



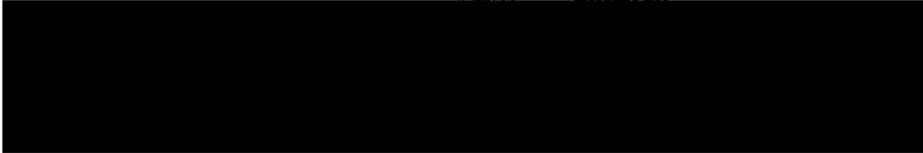
DA

U.S. Department of Justice

Immigration and Naturalization Service

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OFFICE OF ADMINISTRATIVE APPEALS  
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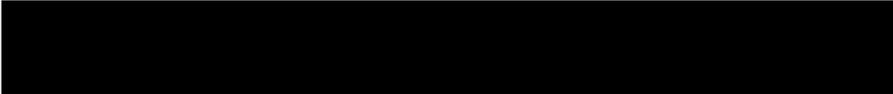


File: LIN-01-046-50251

Office: Nebraska Service Center

Date: DEC 27 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 U.S.C. 1101(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 that originally decided your case. Any further inquiry must be made to that office.

FOR THE ASSOCIATE COMMISSIONER,  
EXAMINATIONS

Robert P. Wiemann, 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 The decision of the director will be withdrawn and the petition will be remanded for further consideration.

The petitioner is a professional hockey team with 30 employees and a gross annual income of \$1.8 million. It seeks to employ the beneficiary as a general 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.

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.

The director denied the petition because the petitioner had not demonstrated that a baccalaureate degree in a specific specialty is required for the proffered position. On appeal, counsel states, in part, that the beneficiary currently holds H-1B status based on his position as an assistant general manager of a minor league pro hockey club. Counsel further states that the Service has routinely approved cases submitted for general managers and assistant general managers for the same hockey league over the last four hockey seasons. Counsel also states that the proffered position, which controls all aspects of a multimillion dollar organization, requires specialized knowledge.

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.

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 I-129 petition, the petitioner described the duties of the offered position as follows:

In this position, [the beneficiary] will manage the daily operations of the organization, overseeing and coordinating the work of other senior managers and support staff. He will develop and implement goals and policies of our club, devising strategies for improving the organization's efficiency in attaining goals. He will review financial reports and personnel reports and make recommendations. He will make decisions governing hiring, firing, and promotion. Due to his particular expertise, he will oversee the development and implementation of a strategic plan for corporate marketing, identifying and negotiating new corporate sponsorship accounts in the area. [The beneficiary] will oversee the development and promotion of a good organizational image through advertising, and promotional and public relations procedures.

The proffered position is similar to that of a general manager/top executive. A review of the Department of Labor's Occupational Outlook Handbook, 2002-2003 edition, at page 87, finds that the formal education and experience of top executives varies as widely as the nature of their responsibilities. Many top executives have a bachelor's or higher degree in business administration or liberal arts.

It is noted that not all general manager/top executives positions may be considered specialty occupations. Each position must be evaluated based upon the nature and complexity of the actual duties. In this instance, the duties are of such complexity as to require a baccalaureate degree and employment experience in a specialized and related area. In view of the foregoing, it is concluded that the petitioner has demonstrated that the proffered position is a specialty occupation within the meaning of regulations.

The director has not determined whether the beneficiary qualifies to perform services in a specialty occupation. The record contains a copy of the beneficiary's bachelor of arts degree conferred by an institution in Canada. The record, however, does not contain a copy of the beneficiary's transcripts nor an evaluation of the beneficiary's credentials from a service which specializes in evaluating foreign educational credentials as required by 8 C.F.R. 214.2(h)(4)(iii)(D)(3).

Accordingly, the matter will be remanded to the director to make such a determination and to review all relevant issues. The director may request any additional evidence he deems necessary. The petitioner may also provide additional documentation within a reasonable period to be determined by the director. Upon receipt of all evidence and representations, the director will enter a new decision.

**ORDER:** The decision of the director is withdrawn. The matter is remanded to him for further action and consideration consistent with the above discussion and entry of a new decision which, if adverse to the petitioner, is to be certified to the Associate Commissioner for review.