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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

[Redacted]

File: WAC-02-003-50926 Office: California Service Center

Date: **NOV - 8 2002**

IN RE: Petitioner: [Redacted]  
Beneficiary: [Redacted]

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:

[Redacted]

**PUBLIC COPY**

**INSTRUCTIONS:**

This is the decision in your case. All documents have been returned to the office that 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 that 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 that 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, California Service Center, and is now before the Associate Commissioner for Examinations on appeal. The appeal will be dismissed.

The petitioner is a manufacturer and distributor of diving and water related products. It has 6 employees and an gross annual income of \$120,000. 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.

Section 214(i)(1) of the Act, 8 U.S.C. 1184(i)(1), defines the term "specialty occupation" as an occupation that requires:

- (A) theoretical and practical application of a body of highly specialized knowledge, and
- (B) 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.

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 had not established that the proffered position requires a baccalaureate degree in a specific specialty.

On appeal, counsel asserts that the Department of Labor (DOL) has determined in its Dictionary of Occupational Titles (DOT) that the proffered position is a specialty occupation.

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] will be responsible for documentation and tracking of all our imported goods. She will coordinate and negotiate settlements between foreign and domestic shippers; plan and direct flow of air and surface traffic moving to overseas destinations; supervise workers engaged in receiving and shipping freight, documentation, way billing, assessing charges, and collecting fees for shipments; negotiate with domestic customers; resolve problems with customs officials to effect release of incoming freight and resolve custom delays; prepare reports of transactions to facilitate billing of shippers and foreign carriers. She will consult with clients regarding packing procedures conforming with shipping specifications to prevent damage, delay, or penalties; confer with shipping brokers concerning export and import papers, packing and marking procedures; file claim with insurance companies for losses, damages, etc. She will direct and coordinate program insurance companies for losses, damages, etc. She will direct and coordinate program activities designed to provide subcontractors, management, and customers to ensure effective and economical support concerned for manufacturing or servicing of products; analyze contractual commitments, customer specifications, design changes, and other data to plan and develop program activities from conceptual stage through life cycle of product. She will perform special research studies to support functions, organize sales presentations with buyers, and attend outdoor fairs overseas.

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 DOL has determined in the DOT that the occupation of import manager is a specialty occupation. A reference in the DOL's DOT, Fourth Edition, 1977, standing alone, is not enough to establish that an occupation is a specialty occupation. The DOT classification system and its categorization of an occupation as "professional and kindred" are not directly related to membership in a profession or specialty occupation as defined in immigration law. In the DOT listing of occupations, any given subject area within the professions contains nonprofessional work, as well as work within the professions.

The latest edition of the DOT does not give information about the educational and other requirements for the different occupations. This type of information is currently furnished by the DOL in the various editions of the DOL's Occupational Outlook Handbook (Handbook). The latter publication is given considerable weight (certainly much more than the DOT) in determining whether an occupation is within the professions. This is because it provides specific and detailed information regarding the educational and other requirements for occupations.

The proffered position appears to combine the duties of a purchasing manager with those of a marketing manager. A review of the Handbook 2002-2003 edition, at page 82 finds no requirement of a baccalaureate degree in a specific specialty for employment as a purchasing manager. Educational requirements tend to vary with the size of the organization. Large stores and distributors, especially those in wholesale and retail trade, prefer applicants who have completed a bachelor's degree program with a business emphasis. (It is noted here that a baccalaureate degree appears to be a preference by large distributors and stores rather than a requirement.) 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.

Additionally, a review of the Handbook at pages 26-29 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. Many employers prefer those with experience in related occupations plus a broad liberal arts background. A

bachelor's degree in sociology, psychology, literature, journalism, or philosophy, among other subjects, is also acceptable. Most marketing management positions are filled by promoting experienced staff or related technical or professional personnel. Thus, the petitioner has not shown that a bachelor's degree in a specific specialty or its equivalent is required for the position being offered to the beneficiary.

Second, the petitioner did not present any documentary evidence that the degree requirement is common to the industry in parallel positions among similar organizations.

Third, the petitioner has not shown that it has, in the past, required the services of individuals with baccalaureate or higher degrees in a specific specialty for the proffered position.

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 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.

Beyond the director's decision, it is noted that the record does not contain sufficient evidence to show that the beneficiary qualifies to perform services in a specialty occupation. The beneficiary holds an associate's diploma with concentration in the area of food and nutrition from The Hanyang Women's College in Korea. The credentials evaluator founds the beneficiary's foreign education equivalent to two years of academic studies leading to a bachelor's degree from an accredited institution of higher education in the United States. The beneficiary also has six years of employment experience as the assistant manager of the overseas sales parts department of a Korean company. The evaluator found the beneficiary's foreign education and work experience equivalent to a Bachelor of Business Administration degree from an accredited institution of higher education in the United States. However, the record does not contain any corroborating evidence to support the evaluator's conclusion such as an evaluation from an official who has authority to grant college-level credit for training and/or experience in the specialty at an accredited college or university which has a program for granting such credit based on an individual's training and/or work experience.

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.