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

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



File: EAC 01 194 53097

Office: VERMONT SERVICE CENTER

Date: JUN 18 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:



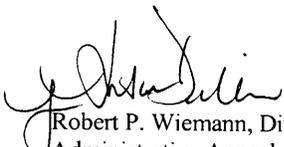
INSTRUCTIONS:

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 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, Vermont Service Center, and is now before the Administrative Appeals Office ("AAO") on appeal. The appeal will be dismissed.

The petitioner is an import and export company with ten employees and an annual income in excess of \$750,000. It seeks to employ the beneficiary as an import and export manager for a period of three years. The director determined the petitioner had not established that the proffered position is a specialty occupation.

On appeal, counsel submits a brief and additional documentation.

The term "specialty occupation" is defined at section 214(i)(1) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1184(i)(1), 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 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.

The director denied the petition because the petitioner had not established that the proffered position requires a baccalaureate degree in a specific specialty.

On appeal, counsel asserts that the petitioner normally requires a baccalaureate degree for the proffered position. Counsel further asserts that this requirement is an industry standard.

When determining whether a particular job qualifies as a specialty occupation, the Bureau considers the specific duties of the offered position combined with the nature of the petitioning entity's business operations. In a letter that accompanied the initial I-129 petition, the petitioner described the duties of the offered position as follows:

- Analyzing the American market and making necessary decisions in connection with the goods to import and export;
- Communicating with other companies, in this country and abroad[,] to collect necessary information;
- Supervising general importing, exporting and related activities;
- Negotiating, supervising negotiating with foreign countries and American business companies with regard to goods we deal with;
- Preparing instructions regarding systems and procedures;
- Issuing orders and revising notices for purchasing agents of importing countries;
- Reviewing purchase orders, claims and contracts, progress reports to ensure conformity to company policies and compliance with local destination regulations;
- Studying workflow and sequence of operations[;]
[and]
- Analyzing Chemical properties of certain merchandise.

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.

The position appears to combine the duties of a purchasing manager with those of a marketing manager. A review of the Department of Labor's ("DOL") *Occupational Outlook Handbook (Handbook)*, 2002-2003 edition, at page 82 finds no requirement of a baccalaureate degree in a specific specialty for employment as a purchasing manager. Educational requirements tend to vary with the size of the organization. Large stores and distributors, especially those in wholesale and retail trade, prefer applicants who have completed a bachelor's degree program with a business emphasis. (It is noted here that a baccalaureate degree appears to be a preference by large distributors and stores rather than a requirement.) Regardless of their academic preparation, new employees must learn the specifics of their employers' business. Training periods vary in length, with most lasting 1 to 5 years.

Additionally, a review of the *Handbook* at pages 26-29 finds no requirement of a baccalaureate degree in a specific specialty for employment as a marketing manager. A wide range of educational backgrounds are considered suitable for entry into marketing managerial positions. Many employers prefer those with experience in related occupations plus a broad liberal arts background. A bachelor's degree in sociology, psychology, literature, journalism, or philosophy, among other subjects, is also acceptable. Most marketing management positions are filled by promoting experienced staff or related technical or professional personnel. Thus, the petitioner has not shown that a bachelor's degree in a specific specialty or its equivalent is a normal minimum requirement for the position being offered to the beneficiary.

Counsel asserts that the proffered position is a specialty occupation because it has been assigned a specific SVP rating in the DOL's *Dictionary of Occupational Titles (DOT)* (4th Ed., Rev. 1991). However, the *DOT* is not considered to be 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 DOL 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 *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. For this reason, the Bureau is not persuaded by a claim that the proffered position is a specialty occupation simply because the Department of Labor has assigned it a specific SVP rating in the *DOT*.

On appeal, counsel asserts that it is a common practice in the industry to require a bachelor's degree for parallel positions. In support of this assertion, counsel submits letters from officials of two other import-export companies. [REDACTED] President of Good Performance, Inc., stated that a bachelor's degree is the standard minimum requirement for parallel positions in the import-export industry. [REDACTED] President

of Icicle, Inc., stated that the requirement of a bachelor's degree for parallel positions is overwhelmingly the practice in the whole import-export industry. Both Mr. [REDACTED] and Mr. [REDACTED] indicate that it is the practice of their companies to hire employees who have a bachelor's degree for managerial positions. Neither Mr. [REDACTED] nor Mr. [REDACTED] has provided any independent evidence to corroborate their assertions. Simply going on record without supporting documentary evidence is not sufficient for meeting the burden of proof in these proceedings. *Matter of Treasure Craft of California*, 14 I&N Dec. 190 (Reg. Comm. 1972). Additionally, it was held in *Matter of Obaigbena*, 19 I&N Dec. 533, 534 (BIA 1988) and *Matter of Ramirez-Sanchez*, 17 I&N Dec. (BIA 1980) that the assertions of counsel do not constitute evidence. Furthermore, two letters are not sufficient to demonstrate an industry standard.

Counsel states that the petitioner requires a bachelor's degree or its equivalent for the position in question. In support of his statement, counsel submits a list of the company's employees and their educational credentials, along with W-4s to show that these individuals are in fact employed by the company. A review of this list reveals that the petitioner employs individuals with a variety of degrees. The sales manager, [REDACTED] holds a bachelor's degree in theater stage management. [REDACTED] the promotional manager, holds a bachelor's degree in international relations. [REDACTED] the administrative assistant, holds a bachelor of fine arts degree. [REDACTED] the accounting manager, holds an associate degree. [REDACTED] senior technician, holds a bachelor's degree, area of specialization unknown. [REDACTED] the project director, holds a master's degree in history. Although the petitioner apparently requires its employees to have postsecondary education, it clearly does not require that its employees hold a bachelor's degree in a specific and related specialty.

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 in a specific specialty.

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.

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.