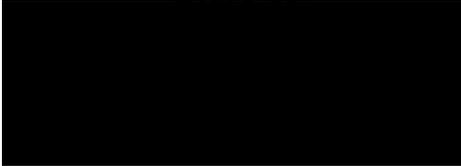


U.S. Department of Homeland Security

Citizenship and Immigration Services

*[Handwritten initials]*  
EXHIBIT COPY

ADMINISTRATIVE APPEALS OFFICE  
CIS, AAO, 20 Mass, 3/F  
425 I Street, N.W.  
Washington, DC 20536



FILE: WAC 02 258 52738

OFFICE: CALIFORNIA SERVICE CENTER

DATE:

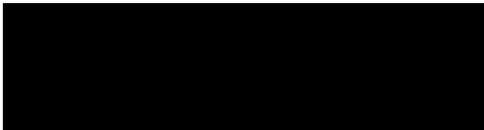
IN RE: Petitioner:  
Beneficiary:



DEC 03 2003

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:



Identifying data deleted to  
prevent clearly unwarranted  
invasion of personal privacy

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 Citizenship and Immigration Services (CIS) 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.

*[Signature]*  
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 Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed.

The petitioner is a corporation engaged in the manufacture, importation, and wholesale of general merchandise. It currently employs six persons and has a gross annual income of \$4,500,000. It seeks to employ the beneficiary as an operations manager for a period of three years. The director denied the petition because it failed to establish that the proffered position qualified as a specialty occupation.

On appeal, counsel submits a brief.

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 for the classification of qualified nonimmigrant 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 the term "specialty occupation" as an one 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.

The term "specialty occupation" is further 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.

On the Form I-129, the petitioner described the proffered position as "Operations Manager" and listed the proposed duties as follows:

[D]irect, coordinate activities of the entire operations department. Confers and recommends with executive management, formulation of administrative, operational

policies and procedures for manufacturing, importing, exporting and wholesaling of general merchandise including coordination of forwarding shipments of merchandise from [the] US to foreign countries.

Submissions with the Form I-129 included a letter from the petitioner's president which repeated the duties listed on the Form I-129 and added that the beneficiary would also "oversee preparation of export documents for US customs, shipping lines, and oversees [sic] government authorities," and "[d]evelop and implement cost reduction procedures and [be] responsible for supervision and training of employees and staff involved in administrative projects." The letter divided the proposed duties as follows:

The duty is 65% supervisory performing the above duties as delineated regarding the operation of the business, 10% on conference with management on administrative and operational policies and procedures, 20% on assistance to staff's need's and requirements, 15% on continuing "education" on attendance to the regulatory policies regarding manufacturing, importing and exporting and requirements including [the] latest changes in the implementation and procedures of same.

According to the letter, the petitioner is engaged in "manufacturing, exporting, and wholesaling of general merchandise such as consumer electronics, house wares, gifts, novelties, premiums, sports equipment and close-outs." Here the president also states that the petitioner manufactures its own products under six brands names. According to the letter, the petitioner has a corporate headquarters in Southern California and associate offices in China and Hong Kong. The customer base is in the United States, Mexico, and North and South America, but the petitioner is in the process of expanding the market for its products to "other Asian countries including [the] Philippines and India." The letter also names seven companies as its merchant vendors.

On review of the Form I-129 and associated documents, the director issued a request for additional evidence, stating, in part, that manager and executive positions are not normally considered specialty occupation caliber. With regard to the specialty occupation issue, the request specifically sought detailed descriptions of the work involved in the proposed duties, and an explanation of why the proffered position requires a person with a college degree in a particular field.

In response, counsel provided a letter and supporting documents. In the letter, counsel repeated the duty description provided in the letter that the petitioner's president had submitted with the Form I-129, and added that the operations manager would also be

responsible for (1) "the accounting department which involves daily accounts receivable, accounts payable, deposits, transfers and budget"; (2) "expansion of the business and staff, pricing of purchases and sales, deliveries, costs of goods and shipment, scheduling and customs regulations, communications, correspondence, and telephone calls, etc."; (3) supervision of "all department managers for sales-engineers, shipping and customs, and accounting"; and (4) work with management to resolve whatever problems might arise with the business from day to day. According to the letter, the proffered position would involve stress and a high level of responsibility, with the operations manager answering only to upper management.

