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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: SRC-01-057-52740 Office: Texas Service Center Date: MAR 24 2003

IN RE: Petitioner: [Redacted]
Beneficiary: [Redacted]

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)

IN BEHALF OF PETITIONER:



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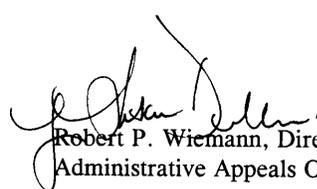
INSTRUCTIONS:

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

The petitioner is a communications technology firm, with six employees and an gross annual income of \$550,000. It seeks to employ the beneficiary as a sales and marketing 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, along with additional documentation.

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 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 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 was sufficiently complex as to require an individual with a baccalaureate degree in a specific specialty.

On appeal, counsel argues that the proffered position of sales and marketing manager does conform to a specialty occupation in that the duties to be performed by the beneficiary require an individual with the education and experience necessary to master the highly complex and constantly-evolving area of communications technology.

Counsel further argues that the beneficiary's familiarity with Central and South American cultures and customs would enable him to develop effective marketing strategies to implement the petitioner's plans to expand its sales into Colombia and Venezuela. In addition, counsel, on appeal, submits an evaluation from a professor of business administration indicating that the beneficiary's two years of academic coursework along with 13 years of business experience are equivalent to a bachelor's degree in the field of business administration.

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 Service considers. In the initial I-129 petition, the petitioner described the duties of the offered position as follows:

- Developing and implementing marketing objectives strategies, and programs designed to increase/improve the company's business sales;
- Supervising the implementation of marketing programs, assuring their timely, effective and efficient execution in the marketplace;
- Directing the company's advertising strategies, ensuring quality performance in the areas of copy, media, promotion and other creative work;
- Hiring and training of Marketing Department personnel in advertising, promotion, product development, market and public relations;
- Directing staffing, training and performance evaluations to develop and control the petitioner's sales program;
- Responsibility for sales activities and coordination of sales distribution through establishing territories, quotas and goals;
- Meeting personally with the petitioner's clients and customers to explain and research advertising and sales techniques;
- Reviewing market analyses to determine client/customer needs, volume potential, price schedules, and discount rates; and
- Developing sales campaigns to implement the petitioner's marketing objectives.

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 the petitioner's argument that the proffered position would normally require a bachelor's degree in business administration. A review of the Department of Labor's *Occupational Outlook Handbook [Handbook]*, 2002-2003 edition, finds no requirement of a baccalaureate or higher degree in a specific specialty for employment as a sales or marketing manager. At page 28, the *Handbook* indicates that "a wide range of educational backgrounds" are deemed suitable for entry into managerial positions in the fields of advertising, marketing, promotions, public relations, and sales. 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.

Second, the petitioner did not present any documentary evidence that the degree requirement is common to the industry in parallel positions among similar organizations.

Counsel argues, on appeal, that the position of sales and marketing manager qualifies as a specialty occupation in that it is sufficiently complex and unique as to require an individual with a baccalaureate degree or its equivalent. In support of this argument, counsel cites *Arctic Catering, Inc. v. Thornburgh*, 769 F.

Supp. 1167 (D. Colo. 1991), which found a general manager position to be professional based on the uniqueness and complexity of the beneficiary's position, despite his lack of a specialized degree. However, the Arctic case is inapplicable because it has not been demonstrated that the duties of the beneficiary in the present case, which involve the sale of small electronics and software, are as unique and complex as those of the beneficiary in the cited decision (catering to the living needs of workers at geophysical drilling and mining camps in remote regions of the world).

Third, 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 for the proffered position.

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.

Beyond the decision of the director, the record does not contain independent evidence to demonstrate that either of the evaluations of the beneficiary's credentials provided by the petitioner was performed by an official with authority to grant college-level credit for training and/or experience in the specialty at an accredited college or university which has a program for granting such credit based on an individual's training and/or work experience, as required by 8 C.F.R. § 214.2(h)(4)(iii)(D)(1). As this matter will be dismissed on the grounds discussed, this issue need not be examined further.

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.