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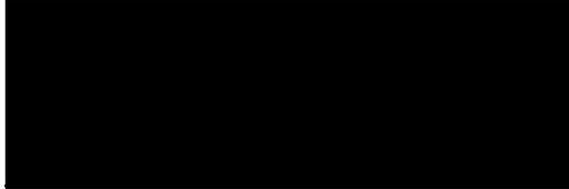
U.S. Department of Homeland Security

Bureau of Citizenship and Immigration Services

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ADMINISTRATIVE APPEALS OFFICE
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BCIS, AAO, 20 Mass, 3/F
Washington, D.C. 20536



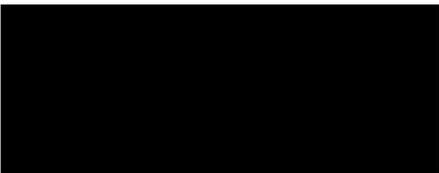
JUN 25 2003

File: EAC:01-056-52430 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, Vermont Service Center. A subsequent appeal was dismissed by the Administrative Appeals Office (AAO). The matter is now before the AAO on a motion to reconsider. The motion will be granted. The previous decision of the AAO will be affirmed.

The petitioner is a distributor of auto parts with 50 employees and a gross annual income of \$1,637,552. It seeks to employ the beneficiary as a branch 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 had provided additional information in support of the appeal.

The AAO dismissed the appeal reasoning that the petitioner had not established that the proffered position required a baccalaureate degree in a specific specialty or that the proposed duties were so complex that such a degree was required. The AAO also found, beyond the director's decision, that the petitioner had not submitted a certified labor condition application timely, in accordance with 8 C.F.R. § 214.2(h)(4)(i)(B)(1).

On motion, counsel states, in part, that the record contains an expert opinion in support of her claim that the proffered position is a specialty occupation. In this opinion, the evaluator submits an expanded description of the duties the petitioner anticipates the beneficiary would perform as a branch manager.

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.

Counsel's additional evidence on motion 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:

- Develop working plans, set goals, deadlines, and implement procedures to improve productivity and customer service.
- Define the respons[i]bilities of personnel.
- He must be involved in the hiring and dismissal of employees.
- He is responsible for coordinating the physical workplace with the people, and work of the organization. Continually monitor the facility to ensure that it remains safe, secure and will maintained [sic] ordering.
- Verify inventory and refer suggested orders to purchasing department.
- Meet the sales quota.
- Handle the accounts receivable, and is respons[i]ble of the branch profitability [sic].
- Open and close in daily basis the branch [sic].
- Prepare daily sales report and send back deposit to main office.
- Participate in monthly meeting with top management.
- Take care of all marketing and promotional activities.

In the opinion submitted on motion, Professor Jonatan Jelen provides the following revised description of the proposed duties:

- Dealing with all accounting duties of the branch, including producing reports[,] accounts receivable summaries, payroll expense reports, taxes expenses [sic], summary balance sheets, trial balances, and payroll liabilities.
- Estimating and preparing the budgets for all activities, operations, and expenses produced by the branch.
- Recruiting, hiring, promoting, and firing personnel.

- Supervising employee behavior and performance and judging how this affects the general operations of the store.
- Making changes in procedures, personnel, and other internal matters without affecting production, labor stability, or employee confidence.
- Identifying the markets and corporate marketing objectives.
- Designing and implementing marketing strategies through market research and advertising.
- Managing, analyzing, and producing estimates, budgets, and forecasts.
- Using various business software such as QuickBooks, Word and Excel for accounting purposes and for presenting reports to upper management.

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 revised description of duties submitted on motion is noted. Although the new job description includes more complex duties than those that were described in the initial I-129 petition, such as budget preparation, the record is not persuasive that the proposed duties were not revised solely to make the petition approvable. Doubt cast on any aspect of the petitioner's proof may, of course, lead to a reevaluation of the reliability and sufficiency of the remaining evidence offered in support of the

visa petition. It is incumbent on the petitioner to resolve any inconsistencies in the record by independent objective evidence, and attempts to explain or reconcile such inconsistencies, absent competent objective evidence pointing to where the truth, in fact, lies will not suffice. *Matter of Ho*, 19 I&N Dec. 582, 591-92 (BIA 1988).

As previously found by the AAO, the proffered position appears to combine the duties of a sales manager with those of a marketing manager. A review of the Department of Labor's *Occupational Outlook Handbook*, 2002-2003 edition, 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, many sales and marketing managers are promoted from within the organization. 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 shown 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. 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. It is noted that none of the five job advertisements counsel submitted on appeal requires a baccalaureate degree in a specific 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.

The record contains a letter from an individual involved in the automotive industry who states that the usual requirement for positions such as the proffered one is a baccalaureate degree. He does not indicate, however, that a baccalaureate degree in a specific specialty is required. Further, even if the writer had specified a specific degree requirement, one letter is insufficient evidence of an industry standard. The writer has not submitted any evidence in support of his assertion. *Matter of Treasure Craft of California*, 14 I&N Dec. 190 (Reg. Comm. 1972). Simply going on record without supporting documentary evidence is not sufficient for meeting the burden of proof in these proceedings.

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.

Counsel did not address the AAO's finding that a certified labor condition application was not submitted timely. For this additional reason, the petition may not be approved.

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 decision of the director will not be disturbed.

ORDER: The decision of the AAO dated April 11, 2002, is affirmed.