



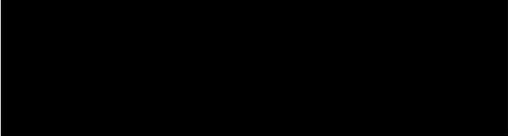
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U.S. Department of Justice

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: SRC 01-131-61216

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
Robert P. Wiemann, Director
Administrative Appeals Office

DISCUSSION: The 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 real estate investment firm with six employees and an unstated gross annual income. It seeks to employ the beneficiary as its personnel training and marketing sales manager for a period of three years.

The 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 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 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 the initial petition, the petitioner stated that the duties of the proffered position are to direct the overall marketing policy including market research.

With the petition, the petitioner provided copies and translations of the beneficiary's diplomas and transcripts, as well as the beneficiary's resume. The resume, diplomas and transcripts demonstrate that the beneficiary graduated with a bachelor's degree in electrical engineering. A letter from an education evaluator states that the beneficiary's degree is equivalent to a bachelor of science in electrical engineering from an accredited university in the United States.

The petitioner also provided the company's articles of incorporation and various executed deeds and other documents tending to show that the petitioner engages in real estate transactions. Finally, the petitioner submitted a letter from its vice-president.

In that letter, the vice-president stated that company policy mandates that only college educated people are hired for executive positions. The vice president stated that, in the proffered position, the beneficiary is expected to:

. . . direct the overall marketing policy including (m)arket (r)esearch, (m)arketing strategy, sales, advertising, promotion, pricing product, development and personnel training activities.

The vice president further stated that the beneficiary would supervise professionals and other employees, and stated that, due to the complexity of the duties of the proffered position, the position may only be filled by a college educated applicant.

The director requested the petitioner to submit additional evidence pertinent to the proffered position. Specifically, the director requested evidence that the duties of the proffered position require a bachelor's degree in a specific specialty.

In response, counsel for the petitioner submitted a letter in which he noted that the petitioner's degree in electrical engineering also relates to engineering in general, and that engineers perform a variety of tasks. Counsel noted that engineers must think, speak, and write clearly. Counsel further observed that engineers have become famous for work which was not directly related to engineering. Finally, counsel noted that the beneficiary has considerable experience managing personnel.

The director denied the petition, finding that the petitioner did not establish that the proffered position is a specialty occupation. On appeal, counsel reiterates the assertions he made in response to the Request for Evidence.

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 implicit 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) when determining whether a baccalaureate or higher degree in a specific specialty or its equivalent is normally the minimum requirement for entry into a particular position. Based on the duties described, the proffered position combines the duties of a human resources and training manager and also those of a marketing manager.

In the 2002 - 2003 edition of the Handbook at pages 62 and 63, the DOL states the following about the training and educational requirements for Human Resources, Training, and Labor Relations Managers and Specialists:

Because of the diversity of duties and levels of responsibility, the educational backgrounds of human resources, training and labor relations managers and specialists vary considerably. In filling entry-level jobs, employers usually seek college graduates. Many prefer applicants who have majored in human resources, personnel administration, or industrial and labor relations. Others look for college graduates with a technical or business background or a well-rounded liberal arts education.

That passage indicates that employers have a preference for college graduates when hiring human resources and training managers, but not that a degree is required. Further, it does not indicate that the position requires a degree in a specific specialty. It certainly does not indicate that, to compete for such a position, an applicant must have a bachelor's degree in electrical engineering or the equivalent.

In the 2002 - 2003 edition of the Handbook at page 28, the DOL states the following about the training and educational requirements for advertising, marketing, promotions, public relations, and sales managers:

A wide range of educational backgrounds are (sic) suitable for entry into advertising, marketing, promotions, public relations, and sales managerial jobs, but many employers prefer those with experience in related occupations plus a broad liberalarts background. A bachelor's degree in sociology, psychology, literature, journalism, or philosophy, among other subjects, is acceptable. However, requirements vary, depending upon the particular job.

Again, that passage indicates a preference for candidates with degrees, rather than a requirement. Further, the passage makes clear that the position does not require a degree in any specific specialty.

Nothing in the Handbook indicates that the proffered position requires a bachelor's degree 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 the proffered position were discussed in the previous section, and shall not be repeated here. Neither counsel nor the petitioner presented any evidence that any association of personnel training

and marketing sales managers has instituted a degree requirement for membership.

Nothing in the description of the proffered position indicates that the petitioner's business is especially complex or unique, such that it would require a baccalaureate degree in a specialized field of study.

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

Although the petitioner's vice-president stated that company policy mandates that only college educated people are hired for executive positions, he presented no evidence that all of the existing managers in the company have degrees in a specific specialty, or that previous personnel training and marketing sales managers have had degrees in a specific specialty related to electrical engineering.

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).

In his letter, the vice-president stated that the proffered position encompasses specialized and complex duties that can only be performed by an individual who has attained a baccalaureate or higher degree. The vice-president did not identify any specific specialty in which a personnel training and marketing sales manager must hold a degree.

Contrary to the vice-president's assertion, however, the described duties of the proffered position do not appear to require any degree, let alone a degree in a specific specialty. If it did, the specific specialty would certainly not be electrical engineering or any other type of engineering.

Counsel's submissions in response to the Request for Evidence and on appeal have been inapposite. The appropriate inquiry is not whether engineers are able to do other jobs nor whether engineers have been successful in other fields, but whether the proffered position demands a minimum of 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 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 personnel training and marketing sales manager 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.