

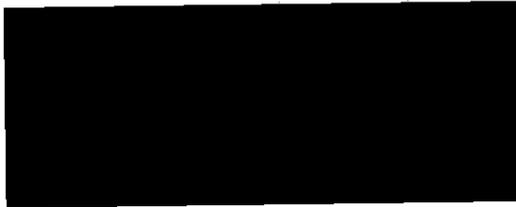


U.S. Department of Justice

Immigration and Naturalization Service

DR

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



Identifying data deleted to
prevent clearly unwarranted
invasion of personal privacy

File: EAC 00 105 53411

Office: VERMONT 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, Vermont Center, and the matter is now before the Associate Commissioner for Examinations on appeal. The appeal will be dismissed.

The petitioner is a leather and fur manufacturer, wholesaler and retailer with 5 employees and an undisclosed gross annual income. It seeks to employ the beneficiary as a fashion merchandise manager for a period of three years. The director denied the petition finding that the petitioner had failed to establish that the beneficiary would be performing duties that required the knowledge normally associated with the attainment of a baccalaureate degree.

On appeal, counsel submits a brief.

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 the beneficiary will be responsible for the following: assisting the merchandising manager who imports textiles; assisting the manager with merchandising various textiles; receiving orders; ordering and communicating with the foreign manufacturer.

On appeal, counsel argues it is common for similar companies to require a bachelor's degree for this position and that the duties of the position are complex. Counsel asserts that, based on the foregoing, the position is a specialty occupation.

Counsel's argument on appeal is not persuasive. The petitioner has not established that the position meets any of the four standards enumerated above and, as a result, it has not been shown that the position is a specialty occupation.

The Department of Labor's (DOL) Occupational Outlook Handbook (Handbook), 2000-2001 edition discusses the position of merchandise manager under the general heading of Purchasing Manager, Buyers, and Purchasing Agents. The Handbook indicates that qualified persons usually begin as trainees, purchasing clerks, expeditors, junior buyers, or assistant buyers. Retail and wholesale firms prefer to hire applicants who are familiar with the merchandise they sell as well as with wholesaling and retailing practices. The Handbook also indicates that educational requirements tend to vary with the size of the organization and that large stores and distributors prefer applicants who have completed a bachelor's degree.

Based on the discussion contained in the Handbook, it is clear that there is no requirement of a bachelor's or higher degree in a specific specialty for employment as a merchandise manager. As such, it has not been shown that a bachelor's or higher degree is normally the minimum requirement for entry into the United States.

In addition, the petitioner has not shown that the degree requirement is common to the industry in parallel positions among similar organizations. On appeal, counsel provides the names of four companies that allegedly are similar in size and scope to the petitioner. However, the record does not contain any evidence relating to these companies such as employment records, and tax returns that would support his assertion. Counsel's assertions on appeal, in the absence of additional evidence, carry little or no weight in these proceedings.

Further, the petitioner has not submitted any evidence establishing 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 petitioner has been in business since 1989. 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. The description of the duties of the position indicates that the beneficiary will be primarily involved in assisting other managers. As a result, the director's decision will not be disturbed.

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.