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

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



File: EAC-02-045-53855 Office: Vermont Service Center

Date: **MAR 13 2003**

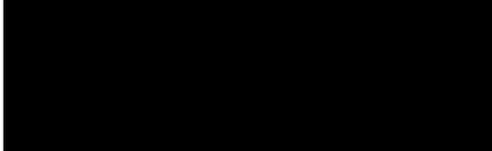
IN RE: Petitioner:  
Beneficiary:



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)

**PUBLIC COPY**

ON BEHALF OF PETITIONER:



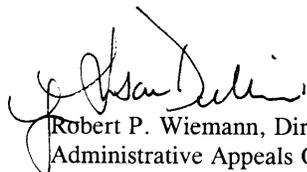
**INSTRUCTIONS:**

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, established in 2001, is an import, export, and wholesale distribution business with five employees. It seeks to employ the beneficiary as a manager of import, export, and domestic trading 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.

Pursuant to 8 C.F.R. § 214.2(h)(4)(ii), the term "specialty occupation" is defined 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 demonstrated that the proffered position requires a baccalaureate degree. On appeal, counsel states, in part, that the beneficiary's proposed duties, which include negotiating high-level procurement contracts with private and international organizations, and conducting the petitioner's business in Southeast Asia, are so complex that a baccalaureate degree in a related field, or an equivalent thereof, is required.

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] is being offered temporary employment as a manger [sic] of import, export and domestic trading of textiles, consumable products and apparels. Since our company is in its growing stages, this manger [sic] position is a crucial one. We need an experienced,

competent and highly qualified manager to ensure that the correct steps are taken in relation to the goods we trade. This position requires thorough knowledge of import, export and international legal systems, rules and regulations and treaties, restrictions, sanctions along with current market situations and conditions. We are looking to hire an individual with at least five years of experience.

Along with the management of trading, the employee must have the ability to manage the security of copyrighted trademarks and brand names. Furthermore, the position requires the employee to negotiate contracts with foreign and domestic sales and distribution centers and direct conversion of products to either the standards of the United States or the foreign country that we are trading with. The employee must also arrange shipments and coordinate import/export licensing, custom declarations and clearance, packaging, shipping and routing [sic].

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 argument that the proffered position would normally require a bachelor's degree in law or a related field. The proffered position appears to combine the duties of a purchasing manager, buyer, and purchasing agent with those of a marketing manager. A review of the Department of Labor's *Occupational Outlook Handbook (Handbook)*, 2002-2003

edition, at page 82, finds no requirement of a baccalaureate or higher degree in a specific specialty for employment as a purchasing manager, buyer, and purchasing agent. Educational requirements tend to vary according to the size of the organization. Large distributors and stores, especially those in wholesale and retail trade, prefer applicants who have completed a bachelor's degree program with a business emphasis. (Emphasis added.) (It is noted here that a baccalaureate degree appears to be a preference by large distributors and stores rather than a requirement. It is also noted that the petitioner has only five employees.) 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.

A review of the *Handbook* at page 28 also 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. Some employers prefer a bachelor's or master's degree in business administration with an emphasis on marketing, but many employers prefer those with experience in related occupations plus a broad liberal arts background. In addition, certain personal qualities and participation in in-house training programs are often considered as significant as the beneficiary's specific educational background. 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 law, 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. 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.

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.