



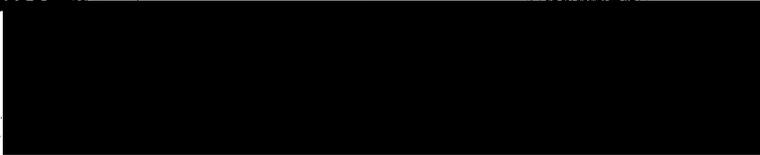
DA

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



FILE: LIN 02 009 50543

OFFICE: NEBRASKA SERVICE CENTER

DATE: DEC 18 2007

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 USC 110(a)(15)(H)(i)(b)

IN BEHALF OF PETITIONER: SELF-REPRESENTED

PUBLIC COPY

INSTRUCTIONS:

This is the decision in your case. All documents have been returned to the office which originally decided your case. Any farther 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, Director
Administrative Appeals Office

DISCUSSION: The Director, Nebraska Service Center, denied the nonimmigrant visa petition and the matter is now before the Associate Commissioner for Examinations on appeal. The appeal will be dismissed.

The petitioner is a print shop with 14 employees and a gross annual income of \$900,000. It seeks to employ the beneficiary as its Sales Manager for a period of three years.

The director denied the petition both because he found that the petitioner had failed to establish that the proffered position is a specialty occupation and because he found that the beneficiary is unqualified to work in a specialty occupation. On appeal, the petitioner asserts that the position is a specialty occupation and that the beneficiary is qualified to perform the duties of the proffered position.

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 the classification of qualified nonimmigrant 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 the term "specialty occupation" as an occupation that requires:

- (A) theoretical and practical knowledge 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) further 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.

In the initial petition, the petitioner stated that the beneficiary would be employed as a Sales Manager to "research and open Chinese printing market in Kansas." The petitioner gave no additional detail of the duties of the job and presented no evidence that the proffered position is a specialty occupation. On the I-129W H1-B data collection form, the beneficiary stated that the petitioner has a bachelor's degree and majored in "Bachelor's of Art."

The director requested the petitioner to submit additional documentation. Specifically, the director requested that the petitioner submit a Labor Condition Application certified by the Department of Labor, a detailed list of the duties of the proffered position, evidence that the position is a specialty occupation, and evidence that the beneficiary is qualified under 8 C.F.R. 214.2(h)(4)(iii)(C), above, to work in that specialty occupation.

In response, the petitioner submitted the requested Labor Condition Application, a photocopy of the applicant's college transcripts from Christ College in Tanshui, Republic of China, and a copy of the applicant's resume. With those submissions, the petitioner sent a letter containing an expanded description of the proffered position and some details of the beneficiary's qualifications.

As to the duties of the proffered position, the petitioner stated that the beneficiary would assist in Chinese translation, public relations, and typesetting. The beneficiary would also operate a small printing press, folders, and collators. In addition, the petitioner stated that the proffered position involves janitorial, handyman, delivery duties.

As to the beneficiary's qualifications, the petitioner noted that the beneficiary received a Bachelor of Arts from Christ College and speaks Chinese, Taiwanese, and English fluently.

The director denied the petition because he found that the petitioner did not establish that the proffered position is a specialty occupation or that the beneficiary is qualified to work in a specialty occupation.

On appeal, the petitioner contends that the applicant's degree in English and his Sales/Management experience should qualify him to work in a specialty occupation. The petitioner further states that the proffered position is specialized because it can only be filled by someone fluent in Chinese and English and familiar with both Chinese and American culture.

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 are so specialized and complex that knowledge required to perform the duties is usually associated with the attainment of a baccalaureate or higher degree.

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 initial inquiry is whether the proffered position is actually a Sales Manager position or some other type of position. This determination is based, not upon the job title, but upon the duties of the position. The petitioner stated that the job entailed researching the Chinese printing market in Kansas. In response to a request for a more detailed statement of the duties, however, the petitioner stated that the beneficiary would assist in Chinese translation, public relations, typesetting, operating a printing press, folders, and collators, as well as janitorial, handyman, and delivery duties.

Rather than concentrating the beneficiary's efforts in sales and marketing, the petitioner appears to envision that the beneficiary will learn every aspect of the printing operation. The position would be most accurately described as that of a Printing Machine Operator. The translation, public relations, janitorial, handyman, and delivery duties, are apparently ancillary to the duties related

to printing. The proffered position shall be evaluated as a Printing Machine Operator.

The petitioner does not present a persuasive argument for classifying the proffered position as a specialty occupation. In evaluating whether the proffered position is a specialty occupation, each of the four criteria listed at 8 C.F.R. 214.2(h)(4)(iii)(A) will be considered separately below.

I. A baccalaureate or higher degree or its equivalent is normally the minimum requirement for entry into the particular position. 8 C.F.R. 214.2(h)(4)(iii)(A)(1).

The Service often looks to the U.S. Department of Labor's (DOL) Occupational Outlook Handbook (Handbook) when determining whether a baccalaureate or higher degree or its equivalent is normally the minimum requirement for entry into a particular position. In the 2002 - 2003 edition of the Handbook at page 541, the DOL states the following about the training and educational requirements for Printing Machine Operator positions.

Although completion of a formal apprenticeship or a postsecondary program in printing equipment operation continue to be the best ways to learn the trade, most printing machine operators are trained informally on the job while working as assistants or helpers to experienced operators.

The Handbook makes clear that positions as Printing Machine Operators do not require a bachelor's in a specific specialty or its equivalent.

II. 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. 8 C.F.R. 214.2(h)(4)(iii)(A)(2).

Factors often considered by the Service when determining the industry standard include: whether the DOL's 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. Minn. 1999) (quoting Hird/Blaker Corp. v. Slattery, 764 F.Supp.2d 872, 1102 (S.D.N.Y. 1991)).

The DOL's conclusions pertinent to a degree requirement for a Printing Machine Operator position were discussed in the previous section, and shall not be repeated here. Neither counsel nor the

petitioner presented any evidence that any association of Printing Machine Operators has instituted a degree requirement for membership.

Nothing in the description of the proffered position indicates that the petitioner's business is especially complex or unique, such that it would require a baccalaureate degree in a specialized field of study.

III. The employer normally requires a degree or its equivalent for the position. 8 C.F.R. 214.2(h)(4)(iii)(A)(3).

The petitioner submitted no evidence that it normally requires a degree or its equivalent for the proffered position.

IV. The nature of the specific duties are so specialized and complex that knowledge required to perform the duties is usually associated with the attainment of a baccalaureate or higher degree. 8 C.F.R. 214.2(h)(4)(iii)(A)4).

Counsel observes that speaking both English and Chinese is a prerequisite for the proffered position. However, a position is not rendered unique or especially complex merely because one must be bilingual in order to perform it. The record contains no other evidence to indicate that the position is unusually specialized or complex.

Based upon the evidence in the record, the petitioner has not established that the proffered position is a specialty occupation. The critical element is not the title of the position, but whether the position actually requires the theoretical and practical application of a body of highly specialized knowledge, and the attainment of a bachelor's degree in the specific specialty or the equivalent as a minimum for entry in the occupation as required by the Act. The Service must examine the ultimate employment of the alien, and determine whether the position qualifies as a specialty occupation. Cf. Defensor v. Meissner, 201 F3d 384 (5th Cir. 2000). In this case, the petitioner has not shown that the practice of the proffered position requires the attainment of a bachelor's degree in a specific specialty.

Inasmuch as the petition is being denied on the ground that the proffered position is not a specialty occupation, the beneficiary's qualifications will not be addressed 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.

COEXM:RHWAUGH:305-3217

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