



U.S. Department of Justice

Immigration and Naturalization Service

Some information has been deleted to protect identity; unauthorized disclosure of personal privacy

OFFICE OF ADMINISTRATIVE APPEALS
425 Eye Street N.W.
ULLB, 3rd Floor
Washington, D.C. 20536



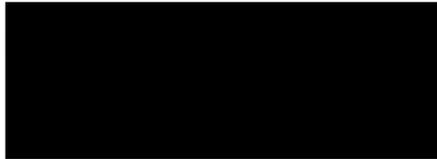
File: LIN 00 237 55017 Office: Nebraska Service Center Date: 07 JAN 2002

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.

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
Robert P. Wiemann, Director
Administrative Appeals Office

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

The petitioner is a worldwide wholesale distributor of tools, equipment and supplies for the tire service and automotive underbody repair industry. It seeks to employ the beneficiary as a "Far East Territory Sales Manager" for a period of three years. The director determined the petitioner had not established that the job offered qualifies as a specialty occupation.

On appeal, counsel argues that the offered position is a specialty occupation and the beneficiary is qualified to perform the duties of a specialty occupation.

Section 101(a)(15)(H)(i)(b) of the Immigration and Nationality Act (the Act), 8 U.S.C. 1101(a)(15)(H)(i)(b), provides in part for nonimmigrant classification to qualified aliens who are coming temporarily to the United States to perform services in a specialty occupation. Section 214(i)(1) of the Act, 8 U.S.C. 1184(i)(1), defines a "specialty occupation" as an occupation that requires theoretical and practical application of a body of highly specialized knowledge, and 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.

Pursuant to section 214(i)(2) of the Act, 8 U.S.C. 1184(i)(2), to qualify as an alien coming to perform services in a specialty occupation the beneficiary must hold full state licensure to practice in the occupation, if such licensure is required to practice in the occupation. In addition, the beneficiary must have completed the degree required for the occupation, or have experience in the specialty equivalent to the completion of such degree and recognition of expertise in the specialty through progressively responsible positions relating to the specialty.

Pursuant to 8 C.F.R. 214.2(h)(4)(iii)(C), to qualify to perform services in a specialty occupation, the alien must meet one of the following criteria:

1. Hold a United States baccalaureate or higher degree required by the specialty occupation from an accredited college or university;
2. Hold a foreign degree determined to be equivalent to a United States baccalaureate or higher degree required by the specialty occupation from an accredited college or university;

3. Hold an unrestricted State license, registration, or certification which authorizes him or her to fully practice the specialty occupation and be immediately engaged in that specialty in the state of intended employment; or

4. Have education, specialized training, and/or progressively responsible experience that is equivalent to completion of a United States baccalaureate or higher degree in the specialty occupation and have recognition of expertise in the specialty through progressively responsible positions directly related to the specialty.

The beneficiary attained a Master of Business Administration degree from The University of Akron in 1999 in Ohio.

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.

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 duties of the offered position were listed as:

1. Compiles lists of prospective customers for use as sales leads, based on information from newspapers, business directories, trade journals, and other sources to develop key accounts.
2. Travels throughout assigned Far East Territory to call on regular and prospective customers to solicit orders, or talks with customers by phone and other electronic means, and performs all critical correspondence with customers and prospects.
3. Displays or demonstrates product, using samples or catalog, and educates accounts by emphasizing salable features.
4. Prepares professional quotations, proposals, and marketing packages with accurate interpretation.
5. Quotes prices and credit terms and prepares sales contracts for orders obtained.
6. Estimates date of delivery to customer, based on knowledge of own firm's production and delivery schedules.
7. Meets quotas and increases sales in geographical and product assigned areas.
8. Prepares detailed reports of business transactions, foreign call reports, and keeps all administrative territory tasks and expense accounts current.
9. Uses PC and computer devices to process orders and do various administrative work including export documentation, freight forwarding, compliance with local regulation & requirements, order entry, shipping, billing and expediting.
10. Coordinates activities with distribution, warehouse, purchasing, and other management staff members vital to serving distant customers.
11. Develops cordial relationships with suppliers from specific markets and sources.

Counsel submits a resume for another employee of the company and indicates that this person is the only other employee of the company filling a similar position. Counsel states that this employee holds a master's and bachelor's degree. However, the

submission of an individual's resume is not sufficient evidence to support the petitioner's assertion that a bachelor's degree or its equivalent is the company's consistent requirement for its sales manager positions.

Counsel has provided letters from the petitioner and the Advisory Board Director of the Institute for Global Business of the College of Business Administration of The University of Akron as evidence to show that the nature of the duties of Far East Territory Sales Manager are so specialized and complex that knowledge required to perform the duties is usually associated with attainment of a baccalaureate or higher degree. Two letters are insufficient to establish an industry standard. In addition, the writers have not provided sufficient evidence in support of their assertions.

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 and sales representative. The Handbook, 2000-2001 edition, at pages 50-51 finds no requirement of a baccalaureate or higher degree in a specialized area 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 finds 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 regulations.

The Handbook at page 275 also finds no requirement of a baccalaureate or higher degree in a specialized area for employment as a sales representative. The Handbook indicates that although employers place an emphasis on a strong educational background, many individuals with previous sales experience who do not have a college degree still enter the occupation. In view of the foregoing, 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.