



DR

U.S. Department of Justice

Immigration and Naturalization Service

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

OFFICE OF ADMINISTRATIVE APPEALS
425 Eye Street N.W.
ULLB, 3rd Floor
Washington, D. C. 20536



FILE: SRC 01 268 50419

OFFICE: TEXAS SERVICE CENTER

DATE: JAN 14 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 USC 110(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 which 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 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 which 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 Acting Director, Texas Service Center, denied the nonimmigrant visa petition and the matter is now before the Associate Commissioner for Examinations on appeal. The appeal will be dismissed.

The petitioner is a wireless retail firm with 3 employees and a projected gross annual income of \$300,000. It seeks to employ the beneficiary as its sales manager for three years.

The acting director denied the petition because he found that the petitioner had failed to demonstrate that the proffered position is a specialty occupation.

On appeal, the petitioner submits a letter 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 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 occupation that requires:

(A) theoretical and practical knowledge 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) further 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.

In a letter which accompanied the initial petition, the petitioner stated that the duties of the position are:

(i) researching, designing, and developing sales procedure based on customer buying habits; (ii) training sales staff and conducting annual reviews; (iii)

supervising sales staff in selling merchandise to retail customers[;] (iv) maintaining inventory and showroom; (v) developing computerized procedures for inventory purchasing, quality control, and bookkeeping functions; (vi) responding to customer inquiries and complaints; (vii) planning and developing sales quotas, budgets, and forecasts by utilizing software applications; and (ix) (sic) sales and management reporting via graphic illustrations.

The petitioner stated that the position requires, at a minimum, a bachelor's degree in business administration, management, or a related field.

With the petition, the petitioner also submitted copies of the beneficiary's diploma, which shows that the beneficiary earned a bachelor of commerce degree from the University of Mumbai, India. In addition, the petitioner submitted an educational evaluation stating that the beneficiary's education is the equivalent of a bachelor of science degree in business administration with a concentration in management information systems from an accredited United States institution.

The acting director requested the petitioner to submit additional evidence pertinent to the proffered position. Specifically, the acting director requested that the petitioner state why someone without a bachelor's degree in business administration, management, or a related field would be unable to perform the duties of the proffered position. The acting director also requested that the petitioner list the employees the beneficiary would supervise and the job title of each individual.

In response, counsel submitted a letter from the petitioner stating that the beneficiary:

will be responsible for the sales operation of the entire store. He will also be responsible for interviewing, hiring, and training sales employees, as well as preparing work schedules and assigning workers to specific duties. . . . [T]he beneficiary is responsible for ensuring that customers receive satisfactory service and quality goods as well as answer [sic] customer inquiries and handle complaints. Beneficiary will also supervise sales associates and employees who price and ticket goods and place them on display; clean and organize shelves, displays, and inventory in stockrooms; and inspect merchandise to ensure that none is outdated. In addition, the Beneficiary will establish security procedures, review inventory and sales records, develop merchandising techniques, coordinate sales promotions,

greet and assist customers, and promote sales and good public relations.

The petitioner further noted that sales managers require knowledge of management principles and practices, must demonstrate initiative, self-discipline, judgement, and decisiveness and must motivate, organize, and direct subordinates, and communicate clearly with customers and other managers. Finally, the petitioner stated that to perform the proffered position one must be computer literate, as the petitioner's point-of-sale and inventory control systems are computerized. The petitioner stated that these duties require knowledge and ability which can only be obtained through the attainment of a bachelor's degree or very extensive work experience.

Counsel also submitted an organizational chart showing that the beneficiary would supervise two sales clerk/shift managers and a stock control clerk.

The acting director denied the petition on the basis that the petitioner did not establish that the proffered position is a specialty occupation.

On appeal, counsel asserts that the described job duties demonstrate that the proffered position is a specialty occupation. As further support for that contention, counsel submits 23 job listings.

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 are so specialized and complex that knowledge required to perform the duties is usually associated with the attainment of a baccalaureate or higher degree.

Counsel's contention that the proffered position is a specialty occupation is unconvincing. In evaluating whether the proffered

position is a specialty occupation, each of the four criteria listed at 8 C.F.R. 214.2(h)(4)(iii)(A) will be considered separately below.

I. A baccalaureate or higher degree or its equivalent is normally the minimum requirement for entry into the particular position. 8 C.F.R. 214.2(h)(4)(iii)(A)(1).

