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U.S. Department of Justice

Immigration and Naturalization Service

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

[Redacted]

File: SRC 01 279 55473 Office: TEXAS SERVICE CENTER

Date: [Redacted]

**DEC 16 2002**

IN RE: Petitioner: [Redacted]  
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)

IN BEHALF OF PETITIONER:  
[Redacted]

**INSTRUCTIONS:**

This is the decision in your case. All documents have been returned to the office that 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 that 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 that 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, Texas Service Center, and the matter is now before the Associate Commissioner for Examinations on appeal. The appeal will be dismissed.

The petitioner is a Texas company that handles sales of industrial electrical equipment. The company, established in 1980, has 43 employees, and a gross annual income of \$6,287,038. It seeks to temporarily employ the beneficiary as a Marketing and Sales Coordinator for Latin America for a period of three years. The director determined that the petitioner had not established that the position offered to the beneficiary was a specialty occupation.

On appeal, counsel asserts that the petitioner requires a baccalaureate degree for the proffered position and this requirement is normal for the position throughout the industry. He also submits further documentation.

Section 214(i)(1) of the Act, 8 U.S.C. 1184 (i)(1), defines the term "specialty occupation": as an occupation that requires:

(A) theoretical and practical application of a body of highly specialized knowledge, and

(B) 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.

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 field 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 issue in this proceeding is whether the petitioner has established that the position offered to the beneficiary is a specialty occupation.

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.

In the initial petition, the petitioner stated that the beneficiary would work as the Marketing and Sales Coordinator for Latin America with an annual salary of \$63,040. The petitioner stated that the beneficiary would be responsible for contacting old clients and generating new clients, doing inside sales, realizing quotations, processing orders and providing customer service regarding products and services. The beneficiary's employment experience was described as "over four years of experience serving the electrical industry, with special focus in electrical distribution, with talent in inside sales, representing the full line of products, including Square-D, Westinghouse, General Electric, [REDACTED] etc." [sic]

The petitioner submitted the beneficiary's diploma for a Bachelor's degree in Management Sciences and Administration with a specialization in Marketing from The Technological University of the Central Region in Venezuela. The petitioner also submitted an educational equivalency document as to the beneficiary's foreign degree, and a letter from the beneficiary's previous employer, who is an exclusive distributor for the petitioner in Venezuela. A cover letter submitted with the petition stated that the minimum educational requirement for the proffered position was an Associate's degree in marketing.

The director requested further documentation noting that the regulations stated that the job must require a baccalaureate degree or higher, in order for it to qualify as a specialty occupation. The director asked for more evidence that the proffered position was a specialty occupation, such as a detailed job description.

In response, the petitioner submitted a letter with a more complete description of the beneficiary's duties. The beneficiary's job duties were described as follows:

Directing staffing, training, and performance evaluations to develop and control sales program.

Coordinating sales distribution by establishing sales and territories, quotas and goals and advises distributors and clients concerning sales and advertising techniques.

Analyzing sales statistic to formulate policy and to assist distributors in promoting sales.

Reviewing market analyses to determine customer needs, volume potential, price schedules, and discount rates.

Develops sales campaigns to accommodate goals of company.

Directing products simplification and standardization to eliminate unprofitable items from sales line.

Representing company at trade associates meeting to promote product.

Assisting other department within establishment to prepare manuals and technical publications and prepares periodic sales report showing sales volume and potential sales.

The letter also stated that the proffered position is a specialty occupation that requires a candidate to hold a minimum qualification of a Bachelor's degree in Management Sciences and Administration with Specialization in Marketing.

On October 25, 2001, the director denied the petition stating that simply submitting a letter which changes the qualifications of the proffered position to a bachelor's degree is insufficient to establish that the proffered position qualifies as a specialty occupation. The director further stated the petitioner had not provided any additional information that indicates that the position of Coordinator of Marketing and Sales requires the minimum of a bachelor's degree.

