



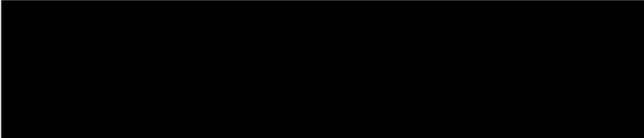
DA

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: EAC-01-017-50864

Office: Vermont Service Center

Date: 14 FEB 2004

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)

**PUBLIC COPY**

IN BEHALF OF PETITIONER:

SELF-REPRESENTED

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

The petitioner is a manufacturer and exporter of wastewater and vacuum systems with two employees and a gross annual income of \$500,000. It seeks to employ the beneficiary as a Latin America sales manager for a period of three years. The director determined the petitioner had not established that the proffered is a specialty occupation.

On appeal, the petitioner submits a brief.

Pursuant to 8 C.F.R. 214.2(h)(4)(ii), a "specialty occupation" is defined 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 that the petitioner had failed to establish that a bachelor's degree in a specific specialty is a minimum qualification for the proffered position. On appeal, the petitioner argues in part that it normally requires a bachelor's degree or its equivalent for the proffered position; that the degree requirement is common to the industry in parallel positions among similar organizations; and that the nature of the specific duties of the proffered position 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 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 proffered position as follows:

- \* Managing inquiries, quotations, and sales for Latin America[n] customers;

- \* Travel to Latin America to find, visit and support customers including technical training seminars and equipment start-ups;
- \* Create and develop Spanish operation and maintenance manual and catalogs;
- \* Contacting freight forwarders and customs clearance companies in Latin American [c]ountries;
- \* Calculating, sizing and quoting aeration and vacuum systems;
- \* Creation of online direct sales web site;
- \* Translation of [company] web sites to Spanish
- \* Placement of new Spanish web sites in Latin American search engines; and
- \* Finding Latin American magazines to advertise and develop ads with ad agents and placing ads.

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 these proceedings, the duties of the position are dispositive and not the job title. The offered position combines the duties of a general manager or executive with those of a marketing manager. In its Occupational Outlook Handbook (Handbook), 2000-2001 edition, at pages 50-51, the Department of Labor does not state that a baccalaureate or higher degree in a specialized area is required

for employment as a general manager or executive. Degrees in business and in liberal arts fields appear equally welcome. In addition, certain personal qualities and participation in company training programs are often considered as important as a specific formal academic background.

The Handbook at pages 25-26 also lists no requirement of a baccalaureate degree in a specialized area 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. Here again, certain personal qualities and participation in company training programs are often considered as significant as the beneficiary's specific educational background. It is concluded that the petitioner has not demonstrated that the offered position is a specialty occupation within the meaning of the regulations.

The petitioner is a company with two employees. The petitioner states that one employee, the president of the company, holds a bachelor's degree in international relations and the other, the director of the company, holds a joint degree in German language and history. However, the petitioner has not submitted any documentation to corroborate this statement. It is noted that the petitioner specifically states in its response to a Service request for additional evidence that, "[o]ur company outsources its engineering work . . . we prefer to hire business or liberal arts graduates who are highly intelligent, who have international experience, who are gifted in math and computers, and who speak multiple languages . . . [w]e believe that these qualities require a 4 year degree." Clearly, the petitioner prefers to hire individuals with a baccalaureate degree, but there is no requirement that the degree be in a specialized area.

The petitioner submits nine job advertisements from its competitors for various sales related positions. Two of the advertised positions, project engineer and application engineer, are not sales positions. The remaining jobs are different from the proffered position because a bachelor's degree in various engineering disciplines such as mechanical engineering and environmental engineering is required for those positions. Thus, the record does not contain sufficient evidence to show that the degree requirement is common to the industry in parallel positions.

Finally, the petitioner has not demonstrated that the specific duties of the proffered position are so specialized and complex that knowledge required to perform the duties is usually associated with the attainment of a baccalaureate or higher degree.

Furthermore, the petitioner has not established that the Spanish-speaking duties of the proffered position are of such complexity that the knowledge required to perform such duties is usually associated with the attainment of a baccalaureate or higher degree in the Spanish language.

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.