



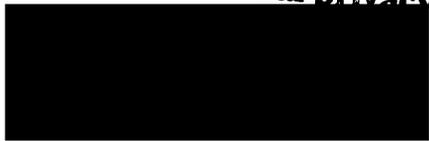
DA

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-01-177-50450 Office: Nebraska Service Center

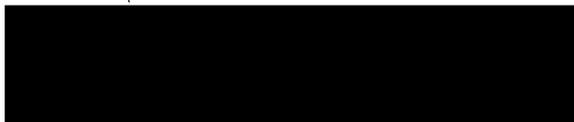
Date: OCT 18 2002

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 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 dismissed.

The petitioner is a business engaged in the sales and servicing of metal sawing machinery and blades. It has 15 employees and a gross annual income of \$4.5 million. The petitioner seeks to employ the beneficiary as a production manager for a period of three years. The director determined the petitioner had not established that the proffered position is a specialty occupation or that the beneficiary qualifies to perform services in 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 duties described by the petitioner did not appear to be so complex as to require a baccalaureate degree in a specific field of study and also because the petitioner had not shown that the beneficiary has the equivalent of a baccalaureate degree in a specific field of study.

On appeal, counsel asserts that the proffered position is a specialty occupation and that the petitioner has submitted

sufficient evidence to show that the beneficiary's work experience is equivalent to a bachelor's degree in business administration.

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 Service considers the specific duties of the offered position combined with the nature of the petitioning entity's business operations. In the initial I-129 petition, the petitioner described the duties of the offered position as follows:

Manage the production plant; planning, control, and improvement of work flow and efficiency of workshops; inventory control and planning; trouble shooting customer problems; manage the work force; establish, manage and control tool room.

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 a specific field of study. The proffered position appears to be that of an industrial production manager. A review of the Department of Labor's (DOL) Occupational Outlook Handbook, 2002-2003 edition, finds that because of the diversity of manufacturing operations and job requirements, no standard preparation exists for this occupation. Although a college degree is required, degrees in

business, engineering, as well as liberal arts fields appear welcome.

In response to a Service request for additional evidence, counsel submitted an advisory opinion letter by a credentials evaluator who states that the proffered position is a specialty occupation. The evaluator based his finding on the DOL's description of the duties of an industrial production manager at its *O*Net Occupational Profile* website. However, a reference in the Department of Labor's *O*Net Occupational Profile*, standing alone, is not enough to establish that an occupation is a specialty occupation. The *O*Net* classification system and its categorization of an occupation as "professional and kindred" are not directly related to membership in a profession or occupation as defined in immigration law. In the *O*Net* listing of occupations, any given subject area within the professions contains nonprofessional work, as well as work within the professions.

The DOL's *O*Net* classification system does not give information about the educational and other requirements for the different occupations. This type of information is currently furnished by the Department of Labor in the various editions of the Handbook. The latter publication is given considerable weight (certainly much more than *O*Net* 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. Thus, counsel has not shown that a bachelor's degree in a specific field of study is a minimum requirement for entry into the field.

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 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 with a bachelor's degree in a specialized area 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 second question to be determined is whether the beneficiary qualifies to perform services in a specialty occupation.

Pursuant to section 214(i)(2) of the Act, 8 U.S.C. 1184(i)(2), to qualify as an alien coming to perform services in a specialty occupation the beneficiary must hold full state licensure to practice in the occupation, if such licensure is required to practice in the occupation. In addition, the beneficiary must have completed the degree required for the occupation, or have experience in the specialty equivalent to the completion of such degree and recognition of expertise in the specialty through progressively responsible positions relating to the specialty.

Pursuant to 8 C.F.R. 214.2(h)(4)(iii)(C), to qualify to perform services in a specialty occupation, the alien must meet one of the following criteria:

1. Hold a United States baccalaureate or higher degree required by the specialty occupation from an accredited college or university;
2. Hold a foreign degree determined to be equivalent to a United States baccalaureate or higher degree required by the specialty occupation from an accredited college or university;
3. Hold an unrestricted State license, registration, or certification which authorizes him or her to fully practice the specialty occupation and be immediately engaged in that specialty in the state of intended employment; or
4. Have education, specialized training, and/or progressively responsible experience that is equivalent to completion of a United States baccalaureate or higher degree in the specialty occupation and have recognition of expertise in the specialty through progressively responsible positions directly related to the specialty.

The record shows that the beneficiary does have a baccalaureate or higher degree, nor has he completed any baccalaureate-level courses at an institution of higher education.

According to the beneficiary's resume, he has the following work experience:

1. He began as a partner in the tire retreading establishment started by his father, CTR Services Center. After half the business was sold in 1985, he continued to

be responsible for overall management of the site operation. He sold his interest in the company in 1994.

