

PUBLIC COPY

D2

**identifying data deleted to
prevent clearly unwarranted
invasion of personal privacy**

U.S. Department of Homeland Security
Citizenship and Immigration Services

ADMINISTRATIVE APPEALS OFFICE
CIS, AAO, 20 MASS. 3/F
425 Eye Street N.W.
Washington, D.C. 20536



File: WAC 02 056 53553 Office: CALIFORNIA SERVICE CENTER

Date: DEC 17 2003

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)

ON BEHALF OF PETITIONER:



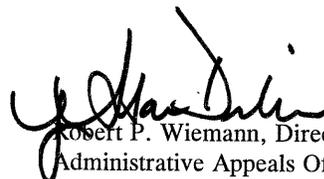
INSTRUCTIONS:

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 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 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.


Robert P. Wiemann, Director
Administrative Appeals Office

DISCUSSION: The nonimmigrant visa petition was denied by the Director, California Service Center. The matter is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed.

The petitioner sells commercial popcorn making equipment and related products to the general public. It has three employees, a gross annual income of \$160,000, and seeks to employ the beneficiary as a wholesale and retail trade manager for a period three years. The director determined that the proffered position did not qualify as a specialty occupation.

On appeal, counsel submits a brief stating that the proffered position qualifies as a specialty occupation, and that the beneficiary is qualified to perform the duties of a specialty occupation. Counsel further asserts that a minimum of a bachelor's degree, or its equivalent, is standard in the industry for marketing managers.

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 the classification of qualified nonimmigrant aliens who are coming temporarily to the United States to perform services in a specialty occupation.

The issue to be discussed in this proceeding is whether the position offered to the beneficiary qualifies as a specialty occupation.

Section 214(i)(1) of the Immigration and Nationality Act (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.

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 field 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.

When determining whether a particular job qualifies as a specialty occupation, the AAO considers the specific duties of the offered position, combined with the nature of the petitioning entity's business operations. The duties and requirements of the proffered position were detailed as follows, with the filing of the I-129 petition:

- Markets products and services to French companies;
- Must be a French citizen[;] This would allow for easier contact with French companies[;] (Would eliminate the need for a French work permit)[;]
- Must be fluent in both American English and French[;]
- Must have attended a French Business School and know French business practices and basic French law[;]
- Must have had French business experience[;]
- Must be trained in Leisure Popcorn systems[;] ([the beneficiary] has been a successful trainee in each of our departments)[;]

- Must be skilled enough to train "California Pop" managers to use American business skills in training our French staff[;]
- Major duties: International Marketing-France[;]
Will be based at our San Jose headquarters[;]
However, frequent travel may be necessary[;]
- Must be willing to invest time to achieve a successful salary[;] Minimum salary: \$30,000 a year plus commission of 3% of net sales to her clients[; and]
- Has interest in investing in the company.

Subsequent to the filing of the I-129 petition, the director requested additional evidence. Specifically, the petitioner was asked to provide: a detailed job description and the percentage of time to be spent on specific duties; evidence that the offered position complied with 8 C.F.R. § 214.2(h)(4)(iii)(A); copies of the petitioner's present and past job announcements; evidence that the beneficiary qualifies to perform the duties of a specialty occupation; and experience letters from past employers.

In response to the director's request, the petitioner provided the following job description:

To develop a retail network of Pop Corn distribution initially in France, and then through Europe. The person hired will report to [the] President and will have primary responsibility for all aspects of the Business. This business will focus on developing international sales and Marketing subcontract arrangements with French Companies. It is a full time Job. Knowledge of French Business practices and French law is essential to this position. It[s] supervisory duties of seasonal employees in all aspects of individual Franchise [sic]. It is expected that the person hired will spend a minimum of 75% of his or her time COMMUNICATING with French retailers, distributors, and financial companies. (Emphasis petitioner's) The new manager will need to have worked in our Cie or have and [sic] experience in similar Cie. This branch needs to be operational very quickly[;] therefore[,] we cannot afford much training time. A college degree is not as important for this position as experiences in French Business[,] native knowledge of French language and business culture, and very extensive understanding of running our particular business.

Two years French post-high school. Business education,

five years experience demonstrating increasing responsibility in Franchise management. Native knowledge of French language/culture. Business contacts in France.

