



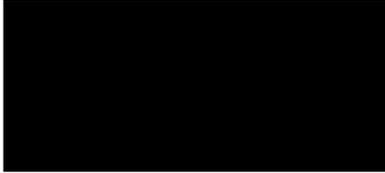
DA

U.S. Department of Justice

Immigration and Naturalization Service

REPEATEDLY TO BE DEPORTED
PREVENT QUALITY IMMIGRATION
INVASION OF PERSONS BY

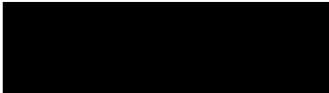
OFFICE OF ADMINISTRATIVE APPEALS
425 Eye Street N.W.
ULLB, 3rd Floor
Washington, D.C. 20536



File: LIN-00-012-51411 Office: Nebraska Service Center

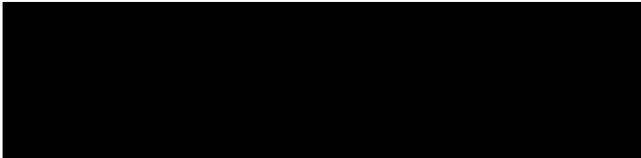
Date: MAY 14 2002

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 is a metal component supplier with one employee and no stated gross annual income. It seeks to employ the beneficiary as president and chief executive officer (CEO) 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 and documentation.

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 petitioner failed to establish that the offered position was a specialty occupation. On appeal, counsel argues that a bachelor's degree is the minimum requirement for employment in similar and parallel positions within the industry. Counsel asserts that the duties of the proffered position are so specialized and complex that the knowledge required to perform such duties is usually associated with the attainment of a baccalaureate or higher degree.

Counsel's statements on appeal are not persuasive. The Service does not rely solely on the title of a position in determining whether that position 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 a separate letter which accompanied the initial I-129 petition, the petitioner described the duties of the beneficiary in the offered position as follows:

...will direct all facets of the company's operations, to include marketing, sales, personnel, finance and, eventually, production. He will confer with the company's directors to establish its objectives, goals and policies. Specifically, [the beneficiary] will recruit, hire and manage sales and office personnel, and will

oversee the company's annual budget. He will also liase[sic] with top management at client companies in the U.S. to ascertain these clients' needs as far as quality and quantity. In addition, he will negotiate with U.S. companies to finish the raw steel products shipped from Korea, and work with those companies' engineering and production staffs to ensure that the finished product meets the standards of [REDACTED] customers. [The beneficiary] will also communicate with production staff at [REDACTED] in Korea in order to maintain the quality and quantity of raw steel products. Finally, [the beneficiary] will stay abreast of market conditions in the U.S., and work to broaden [REDACTED] customer base and increase volume with existing accounts.

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.

The Service does not agree with counsel's argument that the proffered position of president and CEO requires a minimum of a bachelor's degree or its equivalent. The proffered position appears to combine the duties of a general manager or executive 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 general manager or executive. Degrees in business and in liberal arts fields appear equally welcome. In addition, certain personal qualities and participation in in-house

training programs are often considered as important as a specific formal academic background.

Additionally, the Handbook 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 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.

The petitioner has failed to submit any evidence to show that it has, in the past, required the services of individuals with baccalaureate or higher degrees in a specialized area for the proffered position.

The petitioner submits several pages of job advertisements from various web-sites for similar positions currently being offered by various private companies. However, these advertisements reflect that these positions require at least a baccalaureate degree in a wide range of academic backgrounds rather than a bachelor's degree in a specialized and related area. Therefore, it cannot be concluded that the evidence demonstrates 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.

Counsel's assertion that the nature of the proposed duties is so specialized and complex that the knowledge required to perform such duties is usually associated with the attainment of a baccalaureate or higher degree is not persuasive. While the petitioner's corporate owner may itself be directly involved in the highly technical manufacture of metal products, the record contains no evidence that the duties of the proffered position include any participation in this manufacturing process. Instead, the duties of the offered job focus on the sale of refined and shaped steel and metal produced by the petitioner's corporate owner to clients engaged in various manufacturing and finishing processes in a wide range of industries.

As noted above, an analysis of the specific duties of the offered position in conjunction with the petitioner's business operations demonstrates that the proffered position combines the duties of a general manager or executive with those of a marketing manager. The Handbook does not provide any indication that a baccalaureate degree in a specialized area is required for employment as either

a general manager or marketing manager. Consequently, the petitioner has failed to establish 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 in a specific specialty.

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.