

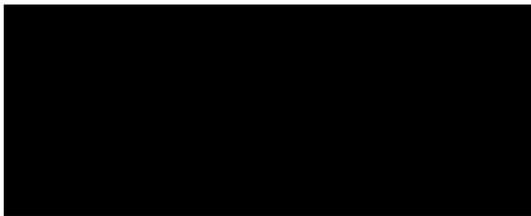


U.S. Department of Justice

Immigration and Naturalization Service

DR

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



File: WAC-00-065-51731 Office: California Service Center

Date: NOV 20 2001

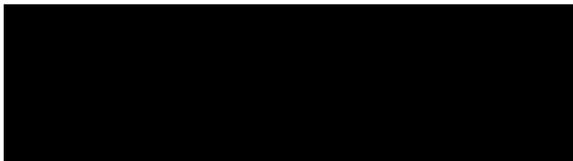
IN RE: Petitioner:
Beneficiary:



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)

Public Copy

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 internet automotive services business with two employees. The business is currently capitalized at \$5.5 million. It seeks to employ the beneficiary as a business alliance manager 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 top executive or general manager, occupations that do not require a baccalaureate degree in a specialized area. On appeal, counsel states in part that the proffered position requires theoretical expertise in business administration and finance. Counsel further states that the proposed duties are more sophisticated than the duties of a top executive or general manager, and are more similar to those of a financial manager.

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:

...[the beneficiary] will be responsible for directing, from a strategic perspective, the management of the relationships between Model-E and its business partners. He will focus on negotiating, developing and incorporating the businesses of external companies

(including suppliers, partnerships, and joint ventures) into the Model-E structure of automotive related services and products, conducting complex research, partner contact, and strategic analysis of market trends, elements of competition, and new growth opportunities. These functions will require him to draw upon the academic preparation he has obtained through his business studies.

[The beneficiary] will also be responsible for applying automotive business best practices such as modularity and concept to production development for unique products, applying both his education and the practical work experience he has acquired at Ford Motor Company.

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 beneficiary is a "financial manager," an occupation that would normally require a bachelor's degree in business administration or a related field. In its Occupational Outlook Handbook (Handbook), 2000-2001 edition, at pages 45-46, the Department of Labor (DOL) describes the job of a financial manager in part as follows:

Areas in which financial managers are playing an increasingly important role involve mergers and consolidations and global expansion and financing. These developments require extensive specialized knowledge on the part of the financial manager to reduce risks and

maximize profit. Financial managers are increasingly hired on a temporary basis to advise senior managers on these and other matters. In fact, some firms contract out all accounting and financial functions to companies that provide these services.

The role of financial manager, particularly in business, is changing in response to technological advances that have significantly reduced the amount of time it takes to produce financial reports. Financial managers now perform more data analysis and use it to offer ideas to senior managers on how to maximize profits. They often work on teams acting as business advisors to top management.

The record reflects that the petitioner, which is in the internet automotive services business, employs two persons and is currently capitalized at \$5.5 million. The business in which the beneficiary is to be employed does not require the services of a financial manager who is part of an executive decision-making team. Furthermore, the petitioner has not established that it has a need for a full-time financial manager.

The duties that the petitioner endeavors to have the beneficiary perform are marketing duties, which are similar to the duties of a marketing manager. In contrast to the description of a financial manager, at page 25 of the Handbook, the DOL describes the position of a marketing manager in part as follows:

...they determine the demand for products and services offered by the firm and its competitors. In addition, they identify potential markets--for example, business firms, wholesalers, retailers, government, or the general public. Marketing managers develop pricing strategy with an eye towards maximizing the firm's share of the market and its profits while ensuring that the firm's customers are satisfied. In collaboration with sales, product development, and other managers, they monitor trends that indicate the need for new products and services and oversee product development.

The types of duties the petitioner ascribes to the beneficiary fall within the scope of a marketing manager position rather than a financial manager position. For example, the petitioner states that the beneficiary will make "strategic analysis of market trends" and be responsible for "applying automotive business best practices such as modularity and concept to production development for unique products..." Analysis of market trends and product development are duties normally associated with a marketing manager. 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 business administration, 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. 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.

The petitioner has failed to establish that any of the four factors enumerated above are present in this proceeding. The job fits the description of a marketing manager, rather than a financial manager. A review of the Handbook at pages 25-26 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. In addition, certain personal qualities and participation in in-house training programs are often considered as significant as the beneficiary's specific educational background. Accordingly, it is concluded that the petitioner has not demonstrated that the offered position is a specialty occupation within the meaning of the regulations.

Beyond the decision of the director, an internet search conducted by this office does not find any website for the petitioner at the e-mail address noted in the record. A further search revealed that a business with a name entirely different from the petitioner's has the exact address and phone number that are listed on the petition for the petitioner. No common employees were found in the two businesses. As this matter will be dismissed on the grounds discussed, this issue need not be examined further.

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.