

U.S. Department of Homeland Security

Bureau of Citizenship and Immigration Services

D2

identifying data deleted
prevent clearly unwarranted
invasion of personal privacy

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



File: EAC-02-034-54907 Office: Vermont Service Center

Date: MAR 25 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)

ON BEHALF OF PETITIONER:



PUBLIC COPY

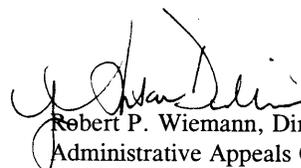
INSTRUCTIONS:

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 an import, export, and trade business with 14 employees and a gross annual income of \$16,536,278.11. It seeks to employ the beneficiary as a production coordinator 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.

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 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 proposed duties, which include directing marketing operations, directing production, and supervising production costs, are more complex than the duties of a purchasing agent or import specialist because they directly relate to production management. Counsel further states that because of the complexity of the proposed duties, the proffered position requires a bachelor's degree in a field related to business management.

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:

1. Directs production, distribution and marketing operation for factories in China;
2. Evaluates production capabilities of factories and suppliers in China, track the production process;
3. Supervises Production cost and quality controllers to implement quality standards, modifies production and inventory control programs to maintain and enhance profitable operation; and conform specifications of production run;
4. Manage shipment documents and schedules; and ensure compliance with US. [sic] Regulations on flame-retardant material requirements;
5. Solicit price quotes, negotiate and structure transactions with the overseas factories utilizing his understanding of letters of credit and other trade financing mechanisms;
6. Manage ordering/production process and communicating with various governmental agencies in the U.S. and China to facilitate/export process.

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 business management or a related field. In its *Occupational Outlook Handbook (Handbook)*, 2002-2003 edition, at page 65, the Department of Labor (DOL) describes the job of an industrial production manager, in part, as follows:

The primary mission of industrial production managers is planning the production schedule within budgetary limitations and time constraints. They do this by analyzing the plant's personnel and capital resources to select the best way of meeting the production quota. Industrial production managers determine, often using mathematical formulas, which machines will be used, whether new machines need to be purchased, whether overtime or extra shifts are necessary, and what the sequence of production will be. They monitor the production run to make sure that it stays on schedule and correct any problems that may arise.

The record reflects that the petitioner, which is an import, export, and trade business, employs 14 persons and has a gross annual income of \$16,536,278.11. The business in which the beneficiary is to be employed does not require the services of an industrial production manager who determines, often using mathematical formulas, which machines will be used, whether new machines need to be purchased, whether overtime or extra shifts are necessary, and what the sequence of production will be. Furthermore, there is no evidence in the record to support counsel's argument that the beneficiary manages the production of the petitioner's factories that are located in China. 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. It is also noted that the e-mail messages sent between the beneficiary and Chinese factories asking about the status of shirts, etc., do not persuasively demonstrate that the beneficiary performs the duties of an industrial production manager.

The duties that the petitioner endeavors to have the beneficiary perform are the daily supervision duties including marketing duties, which are similar to the duties that a general manager or operations manager and a marketing manager would execute in a small business establishment. In contrast to the description of an industrial production manager, at page 87 of the *Handbook*, the DOL

describes the positions of a general manager and operations manager, in part, as follows:

General and operations managers plan, direct, or coordinate the operations of companies or public and private sector organizations. The duties include formulating policies, managing daily operations, and planning the use of materials and human resources, but are too diverse and general in nature to be classified in any one area of management or administration, such as personnel, purchasing or administrative services.

Also, at page 27 of the *Handbook*, the DOL describes the position of a marketing manager as follows:

Marketing managers develop the firm's detailed marketing strategy. . . . [T]hey identify potential markets--for example, business firms, wholesalers, retailers, government, or the general public. Marketing managers develop pricing strategy with an eye towards maximizing the firm's share of the market and its profits while ensuring that the firm's customers are satisfied.

The types of duties the petitioner ascribes to the beneficiary fall within the scope of a general manager or operations manager position and a marketing manager position rather than an industrial production manager position. The record does not demonstrate that the beneficiary would be managing the production of the Chinese factories from the petitioner's location in the United States. A review of the DOL's *Handbook* at pages 87-88 finds no requirement of a baccalaureate or higher degree in a specific specialty for employment as general and operations managers (top executives). Many general and operations managers have a bachelor's or higher degree in business administration or liberal arts. In addition, many are promoted from within the organization.

A review of the DOL's *Handbook* at page 28 also finds no requirement of a baccalaureate or higher degree in a specific specialty for employment in marketing managerial jobs. A wide range of educational backgrounds are suitable, but many employers prefer those with experience in related occupations plus a broad liberal arts background. In addition, most marketing management positions are filled by promoting experienced staff or related professional or technical personnel. 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 management, for the offered position. Third, although the record contains various

job advertisements, none of the advertisements is persuasive evidence of a degree requirement being common to the industry in parallel positions among similar organizations. The advertisements do not indicate that the candidate would be managing the production of a foreign factory from a location in the United States, and, more importantly, they do not require (in contrast to "prefer") a baccalaureate degree in a specific specialty as a minimum requirement for entry into the occupation. 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.