



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: EAC-01-221-53083 Office: Vermont Service Center

Date: DEC 27 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:



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, Vermont Service Center, and is now before the Associate Commissioner for Examinations on appeal. The appeal will be dismissed.

The petitioner is a business engaged in the design, manufacture, and sales of European-Turkish sportswear. The parent company has 2000 employees world-wide; the American branch has 10 employees and a gross annual income of \$11,032,977. The petitioner seeks to employ the beneficiary as a production manager for a period of three years. The director determined the petitioner had not established that the proffered position was a specialty occupation.

On appeal, counsel submits a brief and additional 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 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 director determined the petitioner had not shown that the duties of the proffered position were so specialized or complex as to require a baccalaureate degree in a specific specialty or that the petitioner required a baccalaureate degree in a specific specialty for the proffered position.

On appeal, counsel asserts that the duties of the proffered position are so specialized and complex that a baccalaureate degree in a specific specialty is required and also that the petitioner's

other production managers all have a bachelor's degree in economics or a technical field.

Counsel's assertions on appeal are 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:

1. Plan, organize, direct, control, and coordinate the activities of buyers, purchasing managers, and related workers involved in purchasing materials, products, and services;
2. Shall direct production capacity of plant in coordination with [s]ale in the United States - both actual sales and projected;
3. Shall work with plant managers and warehouse supervisors and sales staff to determine projected production costs and liability[.]

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 counsel's argument that the proffered position of production manager would normally require a baccalaureate degree in a specific specialty. The proffered position appears to be that of an industrial production manager as that job is described by the Department of Labor (DOL) in its Occupational Outlook Handbook (Handbook), 2002-2003 edition. The Handbook describes the duties of industrial production managers, in pertinent part, at pages 64-65 as follows:

Although their duties vary from plant to plant, industrial production managers share many of the same major responsibilities. These responsibilities include production scheduling, staffing, procurement and maintenance of equipment, quality control, inventory control, and the coordination of production activities with those of other departments.

The primary mission of industrial production managers is planning the production schedule within budgetary limitations and time constraints. . . .

Industrial production managers must also monitor product standards. When quality drops below the established standard, they must improve the product. . . .

Because the work of many departments is interrelated, managers work closely with heads of other departments such as sales, procurement, and logistics to plan and implement company goals, policies, and procedures. For example, the production manager works with the procurement department to ensure that plant inventories are maintained at their optimal level. . . .

In many plants, one production manager is responsible for all aspects of production.

A review of the DOL's Handbook at page 65 finds that because of the diversity of manufacturing operations and job requirements, no standard preparation exists for this occupation. Although a college degree is required, degrees in business, engineering, as well as liberal arts fields appear welcome. Thus, the petitioner has not shown that a bachelor's degree in a specific specialty or its equivalent is required for the position being offered to the beneficiary.

The petitioner has not submitted any evidence to show that the degree requirement is common to the industry in parallel positions among similar organizations.

Although the petitioner asserts that it is the company's standard practice to hire only persons with a minimum of a four-year college

degree, the record does not contain any evidence to show that the petitioner requires a baccalaureate degree in a specific specialty as part of the hiring process. Furthermore, the petitioner has not provided sufficient evidence to corroborate its claim that its other production managers and plant managers all have a bachelor's degree in economics or a technical field. Thus, the petitioner has not shown that it requires a baccalaureate degree in a specific specialty for the proffered position.

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 in a specific specialty. The duties of this position do not appear to be any more specialized or complex than those normally required of industrial plant managers. The DOL, which is an authoritative source for educational requirements for certain occupations, does not indicate that a bachelor's degree in a specific specialty is the minimum requirement for employment as a production manager.

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.