The position we are looking to fill is a wholesale and retail International Trade Manager. We need a manager who will be responsible of [sic] the International new marketing branch of Pop Corn.

We are a small Cie, who is looking to focus on a new development in Europe, starting with France. He or [s]he will have to have a practical and analytical knowledge of French Business as well as [f]undamental strategy of marketing, planning, accounting, and financial data experience.

To be able to develop this area of our [b]usiness, we need to require:

- Experience in working in France[;]
- Two years French post [h]ighschool business education[;]
- A sense of analysis of the marketing opportunities, considering our product, our prices, promotional opportunities as well as the normal distribution in this particular country[;]
- Basic knowledge of [the] French judicial system (role of law in purchasing, contract and administrating business)[;]
- Being able to make a sale[s] presentation, negotiation and promotion in French with the approach of American marketing methods, but with the cultural sensitivity needed to have success with French Cie[; and]
- Bilingual, fluent in French.

The knowledge required is more extensive than the general business education expected of a Bachelor['s] degree level graduate. Accounting, [m]arketing, [s]ales, [f]inancing, French economies and French taxation as well as fluency in French is essential.

The petitioner also provided a copy of its advertisement for the

offered position indicating that a minimum of a bachelor's degree, or its equivalent, in marketing or international business was required for the position.

In denying the petition, the director found that the proffered job was a general managerial position, and did not qualify as a specialty occupation.

On appeal, counsel states that the proffered position qualifies as a specialty occupation, and that the beneficiary is qualified to perform the duties of a specialty occupation. Counsel further asserts that a minimum of a bachelor's degree, or its equivalent, is standard in the industry for marketing managers.

The petitioner has failed to qualify the offered position as a specialty occupation. The duties of the proffered position were presented in very general terms. A portion of the job responsibilities to be assigned to the beneficiary, however, are similar to those assigned to marketing managers. In the *Occupational Outlook Handbook*, 2002-03 edition, (*Handbook*) at 27, the Department Of Labor describes in part, the duties of marketing managers as follows:

Marketing Managers develop the firms detailed marketing strategy. . . . [T]hey determine the demand for products and services offered by the firm and its competitors. In addition, they identify potential markets - for example, business firms, wholesalers, retailers, government, or the general public. Marketing managers develop pricing strategy with an eye towards maximizing the firm's share of the market and its profits while ensuring that the firm's customers are satisfied. . . . [T]hey monitor trends that indicate the need for new products and services and oversee product development. Marketing managers work with advertising and promotion managers to promote the firm's products and services to attract potential users.

The *Handbook* notes that for marketing management positions, some employers prefer a bachelor's or master's degree in business administration with an emphasis on marketing, but that a wide range of backgrounds is suitable for entry into the field, such as a broad liberal arts background. *Id.* at 28. Any number of educational pursuits will suffice. It is further noted that most advertising, marketing, promotions, public relations, and sales management positions are filled by promoting experienced staff or related professional or technical personnel. Many managers are former sales representatives, purchasing agents, or promotions specialists. This is consistent with the statement made by the petitioner in its response to the director's request for evidence: "A college degree is not as important for this

position as experiences in French Business[,] native knowledge of French language and business culture, and very extensive understanding of running our particular business." A baccalaureate or higher degree, or its equivalent, is not, therefore, the minimum requirement for entry into the position. The petitioner has, accordingly, failed to establish the first criterion of 8 C.F.R. § 214.2(h)(4)(iii)(A).

The position description provided also indicated that the beneficiary would have varied management responsibilities. Many management positions are filled by promoting experienced, lower level managers from within an organization. A college degree is not a minimum requirement for entry into the field of management. *Id.* at 87.

The petitioner has also failed to establish any of the remaining three criteria of 8 C.F.R. § 214.2(h)(4)(iii)(A). The record does not establish that: a degree requirement is common to the industry in parallel positions among similar organizations; the duties associated with proffered position are so complex or unique that they can only be performed by an individual with a degree; the employer normally requires a degree or its equivalent for the position; or the duties of the position are so specialized and complex that knowledge required to perform them is usually associated with a baccalaureate or higher degree.

The petitioner has failed to establish that any of the four factors enumerated above are present in this proceeding. It is, therefore, 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 and the appeal shall, accordingly be dismissed.

ORDER: The appeal is dismissed.