

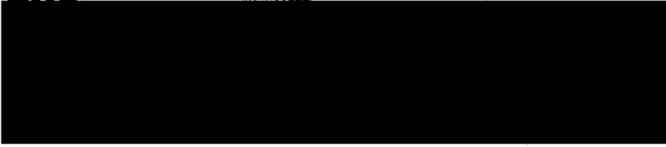


DA

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: SRC-00-123-53126 Office: Texas Service Center Date:

DEC 27 2008

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)

PUBLIC COPY

IN BEHALF OF PETITIONER:



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. A subsequent appeal was dismissed by the Associate Commissioner for Examinations. The matter is now before the Associate Commissioner for Examinations on a motion to reopen and reconsider. The motion will be granted. The previous decision of the Associate Commissioner will be affirmed.

The petitioner is a jewelry retail business with two employees and a gross annual income of \$378,975. It seeks to employ the beneficiary as a manager of computerization and marketing 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 had provided additional information in support of the appeal.

The Associate Commissioner dismissed the appeal reasoning 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, the petitioner states, in part, that the beneficiary would be a management information systems manager. The petitioner further states that the proposed duties are so complex that a baccalaureate or higher degree in business administration is required.

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 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.

The petitioner's statement on motion 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:

Will be responsible for computerizing all accounts, sales figures, inventory and analysis. Will also provide online information to the corporate office, do coordination, manage counter sales, do relationship marketing and develop business plans.

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 the petitioner's argument that the beneficiary is a "management information systems manager," an occupation that would normally require a bachelor's degree in a computer-related field. In its Occupational Outlook Handbook (Handbook), 2002-2003 edition, at page 35, the Department of Labor (DOL) describes the job of a computer and information systems manager, in part, as follows:

Computer and information systems managers direct the work of systems analysts, computer programmers, support specialists, and other computer-related workers. These managers plan and coordinate activities such as the installation and upgrading of hardware and software, programming and systems design, the development of computer networks, and the implementation of Internet and intranet sites. They are increasingly involved with the upkeep and maintenance of networks. They analyze the computer and information needs of their organization and determine the personnel and equipment requirements. They assign and review the work of their subordinates, and

stay abreast of the latest technology in order to purchase necessary equipment.

The record reflects that the petitioner, which is in the jewelry retail business, employs two persons and has a gross annual income of \$378,975. The business in which the beneficiary is to be employed does not require the services of a computer and information systems manager who directs the work of systems analysts, computer programmers, support specialists, and other computer-related workers, in addition to assigning and reviewing the work of his subordinates.

The duties that the petitioner endeavors to have the beneficiary perform are primarily the duties of a marketing manager with computer skills. A review of the DOL's Handbook, at page 28, finds no requirement of a baccalaureate or higher degree in a specific specialty 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.

In its Handbook, at page 168, the DOL also states, in part, as follows:

Employers using computers for scientific or engineering applications usually prefer college graduates [computer programmers] who have degrees in computer or information science, mathematics, engineering, or the physical sciences . . . Employers who use computers for business applications prefer to hire people who have had college courses in management information systems (MIS) and business and who possess strong programming skills.

In view of the foregoing, the petitioner has not shown that a bachelor's degree or its equivalent in a specific specialty is required for the position being offered to the beneficiary.

Second, the petitioner has not shown that it has, in the past, required the services of individuals with baccalaureate or higher degrees in a specialized area such as business administration, for the offered position. Third, although the record contains various job advertisements, 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.

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 decision of the Associate Commissioner dated September 4, 2001, is affirmed.