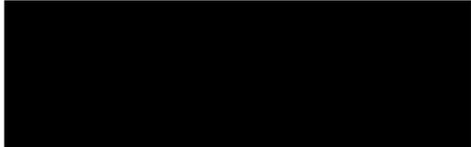




U.S. Department of Justice
Immigration and Naturalization Service

DZ

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

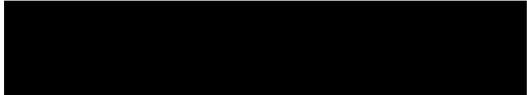


Public Copy

File: EAC-99-264-52553 Office: Vermont Service Center

Date:

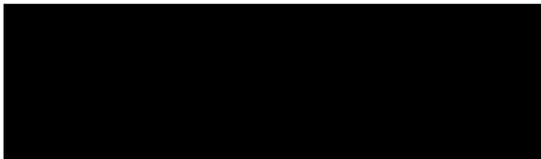
IN RE: Petitioner:
Beneficiary:



OCT 25 2001

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:



Identifying data deleted to prevent clearly unwarranted 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

Robert P. Wiemann, Acting Director
Administrative Appeals Office

DISCUSSION: The nonimmigrant visa petition was denied by the Director, Vermont Service Center. A subsequent appeal was dismissed by the Associate Commissioner for Examinations. The matter is now before the Associate Commissioner for Examinations on motion to reopen and reconsider. The motion will be granted. The previous decision of the Associate Commissioner will be affirmed.

The petitioner is a manufacturer of playground equipment with 228 employees and a gross annual income of \$32,366,897. It seeks to employ the beneficiary as an international sales manager for a period of three years. The director determined the petitioner had not established that the proffered position is a specialty occupation or that the beneficiary qualifies to perform services in a specialty occupation.

On appeal, counsel had provided additional information in support of the appeal.

The Associate Commissioner dismissed the appeal reasoning that the beneficiary had no baccalaureate degree in any field of study nor had the beneficiary's educational and employment background been evaluated by a credentials evaluation service. The Associate Commissioner further found that the proposed position appeared to combine the duties of a general manager or executive and a marketing manager and did not require a baccalaureate degree in a specialized area.

On motion, counsel submits evaluations from three academic experts in addition to a previously submitted evaluation from a fourth academic expert. Counsel argues that all of the evaluations demonstrate that the proffered position is a specialty occupation and the beneficiary qualifies to perform services in the 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)(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 three certificates, two in the specialties of international business, Spanish, and American markets issued by French academies, and a third issued by a French university indicating that the beneficiary had completed coursework and an internship. The beneficiary also had more than three years of relevant employment experience at the time of the filing of the present petition. The beneficiary's foreign education has been found by an academic expert to be equivalent to at least three years towards a bachelor of business administration degree in international business, marketing, or a related field from an accredited university in the U.S. The beneficiary's foreign education in conjunction with her employment background has been found by another academic expert to be equivalent to the minimum of an undergraduate degree in marketing from an accredited university in the U.S. The evaluations appear reasonable and will be accepted. 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.

Counsel's statement on motion that the proffered position is a specialty occupation 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:

1. **ESTABLISHES SALES OBJECTIVES** by forecasting and developing annual sales quotas for regions and territories.
2. **IMPLEMENTS SALES PROGRAMS** by developing field sales action plans.
3. **PARTICIPATES IN MAINTENANCE OF SALES VOLUME, PRODUCT MIX, AND SELLING PRICE** by keeping current with supply and demand, changing trends, economic indicators, and competitors.
4. **KEEPS MANAGEMENT INFORMED** by submitting activity and results reports.
5. **ADJUSTS SELLING PRICES** by monitoring costs, competition, and supply and demand.
6. **MAINTAINS SALES STAFF** by recruiting, selecting, orienting, and training representatives in different territories.
7. **MAINTAINS SALES STAFF SALES RESULTS** by conducting and/or participating in on-sites sales promotion and educational meetings; counseling, guiding and problem solving with representatives; monitoring and appraising sales results.

8. **PROVIDES INFORMATION** by answering questions.
9. **PARTICIPATES IN SALES PROMOTION PROGRAMS** by attending trade shows and sales presentations.
10. **RESOLVES CUSTOMER COMPLAINTS** by investigating problems; developing solutions; preparing reports; making recommendations to management.
11. **MONITORS COMPETITION** by gathering current marketplace information on pricing, products, new products, delivery schedules, selling techniques, etc.
12. **PROVIDES HISTORICAL RECORDS** by maintaining records on area and customer sales.
13. **MAINTAINS PROFESSIONAL AND TECHNICAL KNOWLEDGE** by attending educational workshops; reviewing professional publications; establishing personal networks; participating in professional societies.
14. **CONTRIBUTES TO TEAM EFFORT** by accomplishing related results as needed.

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 would normally require a bachelor's degree in marketing or a related field. The proffered position appears to

combine the duties of a general manager or executive with those of a marketing manager. A review of 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.

A review of 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. 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, although the petitioner's director of human resources states that their first international sales manager held a baccalaureate degree in Spanish and economics as well as a certificate in Latin American studies, the document in the record entitled "International Sales Manager" lists the job requirements as follows: Must be computer literate; must possess sales experience; must have interpersonal skills; problem solving skills; must be able to read, analyze, and use reports; and must be able to lead and motivate independent sales people. There is no mention of a degree requirement. It is also noted that as the petitioner has been in operation since 1952 and has 228 employees, it would seem that it would have had more than one previous international sales manager. It is additionally noted that one of the petitioner's two domestic managers holds a baccalaureate degree in biology. It is further noted that the petitioner has not established that the beneficiary's duties as a translator are of such complexity that a baccalaureate degree in a specific specialty, as distinguished from familiarity with foreign languages or a less extensive education, is necessary for the successful completion of its duties.

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.

Counsel has provided a letter from an academic expert who states that the usual requirement for positions such as the proffered position is a bachelor of business administration degree with an emphasis in marketing, management or international business. One letter is insufficient evidence of an industry standard. The writer has not provided evidence in support of her assertions nor has she indicated the number or percentage of international sales managers who hold such degrees.

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

ORDER: The decision of the Associate Commissioner dated March 27, 2000, is affirmed.