



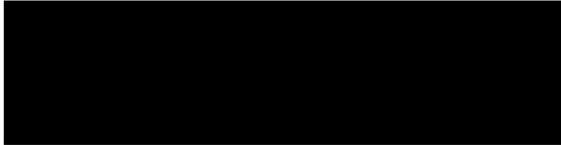
DR

U.S. Department of Justice

Immigration and Naturalization Service

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OFFICE OF ADMINISTRATIVE APPEALS
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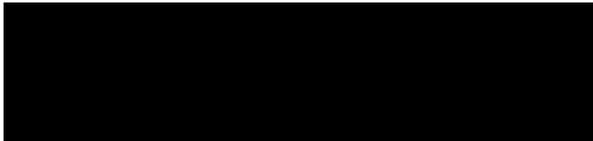
File: LIN-01-149-54295 Office: Nebraska Service Center

Date: OCT 10 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:



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, Director
Administrative Appeals Office

DISCUSSION: The nonimmigrant visa petition was denied by the Director, Nebraska Service Center, and is now before the Associate Commissioner for Examinations on appeal. The appeal will be sustained.

The petitioner is a wholesale travel business with 2,800 employees and an approximate gross annual income of \$1 billion. It seeks to extend its authorization to employ the beneficiary as an associate product 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 and additional evidence.

Section 101(a)(15)(H)(i)(b) of the Immigration and Nationality Act (the Act), 8 U.S.C. 1101(a)(15)(H)(i)(b), provides in part for nonimmigrant classification to qualified aliens who are coming temporarily to the United States to perform services in a specialty occupation. Section 214(i)(1) of the Act, 8 U.S.C. 1184(i)(1), defines a "specialty occupation" as an occupation that requires theoretical and practical application of a body of highly specialized knowledge, and 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.

The director determined that the proffered position combines the duties of a general manager and a marketing manager, two occupations that do not require a bachelor's degree in a specialized area for employment in the field.

On appeal, counsel asserts that a baccalaureate degree in marketing or a related field is the normal minimum requirement for entry into the occupation. Counsel further asserts that the petitioner normally requires a degree in marketing for the proffered position.

The term "specialty occupation" is defined at 8 C.F.R. 214.2(h)(4)(ii) 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.

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.

In the initial I-129 petition, the petitioner described the duties of the offered position as follows:

1. Identify sales trends to maximize profit potential. Analyze both sales and utilization reports and adjust inventory and pricing as deemed necessary.
2. Develop a pricing strategy for the product assigned that considers competitive threats, and is consistent with the company's hotel utilization goals and meets project profit goals.
3. Work with Product Manager to develop a long term forecast utilizing historical sales and arrival figures and identifying factors that will impact these projections.
4. Develop and implement promotional strategies. This responsibility entails developing newspaper ads, brochures and faxed ads. The Associate Product Manager must ensure that the collateral is error free and is consistent with the company's creative direction.

5. Develop and maintain relationships with airlines, hoteliers, and local representatives for the assigned product line.
6. Develop distribution strategies including preferred partnerships, consumer direct mail, Internet and other outlets for increasing distribution and sales.

The director found the petitioner's initial evidence deficient and requested that the petitioner submit additional evidence to show that the proffered position is a specialty occupation.

In response, the petitioner stated that it only hires associate product managers with a bachelor's degree in marketing or a related field. In support of this statement, the petitioner submitted a list of all its current associate product managers, their dates of hire, and their degree and major. A review of this list reveals that all 26 of the petitioner's associate product managers hold degrees in marketing, international business, communications, or a related field.

The petitioner also submitted a copy of its newspaper advertisement for the proffered position as well as two internet postings for the proffered position. All three of these ads state that the job of associate product manager requires a bachelor's degree in marketing or a related field. It is concluded that the petitioner has shown that it normally requires a bachelor's degree in a specialized area or its equivalent for the position being offered to the beneficiary. Thus, the petitioner has demonstrated that the proffered 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 sustained that burden.

ORDER: The appeal is sustained.