This letter further stated that the position requires knowledge of administration, management, and marketing, and that the operation manager would be "supervising and leading key employees who as well have college degrees for their positions and [it] would be necessary [to] be on their level of education[-]wise and not less to gain their confidence, command respect and steer the leadership." The letter also referred the director to the details of the president's letter that was submitted with the Form I-129.

Counsel's letter enclosed, among other documents: a copy of the president's letter; from the Department of Labor's (DOL) *Dictionary of Occupational Titles (DOT)*, excerpts on various manager positions and, to indicate the type of employees the beneficiary would supervise, accountants and sales engineers; and, from an unidentified edition of DOL's *Occupational Outlook Handbook (Handbook)*, excerpts on general managers and top executives and, to provide an idea of the atmosphere of the business, manufacturers' and wholesale representatives.

In denying the petition, the director stated that the evidence of record did not establish that the proffered position qualified as a specialty occupation. The director noted several findings that he made in reaching this decision. He found that the proffered position was a combination of "Administration, Management, and Marketing" and that the *Handbook* indicates that a bachelor's degree is not a minimum requirement for entry into such a position. On counsel's assertion about supervision of subordinates with college degrees, the director commented that no documentation was presented to support it and that, in any event, supervision of degreed subordinates would not qualify a position as a specialty occupation unless the subordinates were working in a specialty occupation. The director also determined that the nature of the proposed duties did not qualify the proffered position as a specialty occupation.

On appeal, counsel asserts that the denial of the petition was erroneous, arbitrary, and capricious, because the petitioner had clearly established that the proffered position "requires a

baccalaureate degree due to the nature and complexity of the duties to be performed." Counsel asserts that the director based his decision on a mischaracterization of the operation manager position as being on the level of a customer services manager, teller supervisor, or shipping and receiving supervisor. Counsel maintains that the beneficiary "would be responsible for the operational activities of a company engaged in worldwide transactions," and that this would involve a "complexity of duties that elevate this managerial position to one requiring a member of a specialty occupation as required by 8 C.F.R. [§] 214 (h) (4) (iii) (A)."

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.

It is worth noting that "degree" as used in each of the four criteria at 8 C.F.R. § 241.2(h)(4)(iii)(A) means one in a "specific specialty," that is, in a discipline associated with a body of highly specialized knowledge. See section 214(i)(1) of the Act, 8 U.S.C. § 1184(i)(1), above.

Upon full review of the entire record, the AAO has determined that the petitioner has not established that the proffered position is a specialty occupation. As the following discussion will show, the evidence does not satisfy any of the qualifying criteria of 8 C.F.R. § 241.2(h)(4)(iii)(A), above.

**I. Baccalaureate or higher degree or its equivalent as the normal minimum requirement for entry into the particular position.**

**-8 C.F.R. § 214.2 (h) (4) (iii) (A) (1).**

As discussed below, the evidence does not satisfy this criterion's requirement that the proffered position be one that normally requires a bachelor's degree or equivalent in a specific specialty as a minimum for entry-level hire.

The AAO regularly consults the *Handbook* for authoritative information about the duties and the educational, training, and experience requirements of certain occupations. The *Handbook* does not support the proffered position as belonging to an occupation that requires a bachelor's degree or higher in a specific specialty as an entry-level credential.

The AAO concurs with counsel that the director's characterization of the proffered position is incorrect. However, the mistake is not material to the outcome of this proceeding.

The denial's *Handbook* quotation on "Office and Administrative, Managers, and Marketing [sic]," is confusing, but the AAO's research of the *Handbook* indicates that the director is presenting the position as a combination of these two occupations: office and administrative support worker managers (*Handbook*, 2002-2003 edition, pages 417 to 419) and marketing managers (*Handbook*, same edition, pages 26 to 28).

The proffered duties as described by the petitioner are qualitatively different from an office manager's main duty of coordinating office operations and administrative support.

The duties do have a marketing management aspect to support the director's referencing that occupation. However, the duties exceed that occupation's.

The proffered position appears to be an amalgam of duties from marketing-management and other occupations. However, the critical point is that this position is not identifiable as one that normally requires a bachelor's degree or higher in a specific specialty.

Page 28 of the 2002-2003 *Handbook* indicates that marketing management does not normally require a degree in a specific specialty. Other sections of that *Handbook* edition indicate the same for other occupations with which the proffered position shares duty aspects.

