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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: LIN-01-055-50087 Office: Nebraska Service Center

Date: JUL 18 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, Director
Administrative Appeals Office

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

The petitioner imports and distributes pigments and dyes. It has five employees and an unspecified gross annual income. It seeks to employ the beneficiary as an import manager for a period of three years. The director determined the petitioner had not established that the proffered position is a specialty occupation.

On appeal, counsel submits a brief.

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 denied the petition because the duties described by the petitioner did not appear to require a degree in any particular field. The director further found that the true nature of the petitioner's business was not clear. On appeal, counsel states, in part, that the proffered position is that of a chemical engineer manager. Counsel further states that the technical nature of the proffered position demonstrates the necessity of a bachelor of science degree in chemical engineering.

Counsel's statement on appeal is 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:

. . . supervise and manage the importation of our products from overseas, particularly from the Asian Market . . . coordinate and direct the activities of our import/export department in areas such as shipping, delivery, product selection, quality standards, pricing and international trade compliance.

. . . sourcing reliable suppliers and working with suppliers to develop products.

. . . planning and directing the flow of products from overseas to our U.S. facility . . . research and compare pricing among potential suppliers so that only the highest quality product is imported at the most cost-effective price . . . develop our business relationships in this market and will be our liaison for our suppliers and our customers . . . facilitate all aspects of the importation of products from this region and will act as intermediary between our domestic and foreign suppliers, customers and employees.

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 would normally require a bachelor's degree in chemical engineering or a related field. In its Occupational Outlook Handbook (Handbook), 2002-2003 edition, the Department of Labor (DOL) describes the job of a chemical engineer as follows:

Chemical engineers apply the principles of chemistry and engineering to solve problems involving the production or use of chemicals, building a bridge between science and manufacturing. They design equipment and develop processes for large-scale chemical manufacturing, plan and test methods of manufacturing the products and treating the by-products, and supervise production. Chemical engineers also work in a variety of

manufacturing industries other than chemical manufacturing, such as those producing electronics, photographic equipment, clothing, pulp and paper. They also work in the healthcare, biotechnology, and business services industries.

The record reflects that the petitioner, which distributes and imports pigments and dyes, employs five persons and has an unspecified gross annual income. The business in which the beneficiary is to be employed does not appear to require the services of a chemical engineer who designs equipment and develops processes for large-scale chemical manufacturing.

The proffered position appears to primarily combine the duties of a sales manager with those of a marketing manager. In contrast to the description of a chemical engineer, in its Handbook, the DOL describes the positions of a sales manager and a marketing manager, in part, as follows:

Sales managers direct the firm's sales program . . . Sales managers maintain contact with dealers and distributors. They analyze sales statistics gathered by their staffs to determine sales potential and inventory requirements and monitor the preferences of customers. Such information is vital to develop products and maximize profits.

Marketing managers develop the firm's detailed marketing strategy. With the help of subordinates, including *product development managers* and *market research managers*, they determine the demand for products and services offered by the firm and its competitors. In addition, they identify potential markets . . . Marketing managers develop pricing strategy with an eye towards maximizing the firm's share of the market and its profits while ensuring that the firm's customers are satisfied. In collaboration with sales, product development, and other managers, they monitor trends that indicate the need for new products and services and oversee product development.

The types of duties the petitioner ascribes to the beneficiary fall within the scope of a sales manager position and a marketing manager position. For example, the petitioner states that the beneficiary will "research and compare pricing among potential suppliers so that only the highest quality product is imported at the most cost-effective price" and "develop our business relationships in this market and will be our liaison for our suppliers and our customers..." Such duties are not duties normally associated with a chemical engineer/chemical engineer manager. Thus, the petitioner has not shown that a bachelor's degree or its equivalent is required for the position being offered to the beneficiary.

Second, the petitioner has not shown that it has, in the past, required the services of individuals with baccalaureate or higher degrees in a specialized area such as chemical engineering, for the offered position. Third, the petitioner did not present any documentary evidence that businesses similar to the petitioner in their type of operations, number of employees, and amount of gross annual income, require the services of individuals in parallel positions. 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.

The petitioner has failed to establish that any of the four factors enumerated above are present in this proceeding. A review of the Handbook finds no requirement of a baccalaureate or higher degree in a specialized area for employment in sales and marketing managerial jobs. A wide range of educational backgrounds are suitable, but many employers prefer those with experience in related occupations plus a broad liberal arts background. In addition, certain personal qualities and participation in in-house training programs are often considered as important as a specific formal academic background. Thus, the petitioner has not shown that a bachelor's degree or its equivalent is required for the position being offered to the beneficiary. 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.