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

ADMINISTRATIVE APPEALS OFFICE
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Washington, D.C. 20536



JUL 31 2003

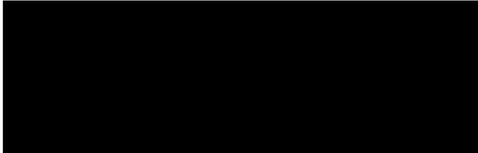
File: EAC-02-028-51937 Office: VERMONT SERVICE CENTER Date:

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 the Bureau of Citizenship and Immigration Services (Bureau) 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 and is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed.

The petitioner is a manufacturer's representative for lighting and accessories. It has four employees and a gross annual income of \$3 million. It seeks to employ the beneficiary as a sales manager for a period of three years. The director determined the petitioner had not established that the proffered position is a specialty occupation or that the beneficiary is qualified to perform the duties of 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 in part for nonimmigrant classification to qualified 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 a "specialty occupation" as an occupation that requires theoretical and practical application of a body of highly specialized knowledge, and 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.

Pursuant to section 214(i)(2) of the Act, 8 U.S.C. § 1184(i)(2), to qualify as an alien coming to perform services in a specialty occupation the beneficiary must hold full state licensure to practice in the occupation, if such licensure is required to practice in the occupation. In addition, the beneficiary must have completed the degree required for the occupation, or have experience in the specialty equivalent to the completion of such degree and recognition of expertise in the specialty through progressively responsible positions relating to the specialty.

The director denied the petition because the petitioner had not demonstrated that a baccalaureate degree is required for the proffered position, or that the beneficiary's educational background and employment experience qualify her for a specialty occupation. On appeal, counsel states, in part, that the proffered position is that of a "Manager Sales" rather than "Sales Manager in Europe", as it was erroneously entitled in the company letter. Counsel also states that the petitioner plans to expand its business, thereby necessitating the proffered position. Counsel further states that the petitioner normally requires its sales employees to hold a bachelor's degree.

Counsel's statement on appeal is not persuasive. The Bureau does not use a title, by itself, when determining whether a particular job qualifies as a specialty occupation. The specific duties of the offered position combined with the nature of the petitioning entity's business operations are factors that the Bureau considers. In the initial I-129 petition, the petitioner described the duties of the offered position as follows:

[The beneficiary] will be our Sales Manager in Europe to Manage sales activities of establishment [sic]: She will direct staffing, training, and performance evaluations to develop and control [the] sales program. Coordinate sales distribution by establishing sales territories, quotas, and goals and advises [sic] dealers, distributors, and clients concerning sales and advertising techniques. She will assign sales territory to sales personnel [and] [a]nalyze sales statistics to formulate policy and to assist dealers in promoting sales. She will Review [sic] market analyses to determine customer needs, volume potential, price schedules, and discount rates, and develops [sic] sales campaigns to accommodate goals of company, direct product simplification and standardization to eliminate unprofitable items from sales line. Represent company at trade association meetings to promote product. Coordinate liaison between sales department and other sales-related units. Analyze and control expenditures of division to conform to budgetary requirements. Assist other departments within establishment to prepare manuals and technical publications. Prepare periodic sales report showing sales volume and potential sales. May direct product research and development.

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 has not met any of the above requirements to classify the offered position as a specialty occupation.

First, the Bureau does not agree with counsel's assertion that the proffered position would normally require a bachelor's degree in business administration or a related field. Counsel's assertion that the petitioner now plans to expand its business is noted. The assertions of counsel, however, 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). Even if the record were to include evidence of the petitioner's plans for expansion, however, the proffered position primarily combines the duties of a sales manager with those of a marketing manager.

A review of the Department of Labor's *Occupational Outlook Handbook* at page 28 finds no requirement of a baccalaureate or higher degree in a specific specialty for employment in sales and marketing managerial jobs. A wide range of educational backgrounds is suitable, but many employers prefer those with experience in related occupations plus a broad liberal arts background. In addition, most sales and marketing management positions are filled by promoting experienced staff or related professional or technical personnel. In highly technical industries, such as computer and electronics manufacturing, a bachelor's degree in engineering or science, combined with a master's degree in business administration, is preferred. The petitioner, however, is not engaged in highly technical activities, such as computer or electronics manufacturing. Thus, the petitioner has not shown that a bachelor's degree or its equivalent is required for the position being offered to the beneficiary.

Second, the petitioner has not demonstrated that it has, in the past, required the services of individuals with baccalaureate or higher degrees in a specific specialty such as business administration, for the offered position. It is noted that one of its sales employees holds a bachelor's degree in landscape architecture. Third, the petitioner did not present any documentary evidence that a baccalaureate degree in a specific

specialty or its equivalent is common to the industry in parallel positions among organizations similar to the petitioner. The job listings submitted by the petitioner have been reviewed. The majority of such listings do not specify a requirement of a baccalaureate degree in a specific specialty. Furthermore, some of the listings specify only that a degree is preferred, not required. Finally, the petitioner did not demonstrate that the nature of the beneficiary's proposed duties is so specialized and complex that the knowledge required to perform the duties is usually associated with the attainment of a baccalaureate or higher degree.

The petitioner has failed to establish that any of the four factors enumerated above are present in this proceeding. Accordingly, it is concluded that the petitioner has not demonstrated that the offered position is a specialty occupation within the meaning of the regulations.

As the petitioner has not sufficiently established that the proffered position is a specialty occupation, the beneficiary's qualifications need not be examined further in this proceeding.

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.