2. In 1994, the beneficiary started a new company, Eezimate Automation, a business that manufactured and sold a remote control gate operator. He entered into a working relationship with a security company, Xpanda, supplying specialty security equipment to that company. He subsequently sold half interest in his company to Xpanda and continued to manage the operation for them. He was promoted to national contract manager a year later and then to regional general manager six months after his initial promotion. He sold the remaining interest to Xpanda in 1998.
3. He then bought NMR Engineering, a company that manufactures cattle handling and feed equipment. The beneficiary was a partner and general manager of this company until he bought his partner out. Shortly thereafter, in March of 2000, he sold the company.
4. The beneficiary subsequently began working for Tyre 'N Tube. Initially, he was responsible for appointing contractors to alter the business operation to comply with franchise requirements. Since June 1, 2000, the beneficiary has managed a franchise tire shop.

The petitioner submitted the following letters to document the beneficiary's work experience:

1. Thed Koutsoudis, Director of Maxiprest, Ltd., states in his letter dated February 15, 2001, that [REDACTED] acquired 50% of [REDACTED] Ltd. (the company founded by the beneficiary's father) during August 1985, the remaining half being retained by the beneficiary. The beneficiary retained the responsibility for the management and control of the retreading facility and sales outlets in Pinetown, South Africa.
2. Pri Clarke, Deputy Managing Director of Xpanda Security (PTY) Ltd., states in his letter dated February 6, 2001, that the beneficiary was employed by the Xpanda group of companies from November 1995 to March 1998. Mr. Clarke further states that the beneficiary was initially a joint venture partner with Xpanda in an automation business manufacturing and installing driveway gates and automation. He was later appointed Branch Manager of the KwaZulu Natal Region. During his last year with the company, he was national contracts manager for the Contracts Division of the Xpanda Group. He left the employ of the company in March 1998.

3. D. S. Davie, an official of Supa Quick, states that the beneficiary worked as manager of the Howick branch of Supa Quick. He further states that the beneficiary was involved with the day to day management of the business, putting in systems, stock control, sales targets, staff discipline and motivation and the overall profitability of the branch.

The record contains two evaluations of the beneficiary's work experience. Carl W. Hartung, a vocational evaluator and consultant, found the beneficiary's 20 years of related work experience equivalent to a bachelor's degree in business administration with a major in marketing or entrepreneurship from an accredited university or college in the United States. Lois J. Hammond, Department Chair, Graduate Business and Management at American InterContinental University in Plantation, Florida, found the beneficiary's work experience equivalent to a Bachelor of Science in Business Administration degree from a regionally accredited institution in the United States. Both evaluations were based on the beneficiary's resume and the three letters listed above.

This Service uses an independent evaluation of a person's foreign credentials in terms of education in the United States as an advisory opinion only. Where an evaluation is not in accord with previous equivalencies or is in any way questionable, it may be rejected or given less weight. Matter of Sea, Inc., 19 I&N Dec. 817 (Comm. 1988).

In this case, Mr. Hartung has not stated, or provided any evidence to show, that he is 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. Additionally, it is noted that, according to Mr. Hartung's curriculum vitae, he has a bachelor's degree in secondary education and a master's degree in rehabilitation counseling. There is no indication in Mr. Hartung's curriculum vitae that he has academic credentials which would qualify him to evaluate the foreign education or work experience of individuals for equivalence to a U.S. bachelor's degree in business administration. In view of the foregoing, the evaluation by Mr. Hartung is accorded little weight.

Dr. Hammond states in a letter dated September 16, 2001, that she has the authority to grant transfer credits to applicants who studied at U.S. or foreign institutions of higher education. Dr. Hammond further states that she has the authority to grant credit waiver to applicants who have completed previous professional training and/or professional work experience. However, she has not

submitted any documentation from American InterContinental University corroborating her statements.

Dr. Hammond states that she based her evaluation on the beneficiary's resume, the letters from his former employers, and Mr. Hartung's evaluation. In her evaluation, Dr. Hammond summarizes the beneficiary's work experience and finds his work experience equivalent to a bachelor's degree in business administration. However, she does not explain how she arrived at this determination or the basis for making it (including copies of the relevant portions of any research materials used). In view of the foregoing, the evaluation by Dr. Hammond is accorded little weight.

The beneficiary is not a member of any organizations whose usual prerequisite for entry is a baccalaureate degree in a specialized area. The record contains no evidence that the beneficiary holds a state license, registration, or certification which authorizes him to practice a specialty occupation in a foreign country. The record does not contain any published material by or about the alien in professional publications, trade journals, or major newspapers. No evidence has been submitted to document any achievements which a recognized authority has determined to be significant contributions to the field of the specialty occupation.

In view of the foregoing, it is concluded that the petitioner has not demonstrated that the beneficiary qualifies to perform services in a specialty occupation.

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.