On appeal, counsel asserts that the first letter sent to the Service Center that stated the position required an associate's degree was a mistake, and the second letter clearly stated the need for a bachelor's degree. Counsel further describes the requirements and duties of the job as follows:

Develops product positioning, packaging, and pricing strategies

Directs foreign sales and service outlets

Negotiates contracts with foreign sales and distribution centers to establish outlets

Directs conversion of products from American to foreign standards and specifications to ensure efficient operation under foreign conditions

Arranges shipping details, such as export licenses, customs declarations, and packing, shipping, and routing of product

Prepares foreign language sales manuals

Expedites import-export arrangements and maintains current information on import-export tariffs, licenses, and restrictions

Negotiates foreign/domestic trade agreements

In addition, counsel submits a letter from the petitioner that examines the differences between the sales and marketing process in the United States and the same process in Latin America. The petitioner maintains the performance of these functions in Latin America is more difficult which make these activities a specialty business. According to the petitioner, the electrical standards are different in various countries, the technical language varies from country to country, and the purchasing law and bids processing are distinct in many Latin American countries. The petitioner states that every bid submitted for a project requires analysis of the administrative, marketing, technical and export-import regulations. Although the petitioner stated that a sample bid for a Panama Canal Commission project was enclosed with the letter in the appeal materials, no such sample was submitted.

Finally the petitioner submits an employment agreement effective as of September 15, 2001 signed by both the petitioner and the beneficiary that lists the following job duties:

- (a) The employee must identify and assess new and existing business opportunity as well as develop strategic plans to penetrate in the Latin American market.
- (b) Review market analyses to determine customer needs, potential volume and schedules and discount rates.
- (c) Represent Company at trade associate meetings to promote products.
- (d) Develop quotation format assemble and organize bid data.
- (e) Monitor products usage and determine strategies to

keep usage high.

- (f) Develop sales campaigns to accommodate goals of company.
- (g) Expedite import-export arrangements and maintain current information on imports-exports, tariffs, licenses and restrictions.

In the cover letter, the petitioner makes reference to items a, c, e, and f listed above as further evidence that the proffered position requires at least a bachelor's degree and qualifies as a specialty occupation. The employment agreement also has the following qualifications listed for the proffered position:

- (a) Employee must have a Bachelor's Degree in Marketing or Business Administration, have a minimum of 3 years experience in Medium Voltage and electrical equipment, contact list of potential customers and acknowledge of International commerce and specialty occupations as indicated in the following incises:
- (b) Write, read and speak fluently Spanish and English.
- (c) Full command in technical language for the countries of: Mexico, Honduras, Costa Rica, Panama, Venezuela, Colombia and Dominican Republic.
- (d) Experience in Microsoft project, Excel, Access, Word and Outlook.
- (e) Acknowledge [sic] of purchasing Laws and Bids Procedures in Latin American regulations and common commercial practices.
- (f) Acknowledge [sic] of International quality Standards (Central & South America)

Upon review of the record, the petitioner has provided additional clarification as to the required duties and necessary qualification for the proffered position beyond the basic information provided in the petition. Both the evidence provided in response to the director's request for further information and documentation contained in the appeal more clearly define what duties would be required of the beneficiary. In addition the appeal provides information as to the detail-oriented nature of the proffered position.

The cover letter for the appeal draws particular attention to items in the employment agreement that the petitioner claims would identify the proffered position as a specialty occupation. These are "(a) identify and assess new and existing business opportunity as well as develop strategic plans to penetrate in the Latin American market," "(c) represent company at trade associates meeting," "(e) monitor products usage and determine strategy to

keep usage high," and "(f) develop sales campaigns to accommodate goals of company." From the description of these major duties, the proffered position appears to be analogous to that of Sales Representative. A related occupation is Sales Manager.

