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U.S. Citizenship
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Services

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FILE: WAC 03 155 50720 Office: CALIFORNIA SERVICE CENTER Date: **APR 01 2005**

IN RE: Petitioner: [Redacted]
Beneficiary: [Redacted]

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.

for Michael T. Kelly
Robert P. Wiemann, Director
Administrative Appeals Office

DISCUSSION: The director of the California 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 manufacturer and supplier of customized vinyl casement windows, doors, and office equipment, with more than 150 employees. It seeks to hire the beneficiary as a sales manager. The director denied the petition because he determined that the proffered position did not qualify as a specialty occupation.

The record of proceeding before the AAO contains: (1) Form I-129 and supporting documentation; (2) the director's request for evidence; (3) counsel's response to the director's request for evidence; (3) the director's denial letter; and (4) Form I-290B, with additional documentation. The AAO reviewed the record in its entirety before reaching its decision.

The issue before the AAO is whether the petitioner's proffered position qualifies as a specialty occupation. To meet its burden of proof in this regard, the petitioner must establish that the job it is offering to the beneficiary meets the following statutory and regulatory requirements.

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 one 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.

To determine whether a particular job qualifies as a specialty occupation, CIS does not simply rely on a position’s title. The specific duties of the proffered position, combined with the nature of the petitioning entity’s business operations, are factors to be considered. CIS must examine the ultimate employment of the alien, and determine whether the position qualifies as a specialty occupation. *Cf. Defensor v. Meissner*, 201 F. 3d 384 (5th Cir. 2000). The critical element is not the title of the position nor 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.

The petitioner states that it is seeking the beneficiary’s services as a sales manager. Evidence of the beneficiary’s duties includes: the Form I-129; an April 5, 2003 letter of support from the petitioner; and counsel’s November 25, 2003 response to the director’s request for evidence. As stated by the petitioner at the time of filing, the proffered position would require the beneficiary to:

- Direct the actual distribution or movement of a product or service to the customer;
- Coordinate sales distribution by establishing sales territories, quotas, and goals;
- Establish training programs for sales representatives;
- Analyze sales statistics gathered by staff;
- Determine sales potential and inventory requirements; and
- Monitor the preferences of customers.

While the director found the above duties to reflect the occupation of sales representatives for wholesale and manufacturing businesses, the AAO notes that the petitioner has described its proffered position in language that is virtually identical to that used by the 2004-2005 edition of the Department of Labor’s (DOL) *Occupational Outlook Handbook (Handbook)* to discuss the occupation of sales manager. The *Handbook*’s discussion states:

Sales managers direct the firm’s sales program. They assign sales territories, set goals, and establish training programs for the sales representatives.... Managers advise the sales representatives on ways to improve their sales performance. In large, multiproduct firms, they oversee regional and local sales managers and their staffs. Sales managers maintain contact with dealers and distributors. They analyze sales statistics gathered by their staffs to determine sales potential and inventory requirements and monitor the preferences of customers

However, a petitioner cannot establish its employment as a specialty occupation merely by describing it in the same generic terms as those used by the *Handbook* to discuss an occupational title. In establishing a position

as a specialty occupation, a petitioner must describe the specific duties or tasks to be performed by a beneficiary in relation to its particular business interests.

In the instant case, the petitioner appears to have restated what the *Handbook* describes as the type of work performed by sales managers, rather than the duties of its own employment. As a result, the petitioner's description of the proffered position is so nonspecific that it precludes the AAO from determining precisely what tasks the beneficiary would perform for the petitioner on a daily basis and, therefore, whether the performance of these duties meets the statutory definition of a specialty occupation -- employment requiring the theoretical and practical application of a body of highly specialized knowledge and the 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 absence of a reliable description of the specific tasks that would indicate the skills, competencies, and specialized knowledge required for the proffered position, the AAO finds the petitioner has not satisfied any criterion set forth at 8 C.F.R. § 214.2(h)(4)(iii)(A).

The AAO notes that counsel, in response to the director's request for evidence and on appeal, has submitted a range of materials to establish the proffered position as a specialty occupation. However, none of this material is sufficient to meet the petitioner's burden of proof in these proceedings.

In addition to the petitioner's failure to identify specific tasks that would require the practical and theoretical application of the highly specialized knowledge of at least a bachelor's degree, or the equivalent, in a specific specialty, the AAO notes that the supportive materials submitted into the record fail to establish that a sales manager's position normally requires at least a bachelor's degree, or the equivalent, in a specific specialty.

The excerpts from the *Handbook*, which CIS recognizes as an authoritative source on the duties and educational requirements of a wide variety of occupations, indicate that a broad range of educational backgrounds -- including less than a bachelor's degree-- is acceptable for entry-level sales manager positions. The *Handbook* notes that many employers prefer candidates with related experience "plus a broad liberal arts background," and that for many employers a "bachelor's degree in sociology, psychology, literature, journalism, or philosophy, among other subjects, is acceptable."

The information from the DOL Employment and Training Administration Information Center's On Line Wage Library, including its Job Zone codes, is meant to indicate only the total number of years of vocational preparation required for a particular position. It does not describe how those years are to be divided among training, formal education, and experience, and it does not specify the particular type of degree, if any, that a position would require. Therefore, this information is not evidence that a sales manager position requires at least a bachelor's degree, or its equivalent, in a specific specialty.

The generalized descriptions of Knowledge, Skills, and Abilities printed from the Internet site www.acinet.org do not equate to a requirement for the level of highly specialized knowledge associated with a bachelor's degree in a specific specialty.

The record's job advertisements from other employers reflect a broad range of educational requirements that is consistent with the *Handbook's* information to the effect that, for the sales manager occupation, there is not an entry level requirement for at least a bachelor's degree, or its equivalent, in a specific specialty.

The statements provided by other firms in the petitioner's industry, which are, in any event, too few to establish an industry-wide practice, are also consistent with the *Handbook's* information, as they do not indicate a requirement for a degree in a specific specialty.

For the reasons related in the preceding discussion, the petitioner has failed to establish that the proffered position meets the requirements for a specialty occupation set forth at 8 C.F.R. § 214.2(h)(4)(iii)(A).

Beyond the decision of the director, it is noted that the petitioner has not established that the beneficiary is qualified to serve in a specialty occupation in accordance with the regulations at 8 C.F.R. §§ 214.2(h)(4)(iii)(C) and (D). The educational equivalency evaluation upon which the petitioner relies indicates that the beneficiary holds only the equivalent of a U.S. degree in physical education, which is not a degree in a specific specialty directly related to the duties of the proffered position. Also, the documentation submitted on the beneficiary's work experience is not sufficient to establish U.S. college-credit or degree equivalency under any criterion of 8 C.F.R. §§ 214.2(h)(4)(iii)(C) or (D). For this reason also the petition must be denied.

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.