



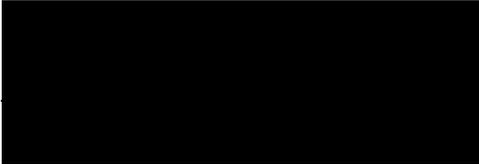
DA

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: LIN-00-058-53644

Office: Nebraska Service Center

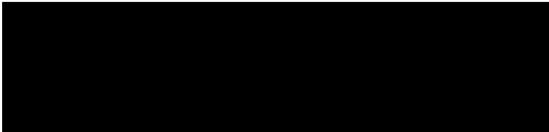
Date: JUL 18 2002

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, Nebraska Service Center. A subsequent appeal was dismissed by the Associate Commissioner for Examinations. The matter is now before the Associate Commissioner for Examinations on motion to reopen and reconsider. The motion will be granted. The previous decision of the Associate Commissioner will be affirmed.

The petitioner is a software development business with 85 employees and a gross annual income of \$10 million. It seeks to employ the beneficiary as a sales coordinator 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 had provided additional information.

The Associate Commissioner dismissed the appeal reasoning that the proffered position appeared to combine the duties of a general manager or executive with those of a marketing manager and a manufacturer's sales representative, and did not require a baccalaureate degree in a specialized area.

On motion, counsel states, in part, that the Service's analysis of the instant petition is incorrect as the proffered position is that of a sales coordinator rather than a general manager, a marketing manager, or a manufacturer's sales representative. Counsel submits job advertisements to demonstrate that a sales coordinator position requires a baccalaureate degree. Counsel further states that the Service has previously approved similar petitions.

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.

Counsel's statement on motion 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:

Provide knowledgeable information about the software's features and function. Demo the software through remote communications, process orders from dealers, produce the software CD with the correct software and manuals, and follow-up on questions from customers or dealers. Use of Microsoft NT, Windows 98 and data base. Translate materials from English to Spanish & Russian. Communicate with foreign markets in Spanish & Russian.

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 Spanish with a minor in business administration. The proffered position is similar to that of a sales representative, wholesale and manufacturing. In its Occupational Outlook Handbook (Handbook), 2002-2003 edition, the Department of Labor describes the job of a sales representative, wholesale and manufacturing, in part, as follows:

Regardless of the type of product they sell, their primary duties are to interest wholesale and retail buyers and purchasing agents in their merchandise, and to address any of the client's questions or concerns. Sales representatives represent one or several manufacturers or wholesale distributors by selling one product or a complimentary line of products.

A review of the Handbook finds that most firms require a strong educational background and increasingly prefer or require a bachelor's degree as the job requirements have become more technical and analytical. Many employers, however, still hire individuals with previous sales experience who do not have a college degree. 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 Spanish with a minor in business administration, 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. The job advertisements with degree requirements submitted by counsel are noted. The majority of the such advertisements, however, do not indicate that a baccalaureate degree in a specialized area is required. 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.

It is also noted that the petitioner has not established that the beneficiary's duties as a translator are of such complexity that a baccalaureate degree in a specific specialty, as distinguished from familiarity with the English, Spanish, and Russian languages, or a less extensive education, is necessary for the successful completion of its duties.

It is additionally noted that although counsel submits information regarding H-1B approvals for similar businesses, he has provided no evidence that any of such approvals were for sales coordinator/representative positions.

The petitioner has failed to establish that any of the four factors enumerated above are present in this proceeding. Accordingly, it is concluded that the petitioner has not demonstrated that the offered position is a specialty occupation within the meaning of the regulations.

Beyond the decision of the director, the petitioner's labor condition application was certified on December 16, 1999, a date subsequent to December 13, 1999, the filing date of the visa petition. Regulations at 8 C.F.R. 214.2(h)(4)(i)(B)(1) provide that before filing a petition for H-1B classification in a specialty occupation, the petitioner shall obtain a certification from the Department of Labor that it has filed a labor condition

application. As this matter will be dismissed on the grounds discussed, this issue need not be examined further.

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 decision of the Associate Commissioner dated August 21, 2001, is affirmed.