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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-01-223-51043 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 and export business with six employees and a gross annual income of \$900,000. It seeks to employ the beneficiary as a business 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 letter from the petitioner.

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 duties described by the petitioner were not so complex as to require a baccalaureate degree. On appeal, the petitioner's president submits an expanded description of the duties the petitioner anticipates the beneficiary would perform as a business manager. He states that the beneficiary will be responsible for performing highly complex duties and responsibilities in the business management field.

The petitioner'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. On appeal, the petitioner's president describes the duties of the offered position as follows:

- A. formulate and evaluate operation policies and procedures.
- B. recommend and implement internal control improvements.
- C. Spearhead technology upgrades/system enhancements.
- D. Review system security measures.
- E. Manage cost based trends vis a vis overall sales
- F. Monitor adherence to documentation procedures as it relates to shipping manifests, textile visas and bill of lading.
- G. Manage import trading activities as it [sic] relates to letters of credits and international wire transfers.
- H. Manage staff administration activities. . . .
- I. Handle customer complaints. . . .
- J. Facilitate and ensure coordination among the Senior Merchandiser, Vice-President and Operations Manager.
- K. Oversee that all customer chargebacks are in accordance to the policies and rules agreed upon by the customer and the company.
- L. Manage that all staff suggestions and grievances are being handled appropriately and ensure that weekly staff meetings are being held to air out their concerns and raise issues pertaining to the workplace.
- M. Spearhead in organizing team-building activities to hasten the cohesiveness and unity of the staff, seminars pertaining to increasing employee motivation and productivity.
- N. Organize and plan compensation packages to benefit the employees in terms of health plans and subsidies.

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 assertion that the proffered position would normally require a bachelor's degree in business management or a related field. The duties that the petitioner endeavors to have the beneficiary perform are primarily 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. At page 87 of the *Occupational Outlook Handbook (Handbook)*, the Department of Labor (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...they 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. 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 contain specific information regarding the prospective employers' organizations and, more importantly, they do not require 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.