

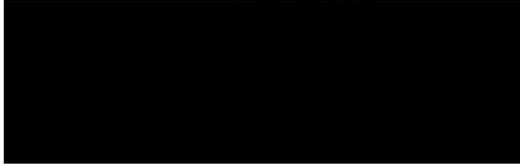


U.S. Department of Justice

Immigration and Naturalization Service

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



26 JUL 2002
Date:

File: EAC-01-004-53649 Office: Vermont Service Center

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 and subsequent motion to reopen and reconsider were denied by the director. The matter is now before the Associate Commissioner for Examinations on appeal. The appeal will be dismissed.

The petitioner is an export trade house with ten employees and a gross annual income of \$875,000. It seeks to employ the beneficiary as a procurement 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 be so complex as to require a baccalaureate degree. On appeal, counsel states, in part, that because the beneficiary will be dealing with engineering merchandise such as computer software, a degree in mechanical engineering is required. Counsel further states that the proposed duties are so complex that a baccalaureate degree in engineering is required.

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:

The beneficiary's goals will, simply put, be to obtain the highest quality engineering merchandise at the lowest possible costs for our organization. He will determine which commodities are best, chose [sic] the suppliers of the products, negotiate the lowest price and award contracts to ensure that the correct amounts of product

are received at the appropriate time. To do this, he will study sales records and inventory levels of current stock, identify foreign and domestic suppliers and keep abreast of changes affecting both the supply of an [sic] demand for products and [sic] materials for which he is responsible.

He will evaluate suppliers based on price, quality, service support, availability, reliability and selection. He will review catalogs, industry periodicals, directories, trade journals, and Internet sites. He will research the reputations and histories of suppliers. He will examine products, services and assess supplier's production and distribution capabilities as well as discuss other technical and business considerations that influence our purchasing decision. He will perform some of these duties at trade shows.

Specifically, he will acquire product material, intermediate goods, machines, supplies, services and other materials used in the production of our final products. He may negotiate and supervise supply contracts. He will obtain items ranging from raw materials, fabricated parts, machinery and office supplies to construction services and other items. He will have to have a working technical a [sic] knowledge of the goods for our business. He will handle complex and critical purchases and may supervise a group of other purchasers.

He will prepare instructions regarding purchasing systems and procedures. He will prepare and issue purchase orders and change notices to purchasing agents. He will analyze market and delivery conditions to determine present and future material availability and prepare market analysis reports. He will review purchase order claims and contracts procedures and practices while studying work flow, sequence of operations and office arrangements for creating efficient internal procedures.

He will work closely with other employees when deciding on purchases and may participate in team buying. He will use computers to obtain instant and accurate product and price listings, track inventory levels, process routine orders, and help determine when to make purchases. He will also use computers to maintain lists of bidders and offers, record the history of supplier performance and issue purchase orders.

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 engineering or a related field. The proffered position appears to primarily combine the duties of a purchasing manager, buyer, and purchasing agent with those of a marketing manager. A review of the Department of Labor's Occupational Outlook Handbook (Handbook), 2002-2003 edition, finds no requirement of a baccalaureate or higher degree in a specialized area for employment as a purchasing manager, buyer, and purchasing agent. Educational requirements tend to vary according to the size of the organization. Large distributors and stores, especially those in wholesale and retail trade, prefer applicants who have completed a bachelor's degree program with a business emphasis. (Emphasis added.) (It is noted here that a baccalaureate degree appears to be a preference by large distributors and stores rather than a requirement. It is also noted that the petitioner has only ten employees.) Regardless of their academic preparation, new employees must learn the specifics of their employers' business. Training periods vary in length, with most lasting 1 to 5 years.

A further review of the Handbook 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 a bachelor's or master's degree in business administration with an emphasis on marketing, 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 significant as the beneficiary's specific educational 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.

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 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. 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.