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U.S. Department of Justice

Immigration and Naturalization Service

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



Public Copy

APR 04 2001

File: EAC 99 157 51806 Office: Vermont Service Center Date:

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)

IN BEHALF OF PETITIONER:



Identification info deleted to prevent clearly unwarranted invasion of personal privacy.

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, Acting Director  
Administrative Appeals Office

**DISCUSSION:** The nonimmigrant visa petition was denied by the Director, Vermont Service Center, and is now before the Associate Commissioner, Examinations, on appeal. The appeal will be dismissed.

The petitioner is a two person firm engaged in the purchasing and selling of antiquities and related art. It seeks to employ the beneficiary as a curator and manager for a period of three years. The director determined the petitioner had not established that the offered position is a specialty occupation.

On appeal, counsel states that two expert opinion letters previously submitted were overlooked by the director. Counsel requests that the visa petition be approved.

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 nonimmigrant classification to qualified 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 a "specialty occupation" as an occupation that requires theoretical and practical application of a body of highly specialized knowledge, and 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 section 214(i)(2) of the Act, 8 U.S.C. 1184(i)(2), to qualify as an alien coming to perform services in a specialty occupation the beneficiary must hold full state licensure to practice in the occupation, if such licensure is required to practice in the occupation. In addition, the beneficiary must have completed the degree required for the occupation, or have 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)(B), the petitioner shall submit the following with an H-1B petition involving a specialty occupation:

1. A certification from the Secretary of Labor that the petitioner has filed a labor condition application with the Secretary,
2. A statement that it will comply with the terms of the labor condition application for the duration of the alien's authorized period of stay, and
3. Evidence that the alien qualifies to perform services in the specialty occupation.

The petitioner has provided a certified labor condition application and a statement that it will comply with the terms of the labor condition application.

Pursuant to 8 C.F.R. 214.2(h)(4)(iii)(C), to qualify to perform services in a specialty occupation, the 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 beneficiary earned a Bachelor of Arts degree in Art History from The University of Michigan in 1990. It is determined that the petitioner has shown that the beneficiary qualifies to perform the duties of an appropriate position in a specialty occupation in the field of art history.

The term "specialty occupation" is 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.

The duties of the offered position are described as follows:

As art antiquities Curator and Manager, Mr. Aboutaam will be responsible for: the acquisition and sale of antiquities and related art; directing and coordinating all corporate activities in connection with the acquisition and sale of antiquities on a worldwide basis; overseeing and administering financial matters, including negotiating terms of acquisitions and sales based on the historical and artistic value of the particular artifact (s); directing activities regarding the transportation, storage and safekeeping of these valuable and fragile ancient artifacts and artwork; conducting research, valuation, and historical surveys of the significance of antiquities and ancient art; conducting research projects for specific targeted acquisitions; interviewing and hiring support personnel as necessary; managing support personnel as necessary; coordinating business activities worldwide; and attending industry conferences with a focus on the acquisition and/or sale of specific art antiquities.

Counsel states that two expert opinion letters previously submitted were overlooked by the director. The first letter indicates that a bachelor's degree in art history or a related discipline would be required to perform the duties of the offered position. The second letter indicates that a baccalaureate degree in art history is a minimum requirement for the performance of the proposed duties of the offered position of curator/manager. Two letters are

insufficient to establish an industry standard. In addition, the writers have not provided evidence in support of their assertions.

The Department of Labor's Occupational Outlook Handbook (Handbook) at page 171 states that curators oversee collections in museums, zoos, aquariums, botanical gardens, nature centers and historical sites. They acquire items through purchase, gifts, field exploration, inter-museum exchanges, or, in the case of some plants and animals, reproduction. Curators also plan and prepare exhibits. In natural history museums, curators collect and observe specimens in their natural habitat. Their work involves describing and classifying species, while specially trained collection managers and technicians provide hands-on care of natural history collections. Most curators use computer databases to catalogue and organize their collections. Many also use the Internet to make information available to other curators and the public. Increasingly, curators are expected to participate in grant writing and fund raising to support their projects. It is determined that the above position which primarily involves the acquisition and sale of antiquities and ancient art is not a curator position as defined by the Department of Labor.

It is noted that the Handbook at pages 170-171 indicates that the usual requirement for employment as a curator is a master's degree or doctorate in a closely related field of study. Even had the offered position required the services of a curator, the beneficiary (who has attained a bachelor's degree) would not qualify on the basis of his educational attainment to date.

In these proceedings, the duties of the position are dispositive and not the job title. The offered position combines the duties of a marketing manager and a salesperson. The Handbook at pages 25-26 also finds no requirement of a baccalaureate degree in a specialized area for employment as a marketing manager. A wide range of educational backgrounds are considered suitable for entry into marketing managerial positions. Some employers prefer degrees in business administration but bachelor's degrees in various liberal arts fields are also acceptable. Here again, certain personal qualities and participation in company training programs are often considered as significant as the beneficiary's specific educational background. Most marketing, advertising, and public relations management positions are filled by promoting experienced staff or related professional or technical personnel, such as sales representatives, purchasing agents, buyers, product or brand specialists, advertising specialists, promotion specialists, and public relations specialists.

The Handbook at page 275 also finds no requirement of a baccalaureate or higher degree in a specialized area for employment as a salesperson. The Handbook indicates that there usually are no formal education requirements for this type of work, although a

high school diploma or equivalent is increasingly preferred. In view of the foregoing, it is concluded that the petitioner has not demonstrated that the offered position is a specialty occupation within the meaning of the regulations.

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.