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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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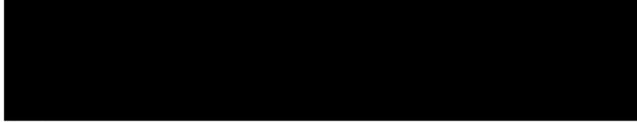
File: EAC 00 174 51279

Office: VERMONT SERVICE CENTER

Date:

10 4 1997

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 which 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, Vermont Service Center, 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 The decision of the director will be withdrawn and the petition will be remanded for further consideration.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 company that provides insurance and financial services with 45,000 employees and a gross annual income of \$1.34 billion. It seeks to continue the employment of the beneficiary as a marketing representative for an additional period of approximately 19 months. The director denied the petition finding that the petitioner had failed to establish that the position qualified as a specialty occupation.

On appeal, counsel for the petitioner submits a brief.

The regulation at 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.

Further, the regulation at 8 C.F.R. 214.2(h)(4)(iii)(A) that a petitioner could qualify the offered position as a specialty occupation if the petitioner could establish that:

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 petition is supported by a description of the duties of the position that indicates that the beneficiary will be required to analyze markets, identify profitable niches, identify the needs of the target niches and design marketing strategies to best reach the target customers. The petitioner asserts that the position requires a minimum of a bachelor's degree in Marketing or Business Administration.

The director found that the record did not clearly establish whether the position was for a sales representative or a market researcher. The director's decision focused on the portion of the beneficiary's income that he derived from sales commissions.

On appeal, counsel for the petitioner asserts that the beneficiary will be involved in performing marketing activities and that sales related activity accounts for only 30% of the beneficiary's time. Counsel further asserts that the percentage of the beneficiary's income based on sales commissions is not a factor in determining whether the position qualifies as a specialty occupation.

Upon review, counsel has submitted sufficient evidence establishing that the position qualifies as a specialty occupation. However, the record as presently constituted does not establish that the beneficiary is qualified to perform services in a specialty occupation.

The record contains a statement that the beneficiary holds a master's degree in Journalism from a university in the United States. The record also contains a statement that the beneficiary's education and experience has been evaluated to be equivalent to a bachelor's degree in Business Administration with a concentration in marketing.

The regulation at 8 C.F.R. 214.2(h)(4)(iii)(D) describes the methods that a petitioner can use to establish that the beneficiary has the equivalent of a bachelor's degree. The regulation at 8 C.F.R. 214.2(h)(4)(iii)(D)(3) clearly indicates that evaluations performed by credentials evaluators are limited solely to the beneficiary's educational achievements and are not to address the beneficiary's employment.

Further, the regulation at 8 C.F.R. 214.2(h)(4)(iii)(D)(5) allows the Service to determine whether an alien's education and experience are the equivalent of a bachelor's degree. The regulation provides that three years of specialized training and/or work experience must be demonstrated for each year of college-level training the alien lacks. The regulation also provides that it must be clearly demonstrated that the alien's training and/or work experience included the theoretical and practical application of specialized knowledge required by the specialty occupation; that the alien's experience was gained while

working with peers, supervisors, or subordinates who have a degree or its equivalent in the specialty occupation; and that the alien has recognition of expertise in the specialty. Finally, in order to establish the alien's experience and training is equivalent to academic training, the regulation provides that one of the following types of documentation must be submitted:

1. Recognition of expertise in the specialty occupation by at least two recognized authorities in the same specialty occupation;
2. Membership in a recognized foreign or United States association or society in the specialty occupation;
3. Published material by or about the alien in professional publications, trade journals, books, or major newspapers;
4. Licensure or registration to practice the specialty occupation in a foreign country; or
5. Achievements which a recognized authority has determined to be significant contributions to the field of the specialty occupation.

Since the record does not contain copies of the evaluation relating to the beneficiary's education and experience, a determination cannot be made that the evaluation comports with the Service's regulations. As such, a determination cannot be made that the beneficiary has a bachelor's or higher degree or its equivalent in an academic field related to the position of market researcher. Accordingly, the matter will be remanded to the director to make such a determination. The director may request any additional evidence he deems necessary. The petitioner may also provide additional documentation within a reasonable period of time to be determined by the director. Upon receipt of the 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.