



U.S. Department of Justice

Immigration and Naturalization Service

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OFFICE OF ADMINISTRATIVE APPEALS
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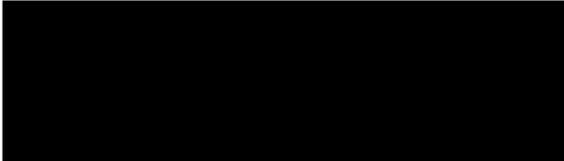
File: LIN-99-138-51634 Office: Nebraska Service Center Date:

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:



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 and is now before the Associate Commissioner for Examinations on appeal. The appeal will be dismissed.

The petitioner is an import and wholesale business with one employee and an approximate gross annual income of \$1.1 million. It seeks to employ the beneficiary as a marketing director for a period of three years. The director determined the petitioner had not established that the proffered position is a specialty occupation.

On appeal, counsel submits a brief.

8 C.F.R. 214.2(h)(4)(ii) defines the term "specialty occupation" 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.

The director denied the petition because the duties described by the petitioner appeared to relate to the job of a sales representative. The director did not find the duties described by the petitioner to be so complex as to require a baccalaureate degree. On appeal, counsel states that the proffered position is that of a marketing director and submits an expanded description of the duties the petitioner anticipates the beneficiary would perform. Counsel submits an opinion from an academic expert in support of her claim.

Counsel's statement on appeal is not persuasive. The Service does not use a title, by itself, when determining whether a particular job qualifies as a specialty occupation. The specific duties of the offered position combined with the nature of the petitioning entity's business operations are factors that the Service considers. In the initial I-129 petition, the petitioner described the duties of the offered position as follows:

Utilizing his extensive knowledge of Far East markets, the Beneficiary will evaluate and select products for purchase that meet our quality standards (spending 40% of his time working on this task).

The Marketing Director will also estimate product values based on his knowledge of current economic conditions (20%) and negotiate contracts with selected vendors (20%). The Beneficiary will sustain a computerized records analysis system regarding each transaction and contract and ensure that each vendor supplies the necessary health and beauty products and supplies, as required (20%).

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 petitioner has not met any of the above requirements to classify the offered position as a specialty occupation.

First, the Service does not agree with counsel's argument that the proffered position is that of a marketing director that would require a bachelor's degree in economics or a related field. The proffered position appears to combine the duties of a purchasing manager, buyer, and purchasing agent. A review of the Department of Labor's Occupational Outlook Handbook (Handbook), 2000-2001 edition, at pages 73-75 finds the following duties for the purchasing manager, buyer, and purchasing agent:

Purchasing managers, buyers, and purchasing agents seek to obtain the highest quality merchandise at the lowest possible purchase cost for their employers. In general, *purchasers* buy goods and services for their company or organization, whereas some *buyers* buy items for resale. They determine which commodities or services are best, choose the suppliers of the product or service, negotiate the lowest price, and award contracts that ensure the correct amount of the product or service is received at

the appropriate time. In order to accomplish these tasks successfully, purchasing managers, buyers, and purchasing agents study sales records and inventory levels of current stock, identify foreign and domestic suppliers, and keep abreast of changes affecting both the supply of and demand for products and materials for which they are responsible.

A review of the Handbook at page 75 finds no requirement of a baccalaureate or higher degree in a specialized area for employment as a purchasing manager, buyer, and purchasing agent. Educational requirements tend to vary according to the size of the organization. Large distributors and stores, especially those in wholesale and retail trade, prefer applicants who have completed a bachelor's degree program with a business emphasis. (Emphasis added.) (It is noted here that a baccalaureate degree appears to be a preference by large distributors and stores rather than a requirement. It is also noted that the petitioner has only one employee.) Regardless of their academic preparation, new employees must learn the specifics of their employers' business. Training periods vary in length, with most lasting 1 to 5 years. Thus, the petitioner has not shown that a bachelor's degree or its equivalent is required for the position being offered to the beneficiary.

Second, the petitioner has not shown that it has, in the past, required the services of individuals with baccalaureate or higher degrees in a specialized area such as economics, for the offered position. Third, the petitioner did not present any documentary evidence that businesses similar to the petitioner in their type of operations, number of employees, and amount of gross annual income, require the services of individuals in parallel positions. (It is noted that the job advertisements submitted were related to information technology, teleservices, media, and healthcare rather than to import and wholesale.) Finally, the petitioner did not demonstrate that the nature of the beneficiary's proposed duties is so specialized and complex that the knowledge required to perform the duties is usually associated with the attainment of a baccalaureate or higher degree.

Counsel has provided a letter from an academic expert whose expertise is not disputed by this office. It is noted, however, that the beneficiary's proposed duties in the said letter are the expanded version, not the duties that are listed on the initial I-129 petition that indicate that the majority of the beneficiary's duties involve purchasing activities (40% of his time spent evaluating and selecting products and another 20% of his time performing related computer tasks). As such, the letter is insufficient evidence that the proffered position is a specialty occupation or that the degree requirement is an industry standard.

The petitioner has failed to establish that any of the four factors enumerated above are present in this proceeding. Accordingly, 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.