The Service often consults the U.S. Department of Labor's (DOL) Occupational Outlook Handbook (Handbook) to classify positions and to determine whether a baccalaureate or higher degree in a specific specialty or its equivalent is normally the minimum requirement for entry into a particular position. In the 2002 - 2003 edition of the Handbook at pages 371, the DOL states the following about the duties of sales worker supervisor positions:

Sales worker supervisors oversee the work of sales and related workers such as retail salespersons, cashiers, customer service representatives, stock clerks and order fillers, sales engineers, and wholesale and manufacturing sales representatives. They are responsible for interviewing, hiring, and training employees, as well as preparing work schedules and assigning workers to specific duties. Many of these workers hold job titles such as sales manager or department manager.

The Handbook continues that:

In retail establishments, sales worker supervisors ensure that customers receive satisfactory service and quality goods. They also answer customers' inquiries and deal with complaints, and may handle purchasing, budgeting, and accounting.

and finally:

Sales worker supervisors also review inventory and sales records, develop merchandising techniques, coordinate sales promotions, and may greet and assist customers and promote sales and good public relations.

The described duties of the proffered position bear a striking resemblance to the duties the Handbook describes for sales worker supervisors. The proffered position is clearly a sales worker supervisor position.

In the 2002 - 2003 edition of the Handbook at pages 372, the DOL states the following about the training and educational requirements for sales worker supervisor positions:

Sales worker supervisors usually acquire knowledge of management principles and practices -- an essential requirement for a supervisory or managerial position in retail trade -- through work experience. Many supervisors begin their careers on the sales floor as salespersons, cashiers, or customer service representatives. In these positions, they learn merchandising, customer service, and the basic policies and procedures of the company.

The educational background of sales worker supervisors varies widely. Regardless of the education received, recommended courses include accounting, marketing, management, and sales, as well as psychology, sociology, and communication. Supervisors must be computer literate because almost all cash registers, inventory control systems, and sales quotes and contracts are computerized.

Most supervisors who have postsecondary education hold associates or bachelor's degrees in liberal arts, social sciences, business, or management. To gain experience, many college students participate in internship programs that usually are developed jointly by individual schools and firms.

The Handbook offers no support for the proposition that the proffered position requires a bachelor's degree in a specific specialty.

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

Factors often considered by the Service when determining the industry standard include: whether the DOL's 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. Minn. 1999) (quoting Hird/Blaker Corp. v. Slattery, 764 F.Supp.2d 872, 1102 (S.D.N.Y. 1991)).

The DOL's conclusions pertinent to a degree requirement for sales worker supervisors were discussed in the previous section, and shall not be repeated here. Neither counsel nor the petitioner presents any evidence that any association of sales worker supervisors has instituted a degree requirement for membership.

Nothing in the description of the proffered position indicates that the petitioner's business is so complex or unique that it would require a baccalaureate degree in a specific specialty to execute the job duties routinely found in most sales work supervisory positions.

The petitioner provided 23 job listings for sales manager positions with various companies. Counsel argued that those listings indicate that a bachelor's degree is commonly required for a sales manager position.

Some of those listings indicate a preference for a bachelor's degree but do not list any preferred major. Others require a bachelor's degree but, again, do not list any preferred major. Still others require a bachelor's degree and state that a major in business or a related field is preferred, rather than required. Finally, three of those 23 job listings require a bachelor's degree in a specific specialty. Even if those job listings are accepted as being for positions parallel to proffered position, those job listings offer slim support for the proposition that the proffered position requires a bachelor's degree in a specific specialty.

Further, nothing in those job listings indicates that they are actually for sales worker supervisors, as is the proffered position. No reason exists to believe that the duties of those positions are similar to those of the proffered position. As such, those job listings are unconvincing evidence, and certainly do not overcome the information from the Handbook, which indicates that the proffered position does not require, at a minimum, a bachelor's degree in a specific specialty or its equivalent.

III. The employer normally requires a degree or its equivalent for the position. 8 C.F.R. 214.2(h)(4)(iii)(a)(3).

The petitioner has not presented evidence that it normally requires a degree or its equivalent for the proffered position.

IV. The nature of the specific duties are so specialized and complex that knowledge required to perform the duties is usually associated with the attainment of a baccalaureate or higher degree. 8 C.F.R. 214.2(h)(4)(iii)(A)4).

The petitioner has extensively described the duties of the proffered position. None of the duties of the proffered position, however, are so specialized or complex as to require a bachelor's degree in a specific specialty.

Based upon the evidence in the record, the petitioner has not established that the proffered position is a specialty occupation. The critical element is not the title of the position, but whether the position actually requires the theoretical and practical

application of a body of highly specialized knowledge, and the attainment of a bachelor's degree in the specific specialty as a minimum for entry in the occupation as required by the Act. The Service must examine the ultimate employment of the alien, and determine whether the position qualifies as a specialty occupation. Cf. Defensor v. Meissner, 201 F3d 384 (5th Cir. 2000). In this case, the petitioner has not shown that the practice of the proffered position requires the attainment of a bachelor's degree in a specific specialty.

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.