



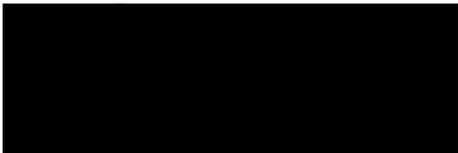
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U.S. Department of Justice

Immigration and Naturalization Service

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OFFICE OF ADMINISTRATIVE APPEALS
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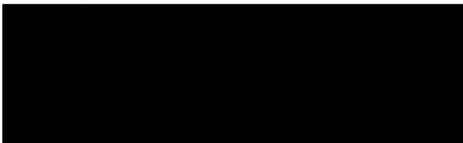
DATE: DEC 18 2002

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:



PUBLIC COPY

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, 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 bakery with 62 employees and a gross annual income of \$2,600,000. It seeks to employ the beneficiary as its Transportation Manager for a period of three years.

The director denied the petition because he found that the petitioner failed to demonstrate that the proffered position is a specialty occupation. On appeal, the petitioner asserted that the proffered position is, in fact, a 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 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 the duties of the proffered position as

Plan(s), direct(s) and coordinate(s) transportation.
Develops procedures for transportation of product from

bakery to customers. Determines most efficient and economical routing. Directs distribution scheduling.

The I-129W H1-B data collection form stated that the beneficiary has a bachelor's degree in "management."

On June 26, 2001, the director requested the petitioner to submit additional evidence pertinent to the proffered position. The director requested that the petitioner provide a complete, detailed description of the duties to be performed by the beneficiary. The director also noted that the beneficiary had completed few or no college courses or training programs related to the proffered position, and requested that the petitioner provide a description of how the beneficiary's course work or training correlates to the requirements of the position.

In response, the petitioner submitted letters from its President and from its General Manager. The authors of those letters stated that the proffered position requires a college degree. They further state that the current General Manager was the most recent person to hold the position of Transportation Manager, that he has a degree in business, and that his promotion to General Manager necessitates hiring a new Transportation Manager. Still further, the authors stated that all of the five of the company's current managers hold degrees.

In addition, those authors described the duties of the proffered position. They state that the Transportation Manager oversees 30 employees and 8 vehicles, and is responsible for those employees' daily deliveries. The president stated that "[t]he Transportation Manager is responsible for scheduling, routing, customer satisfaction, hiring, firing, training, discipline, driver training, cash management of fuel purchases, and oversee(ing) vehicle maintenance and repair."

The petitioner also submitted the applicant's transcript from Thracian University in Bulgaria, and an Educational Evaluation Report from Global Education Group, Inc., of Miami Beach, Florida. The transcript indicates that the applicant studied farm management at Thracian University and is a qualified farm manager. The Educational Evaluation Report states that this is the equivalent of a bachelor of science in farm management awarded by a regionally accredited university in the United States.

Finally, the petitioner submitted the applicant's resume, which indicated that the applicant owned and operated three retail stores from 1991 to 1994 and since then worked as a Purchasing Manager for SBS Ltd.

The director denied the petition on the basis that the petitioner did not establish that the proffered position qualifies as a specialty occupation.

On appeal, counsel stated,

Petitioner met burden of proof for the benefit sought in their petition. Denial of the petition is not supported by substantial evidence. Petitioner proved that they require a person with bachelor's degree for this position.

Counsel submits no further information, argument, or documentation on appeal.

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.

Counsel's contention that the proffered position is a specialty occupation is unconvincing. 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. The position of Transportation Manager is not covered in detail in the

Handbook. However, in the 2002 - 2003 edition of the Handbook at page 595, the DOL states that, for Transportation, Storage and Distribution Managers, the most significant form of training is work experience in a related occupation. The Handbook offers no support for the proposition that the proffered position requires a bachelor's degree.

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 Transportation Manager 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 Transportation Managers 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 stated that all five of its current managers possess degrees. Nothing in the record indicates that the duties of the four other managerial positions are comparable to the Transportation Manager position. Furthermore, there is no evidence that the bachelor's degrees of the other managers are in the same specific specialty.

The petitioner also stated that the most recent person to hold the proffered position, who was promoted to General Manager, has a degree in business. The mere fact that the person who previously held the position has a degree does not establish that it is a requirement for appointment to the job. Even if the petitioner routinely requires its Transportation Manager to possess a degree,

the petitioner has not shown that the degree must be in a specific specialty. The petitioner has not shown that a degree has been, and continues to be, a requirement in its hiring practices.

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).

The duties of the proffered position appear to be the duties expected of Transportation Managers generally. No evidence has been offered to demonstrate that the duties of this particular Transportation Manager position are especially specialized and complex compared to the duties of other Transportation Managers.

The petitioner has failed to demonstrate that the proffered position satisfies any of the four alternative criteria of 8 C.F.R. 214.2(h)(4)(iii)(A) and has failed, therefore, to demonstrate that the proffered position is a specialty occupation.

Beyond the decision of the director, even if the petitioner had demonstrated that the proffered position was a specialty occupation the petition could not be approved because the beneficiary's education, training, and experience are not equivalent to a bachelor's degree in business administration. The petitioner's education qualifies him for a position that requires a degree in farm management. However, as the petition is being dismissed on another ground, the issue will not be discussed 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.