



U.S. Department of Justice  
Immigration and Naturalization Service

*[Handwritten initials]*

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

[Redacted]

File: LIN-99-086-50770 Office: Nebraska Service Center

Date: JAN 11 2001

IN RE: Petitioner:  
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)

**Public Copy**

IN BEHALF OF PETITIONER:

[Redacted]

Identify, locate, and  
prevent clearly warranted  
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

*[Handwritten signature of Mary C. Mulrean]*

Mary C. Mulrean, Acting Director  
Administrative Appeals Office

**DISCUSSION:** The nonimmigrant visa petition was denied by the director and is now before the Associate Commissioner for Examinations on appeal. The appeal will be dismissed.

The petitioner is an import and export consultant business with three employees and \$250,000 gross annual income. It seeks to employ the beneficiary as a logistical and international trade manager for a period of two years. The director determined the petitioner had not established that the proffered position is a specialty occupation or that the petitioner had submitted an ETA 9035 certified by the Department of Labor.

On appeal, counsel submits an ETA 9035 certified by the Department of Labor and argues that the proffered position is a specialty occupation and the beneficiary is qualified to perform the duties of a specialty occupation.

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 holds a bachelor of arts degree conferred by an Indian institution. Accordingly, it is concluded that the petitioner has shown that the beneficiary qualifies to perform the duties of the proffered position.

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 proffered position are described in pertinent part as follows:

- \* Communicate and correspond with foreign vendors in order to develop international customer contracts;
- \* Direct foreign sales and service outlets for employer;
- \* Negotiate contracts with foreign sales and distribution centers to establish outlets;
- \* Negotiate and open letters of credit with financial institutions in order to ensure payment for goods and services;
- \* Supervise workers engaged in receiving and shipping international freight, documentation, way-billing, assessing charges and collecting fees for shipments;
- \* Plan shipping windows and issue purchasing orders;
- \* Arrange international shipping details, such as export licenses, customs declarations and packing, shipping and routing of products;
- \* Examine invoices and shipping manifests for conformity to tariff and customs regulations;
- \* Contact custom officials to effect release of incoming freight and resolve customs delays;

- \* Nominate customs and freight forwarders to consolidate the cargo in various foreign ports; issue CLP (Container Load Plan);
- \* Negotiate and establish SVC (Service Contract Rates) of various commodities from foreign ports with freight lines;
- \* Monitor status of cargo during international shipment to ensure prompt and efficient delivery; and
- \* Coordinate and direct distribution and warehousing of freight upon arrival in U.S. ports.

The petitioner has failed to establish that any of the four factors enumerated above are present in this proceeding. The petitioner has not shown that requires the services of an individual with a baccalaureate or higher degree in a specialized area for the proffered position. In addition, the petitioner has not shown that similar firms require the services of such individuals in parallel positions. The petitioner's actual minimum educational requirement appears to be a baccalaureate degree in any of a number of fields of study rather than a bachelor's degree in a specific and specialized area.

In these proceedings, the duties of the position are dispositive and not the job title. The proffered position appears to combine the duties of a general manager or executive with those of a marketing manager and a purchasing manager. The Department of Labor's Occupational Outlook Handbook (Handbook), 2000-2001 edition, at pages 50-51 finds no requirement of a baccalaureate or higher degree in a specialized area for employment as a general manager or executive. Degrees in business and in liberal arts fields appear equally welcome. In addition, certain personal qualities and participation in in-house training programs are often considered as important as a specific formal academic background.

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 in-house training programs are often considered as significant as the beneficiary's specific educational background.

The Handbook at pages 73-75 also finds no requirement of a baccalaureate degree in a specialized area for employment as a purchasing manager. Depending on the size of the organization, educational requirements tend to vary for entry into purchasing

managerial positions. While large stores and distributors, especially those in wholesale and retail trade, prefer applicants who have completed a bachelor's degree program with a business emphasis, most employers use a combination of recruiting methods such as promoting from within, and hiring applicants who are familiar with the merchandise they sell as well as with wholesaling and retailing practices. (Emphasis added). Also, certain personal qualities and participation in in-house training programs are often considered as significant as the beneficiary's specific educational background. It is also noted that the record does not demonstrate that the beneficiary possesses a business-related degree. In view of the foregoing, it is concluded that the petitioner has not demonstrated that the proffered position is a specialty occupation within the meaning of 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. Accordingly, the decision of the director will not be disturbed.

**ORDER:** The appeal is dismissed.