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**DR**

U.S. Department of Homeland Security

Citizenship and Immigration Services

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ADMINISTRATIVE APPEALS OFFICE  
CIS, AAO, 20 Mass, 3/F  
425 Eye Street, NW  
Washington, D.C. 20536



FILE: EAC 02 198 52199 Office: VERMONT SERVICE CENTER

Date: **DEC 29 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 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.

Robert P. Wiemann, Director  
Administrative Appeals Office

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

The petitioner is an engineering consulting firm. It employs 14 people and has a gross annual income of \$1,100,000. It seeks to temporarily employ the beneficiary as a sales promoter for a period of three years. The director determined that the petitioner had not established that the proffered position was a specialty occupation.

On appeal, counsel asserts that the director erred in making his decision and that the position is 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:

[A]n 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.

The petitioner did not submit a position description with the petition. The director then requested "a detailed statement setting forth the beneficiary's proposed duties and responsibilities. Also indicate the educational requirements of the proposed position and how the beneficiary's education relates to the position itself." The petitioner responded to the director's request for evidence with a description of the duties to be performed:

Promotes sales and creates goodwill for firm services or by preparing displays, touring country, making speeches at conventions and advise on ways and means for increasing sales. Prepares and forwards introductory letter, sales correspondence and bid proposal packages to prospective clients requiring engineering, controlled inspection and testing services.

The director denied the petition because he determined that the proffered position was not a specialty occupation based on the position description.

On appeal, counsel restates the above position description, quoting from the Department of Labor's *Dictionary of Occupational Titles*. Counsel also asserts, "The position offered qualifies as a specialty occupation considering the complexity of the duties performed which also needs an individual to be a holder of a bachelor's degree."

In order to determine whether the beneficiary qualifies for the benefit sought, it is necessary to address the four criteria outlined at 8 C.F.R. § 214.2(h)(4)(iii)(A) to determine whether the position can be considered a specialty occupation. The petitioner need only show that the position meets one of the

criteria in order to establish it as a specialty occupation. Upon review of the record, the petitioner has not articulated a sufficient basis for classifying the proffered position as a specialty occupation.

**I. A baccalaureate or higher degree or its equivalent is normally the minimum requirement for entry into the particular position.**

Section 214(i)(1)(B) of the Act provides further information about what is necessary in order to meet this criterion, in that it defines the term "specialty occupation" as an occupation that requires "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." (Emphasis added).

Since the position description is taken almost verbatim from the *Dictionary of Occupational Titles (DOT)*, it is difficult to know what the position actually entails and what duties the beneficiary would actually be performing.

Counsel asserts that the proffered position is a specialty occupation because it has been assigned a specific SVP rating in the *Dictionary of Occupational Titles*. However, the *DOT* is not considered a persuasive source of information regarding whether a particular job 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.

The Department of Labor has replaced the *DOT* with the *Occupational Information Network (O\*Net)*. Both the *DOT* and *O\*Net* provide only general information regarding the tasks and work activities associated with a particular occupation, as well as the education, training and experience required to perform the duties of that occupation. The Department of Labor's *Occupational Outlook Handbook (Handbook)* provides a more comprehensive description of the nature of a particular occupation and the education, training and experience normally required to enter into an occupation and advance within that occupation.

The director determined that the proffered position most closely resembled that of a demonstrator/product promoter as described on page 356 of the 2002-03 edition of the *Handbook*. There are, however, also some elements of marketing and sales in the position description in that the beneficiary would be expected to prepare "sales correspondence and bid proposal packages" for prospective clients, as well as "advise on ways and means for increasing sales." Nonetheless, the primary elements of the position description match those of a product promoter or demonstrator, who

"build[s] current and future sales of both sophisticated and simple products. . . . They inform and educate customers about the features of products and demonstrate their use. . . . They also distribute information." The *Handbook* states, "Formal training and education requirements are limited for demonstrators [and] product promoters. . . . Postsecondary education, while helpful, usually is not required."

In the marketing and promotions fields, the *Handbook* states, "A wide range of educational backgrounds are suitable for entry into advertising, marketing, promotions, public relations and sales managerial jobs."

There is no clear standard for how one prepares for the proffered position, as currently described. The requirements vary by employer as to what course of study might be appropriate or preferred, but it is clear that a baccalaureate degree in a specific specialty is not required. As a result, the proffered position cannot be considered to have met this criterion.

**II. 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.**

A. Degree Requirement is Common to the Industry

Factors often considered by CIS 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. 1151, 1165 (D.Minn. 1999) (quoting *Hird/Blaker Corp. v. Slattery*, 764 F.Supp. 872, 1102 (S.D.N.Y. 1991)).

The *Handbook's* conclusions about a degree requirement for the proffered position were discussed in the previous section, and shall not be repeated here. In the response to the director's request for evidence, the petitioner stated, "The degree requirement is common to the industry in parallel positions among similar organizations." The petitioner did not submit any evidence to establish that this statement is true. Simply going on record without supporting documentary evidence is not sufficient for purposes of meeting the burden of proof in these

proceedings. *Matter of Treasure Craft of California*, 14 I&N Dec. 190 (Reg. Comm. 1972).

B. Complexity and Uniqueness of the Proffered Position

In the alternative, the petitioner may show that the proffered position is so complex or unique that only an individual with a degree can perform it.

The petitioner has submitted no documentation that the position of a sales promoter is either unique or so complex that only an individual with a degree in a specific specialty could perform the job.

**III. The employer normally requires a degree or its equivalent for the position**

The petitioner did not submit any evidence that it had previously hired anyone for the position of sales promoter, nor that it normally requires a degree for this position.

**IV. 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**

Counsel states on appeal, "The position offered qualifies as a specialty occupation considering the complexity of the duties performed which also needs an individual to be a holder of a bachelor's degree." Counsel did not submit any evidence to support this statement. The assertions of counsel do not constitute evidence. *Matter of Obaigbena*, 19 I&N Dec. 533, 534 (BIA 1988); *Matter of Ramirez-Sanchez*, 17 I&N Dec. 503, 506 (BIA 1980).

The petitioner, in its response to the director's request for evidence, states, "Our facility is in dire need of a Sales Promoter with a bachelor's degree to handle this particular position which is so complex in nature that it can only be performed by an individual with a bachelor's degree, training and experience." Again, there is no evidence to indicate what makes the proffered position particularly complex. Without more persuasive evidence as to the specialized or complex nature of the position, the petitioner has not met this criterion.

The petitioner has failed to establish that any of the four criteria enumerated above are present in this proceeding. 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 decision of the director, the AAO notes that the evaluator used to perform the credentials equivalency has been found to have misstated his qualifications to make a portion of such assessments. The Assistant Vice President and Special Counsel to the President of Queens College, in a November 7, 2001 letter to the Immigration and Naturalization Service, specifically states that, despite Dr. Itzkowitz's assertion, he does not have the authority to grant college-level credit at Queens College for experience or coursework taken at other institutions. This is not relevant in the current adjudication, as the proffered position has been found not to be a specialty occupation, but it would cast doubt on the evaluation otherwise.

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. Accordingly, the appeal will be dismissed.

**ORDER:** The appeal is dismissed.