The AAO notes that the Form I-129 listing of duties includes a short, generalized phrase about directing and coordinating "activities of the entire operations department." Pages 64 to 67 of the *Handbook* indicate that the proffered position would share in the industrial production manager occupation to the extent that it would include responsibility for the petitioner's production-scheduling in line with time and budgetary constraints, production staffing, procurement and maintenance of

production equipment, quality control, inventory control, and coordination with other departments on production issues. However, the *Handbook* at page 65 indicates that there is no standard educational requirement for this occupation.

The petitioner's duty descriptions are broad enough also to include elements of the occupation of purchasing managers, buyers, and purchasing agents as discussed at *Handbook* pages 80 to 83, but this is another occupation for which there is no standard educational requirement.

The petitioner's reference to the DOT's SVP (Special Vocational Preparation) ratings of various management positions has no evidentiary value. The *DOT* is not a persuasive source of information regarding whether a particular job requires the attainment of a baccalaureate or higher degree in a specific specialty, or its equivalent, as a minimum for entry into the occupation. Accordingly, the AAO accords no weight to SVP ratings.

Counsel advocates the proffered position as a "general manager or top executive" occupation as discussed in a three-page excerpt he provided from an unidentified edition of the *Handbook*. However, the record does not support placing the petitioner's operational manager in that echelon of management. Both counsel's *Handbook* excerpt and pages 86 to 88 of the 2002-2003 edition (on "top executives") indicate that a hallmark of this management level is the authority to formulate policy and direct operations. In contrast, as indicated in the Form I-129's listing of duties and the president's letter, the beneficiary would not set policy or make strategic business decisions, although he would confer with and make recommendations to "executive management." In any event, both *Handbook* versions indicate that the "top executive" and "general manager" occupation does not have a standard educational requirement.

The critical point is that the evidence does not establish that the proffered position's duties and responsibilities can be identified with an occupation that requires a bachelor's degree or higher in a specific specialty. Therefore, the petitioner has not met the specialty occupation criterion of 8 C.F.R. § 214.2(h)(4)(iii)(A)(1).

**II. Degree requirement that is common to the industry in parallel positions among similar organizations, or, alternatively, a particular position so complex or unique that it can be performed only by an individual with a degree.**

**-8 C.F.R. § 214.2 (h) (4) (iii) (A) (2).**

A. Degree requirement common to the industry.

Factors often considered by Citizenship and Immigration Services when determining the industry standard include: whether the *Handbook* reports that the industry requires a degree; whether the industry's professional association has made a degree a minimum entry requirement; and whether letters or affidavits from firms or individuals in the industry attest that such firms "routinely employ and recruit only degreed individuals." *Shanti, Inc. v. Reno*, 36 F. Supp. 2d 1151, 1165 (D.Min. 1999) (quoting *Hird/Blaker Corp. v. Slattery*, 764 F. Supp. 872, 1102 (S.D.N.Y. 1991)).

As indicated in the discussion above, the *Handbook* does not reveal any industry-wide requirement for a degree in a specific specialty. Furthermore, the record contains no documentation in support of such an industry-wide requirement.

B. Degree necessitated by the complexity or uniqueness of the position.

The record fails to establish that the particular duties of the proffered position are either so complex or so unique that only an individual with a bachelor's degree in a specific specialty could perform them. As enumerated and described in the record, the duties appear neither especially complex nor unique.

For the reasons discussed above, the director was correct in not granting the petition under 8 C.F.R. § 214.2(h) (4) (iii) (A) (2).

**III. Degree or its equivalent as the employer's normal requirement for the position.**

**-8 C.F.R. § 214.2 (h) (4) (iii) (A) (3).**

The petitioner presented no evidence about any employment history for this position, and so there is no basis for finding for the petitioner on 8 C.F.R. § 214.2(h) (4) (iii) (A) (3).

**IV. Specific duties of a nature so specialized and complex as to require knowledge usually associated with a baccalaureate or higher degree.-8 C.F.R. § 14.2 (h) (4) (iii) (A) (4).**

To the extent that they are depicted in the record, the duties appear to involve a managerial mix of operational, supervisory, coordination, and staff-support duties. However, the evidence does not establish that any aspects of the position are, alone or in combination, so specialized and complex as to require the highly specialized knowledge associated with a bachelor's degree in any specific specialty.

Therefore, the evidence does not establish that the proffered position is a specialty occupation under 8 C.F.R. § 214.2(h) (4) (iii) (A) (4).

As related in the discussions above, the petitioner has failed to establish any one of the four specialty occupation criteria of 8 C.F.R. § 214.2 (h)(4)(iii)(A). Therefore, the decision of the director denying the petition should not be disturbed.

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. The petition is denied.