In examining whether the duties as described qualify as a specialty occupation, factors often considered by the Service include: whether the Department of Labor's (DOL) Handbook reports that the industry requires a degree, whether the industry's professional association has made a degree a minimum entry requirement, and whether letters or affidavits from firms or individuals in the industry attest that such firms "routinely employ and recruit only degreed individuals." Shanti, Inc. v. Reno, 36 F.Supp.2d 1151, 1165 (D. Min. 1999) (quoting Hird/Blaker Corp. v. Slattery, 764 F.Supp. 872,1102 (S.D.N.Y. 1991)).

The Department of Labor's Occupational Outlook Handbook, (Handbook), 2002-2003 edition, examines the occupation of sales representatives on page 368.

Sales representatives are an important part of manufacturers' and wholesalers' success. Regardless of the type of product they sell, their primary duties are to interest wholesale and retail buyers and purchasing agents in their merchandise, and to address any of the client's questions or concerns. . . . Sales Representatives also advise clients on methods to reduce costs, use their products, and increase sales.

With regard to training and education for the sales representative position, on page 369, the Handbook states the following:

The background needed for sales jobs varies by product line and market. Most firms require a strong educational background and increasingly prefer or require a bachelor's degree as the job requirements have become more technical and analytical. Nevertheless, many employers still hire individuals with previous sales experience who do not have a college degree. For some consumer products, factors such as sales ability, personality, and familiarity with brands are as important as a degree. On the other hand, firms selling complex, technical products may require a technical degree in addition to some sales experience.

In reference to the occupation of Sales Manager, the Handbook states the following on page 27:

Sales Managers direct the firm's sales program. They assign sales territories, set goals, and establish training programs for the sales representatives. Managers advise the sales representatives on ways to

improve their sales performance. In large, multi-product firms, they oversee regional and local sales managers and their staffs. Sales managers maintain contact with dealers and distributors.

With regard to the educational background or experience required for a sales manager position, within the Advertising, Marketing, Promotions, Public Relations, and Sales Managers classification, the Handbook on page 26 states: "College graduates with related experience, a high level of creativity, and strong communication skills should have the best job opportunities." On page 28, the Handbook continues:

A wide range of educational backgrounds are suitable for entry into advertising, marketing, promotions, public relations, and sales managerial jobs, but many employers prefer those with experience in related occupations plus a broad liberal arts background. For marketing, sales and promotion management positions, some employers prefer a bachelor's or master's degree in business administration with an emphasis on marketing. Courses in business law, economics, accounting, finance, mathematics, and statistics are advantageous.

The general trends in both categories as documented in the Handbook appear to be that most employers require a strong educational background with an increasing need for a bachelor's degree for sales representatives and that employers still hire sales managers from a wide range of educational backgrounds, although some employers prefer a bachelor's or master's degree in for sales, marketing, and management jobs. Neither trend would support the petitioner's assertion that a baccalaureate degree or higher is normally the minimum requirement for entry into the sales and marketing coordinator position. Thus, the petitioner has not established the first criterion found in the regulations with regard to specialty occupations.

With regard to the second and third criteria, namely that the degree requirement is common to the industry in parallel position, and that the employer normally requires a degree or its equivalent for the proffered position, to date, the petitioner has submitted no evidence to establish either criterion. With regard to the fourth criterion, namely, that the nature of the specific duties is so specialized and complex that knowledge required to perform the duties is usually associated with having a bachelor's degree, the petitioner has provided additional documentation as to the detail-oriented nature of the proffered position, and to the necessity for an employee who speaks English and Spanish and who understands the electrical supplies distribution system in Latin America.

While the Service acknowledges the necessity of such

qualifications for the proffered position, the evidence provided to date does not establish these qualifications as being of a specialized and complex nature. For example, the beneficiary is required to know the electrical supply products and the various Latin American electrical standards in order to sell the appropriate products to Latin American clients. There is no indication on the record that the petitioner would need any in depth and specialized electronic or electrical expertise in the proffered position in order to sell or market the petitioner's products.

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.