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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: LIN 00 110 52399

Office: NEBRASKA SERVICE CENTER

Date: 7 FEB 2004

IN RE: Petitioner: TRANSFERNET USA/MEX, INC.
Beneficiary: HUGO LOYO

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.

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 nonimmigrant visa petition was denied by the Director, Nebraska Service Center, and the matter is now before the Associate Commissioner for Examinations on appeal. The appeal will be dismissed.

The petitioner is a firm involved in the wire transfer business with 11 employees and a gross annual income of \$600,000. It seeks to employ the beneficiary as president for a period of three years. The director denied the petition finding that the petitioner had failed to establish that the position offered to the beneficiary qualified as a specialty occupation.

On appeal, counsel submits a brief.

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.

Further, the regulation at 8 C.F.R. 214.2(h)(4)(iii)(A) provides that a petitioner can qualify the offered position as a specialty occupation if the petitioner can 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 responsible for negotiating agreements with the agencies that are used to sell the petitioner's services; for seeking financing arrangements; for compliance with federal laws; for developing and approving pricing; and for overseeing the organization. The petitioner claims that the position requires a bachelor's degree in finance, banking, accounting or a related business field. The petition is supported by an evaluation performed by a credentials evaluation service that indicates that the beneficiary has the equivalent of a bachelor's degree in Business Administration granted by an accredited university or college in the United States.

On appeal, counsel for the petitioner argues that the position requires at least a bachelor's degree in banking, finance, or related field. In support of the appeal, counsel has submitted another evaluation of the beneficiary's education as well as two letters asserting that the proffered position qualifies as a specialty occupation.

Counsel's argument is not persuasive. The record of proceeding does not establish that the position meets any of the four standards enumerated above and, as a result, has not established that the position is a specialty occupation.

The Department of Labor's (DOL) Occupational Outlook Handbook (Handbook), 2000-2001 edition indicates that there is no general requirement that managers possess a bachelor's degree in a specific academic specialty to perform the duties of the position. The Handbook indicates that individuals are selected for managerial positions on a number of factors including the individual's personality and ability to deal with people. The Handbook also notes that, where there is a degree requirement for a specific management position, employers will accept individuals with degrees from many fields of academic study. In short, the Handbook indicates that there is no specific degree requirement for entry into the vast majority of management positions. While the record contains statements from two individuals attesting to the fact that the position requires a bachelor's degree in business administration, these two statements do not overcome the findings of the Department of Labor.

In addition, the petitioner has not shown that the degree requirement is common to the industry in parallel positions among similar organizations. While the record contains copies of employment advertisements for manager positions for other companies, the advertisements do not establish that the companies are of the same size and scope as the petitioner.

The record does not establish that the petitioner has employed individuals with a specific type of degree or its equivalent for this position in the past. Finally, the record does not establish that the duties of the position are so complex and specialized

that knowledge required to perform the duties is usually associated with the attainment of baccalaureate degree.

The petitioner has also made reference to the Department of Labor's Dictionary of Occupational Titles (DOT), Fourth Edition, 1977 in support of the appeal. However, a reference in the DOT does not establish that an occupation is a specialty occupation. The DOT classification and its categorization of an occupation as "professional and kindred" are not directly related to membership in a profession or specialty occupation as defined in immigration law. In the DOT listing of occupations, any given subject area within the professions contains nonprofessional work, as well as work within the professions.

Further, counsel's reliance on the Department of Labor's Specific Vocational Preparation (SVP) scale in support of the appeal is misplaced. The SVP represents training that can be acquired in school, work, military, institutional, or vocational environment. It is not a gauge of education but of training and occupational preparation. It is not establish that a position qualifies as a specialty occupation. As a result, the director's decision will not be disturbed.

In closing, it is noted that the director also discussed the issue of whether the beneficiary is the sole stockholder of the petitioning entity. The director's discussion of this issue does not appear to be germane to the issue of whether the position qualifies as a specialty occupation.

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. Accordingly, the decision of the director will not be disturbed.

ORDER: The appeal is dismissed.