



U.S. Department of Justice

Immigration and Naturalization Service

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



File: LIN 00 104 53797

Office: NEBRASKA SERVICE CENTER

Date: DEC 08 2002

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:



PUBLIC COPY

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 nonimmigrant visa petition was denied by the Director, Nebraska Service Center, and the matter is now before the Associate Commissioner for Examinations on appeal. The appeal will be dismissed.

The petitioner is a retail store with a staff of 18 employees and a gross annual income of \$2,365,800. It seeks to employ the beneficiary as a Manager, Customer Technical Services for a three-year period. The director denied the petition finding that the petitioner had failed to establish that the position offered to the beneficiary was a specialty occupation.

On appeal, counsel asserts that the position is a specialty occupation.

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.

Further, the regulation at 8 C.F.R. 214.2(h)(4)(iii)(A) provides that a petitioner can qualify the offered position as a specialty occupation if the petitioner can establish that:

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 petition is supported by a description of the duties of the position that indicates that, among other things, the beneficiary will be responsible for the following duties: coordinates technical liaison services between management, sales department, and customers and informs customers of new toy products; confers with sales department managers to assist in specific classification of toy products; directs investigation of customer complaints regarding quality assurance; negotiates settlement of claims; analyze sales and business opportunities; training new employees; and, finally, conducting surveys of potential markets. The record also reflects that the beneficiary has a bachelor's degree in Human Ecology.

The record of proceeding has been carefully considered. The petitioner has not established that the position meets any of the four standards enumerated above and, as a result, has not established that the position is a specialty occupation.

The Department of Labor's (DOL) Occupational Outlook Handbook (Handbook), 2000-2001 edition indicates that there is no general requirement that managers possess a Bachelor's degree in a specific academic specialty to perform the duties of the position. The Handbook indicates that individuals are selected for managerial positions on a number of factors including the individual's personality and ability to deal with people. The Handbook also notes that, where there is a degree requirement for a specific management position, employers will accept individuals with degrees from many fields of academic study. In short, the Handbook indicates that there is no specific degree requirement for entry into the vast majority of management positions.

In addition, the petitioner has not shown that the degree requirement is common to the industry in parallel positions among similar organizations. While the petitioner has submitted copies of advertisements for a number of employment positions at other companies, the advertisements merely indicate that the employers will accept a bachelor's degree in any academic specialty for the position. Further, the positions described in the advertisements do not appear to be similar to the proffered position.

The record does not establish that the petitioner has employed individuals with a specific type of degree or its equivalent for this position in the past. It is noted that the company has been in existence since 1977.

Finally, the record does not establish that the duties of the position are so complex and specialized that knowledge required to perform the duties is usually associated with the attainment of baccalaureate degree. It has not been shown that an individual with good people skills and knowledge of the petitioner's products could not perform the duties of this position. As a result, the director's decision will not be disturbed.

In closing, in support of the appeal, counsel has made reference to a court case dealing with a petition filed for a computer programmer. The case cited by counsel does not appear to be similar to the position described in this petition. Further, the case is not binding on the Service.

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. Accordingly, the decision of the director will not be disturbed.

ORDER: The appeal is dismissed.