’s opinions with regard to the qualifications necessary for a supply chain manager to successfully function in such a position. Moreover, the description of the duties of the proffered position does not specifically identify any tasks that are so specialized or complex that only a degreed individual could perform them. 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. Accordingly, the AAO shall not disturb the director’s denial of the petition.

The director also determined that the beneficiary would not be qualified to work in the proffered position even if it had been found to be a specialty occupation. However, a beneficiary’s credentials to perform a particular job are relevant only when the job is found to be a specialty occupation. As discussed in this

decision, the proffered position does not require a baccalaureate or higher degree, or its equivalent, in a specific specialty. Therefore, the AAO will not address the beneficiary's qualifications further.

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.