

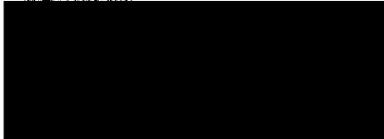
DA

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 02 016 55847

Office: TEXAS SERVICE CENTER

Date: **MAR 31 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)

ON BEHALF OF PETITIONER:

SELF-REPRESENTED

PUBLIC COPY

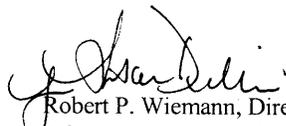
INSTRUCTIONS:

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

The petitioner is a Florida import export company specializing in medical equipment. It has one employee and a gross annual income of approximately \$50,000. It seeks to temporarily employ the beneficiary as a sales director for bacteriology equipment for a period of three years. The director determined that the petitioner had not established that the proffered position was a specialty occupation.

On appeal, the petitioner submits an evaluation of the beneficiary's work experience and states that it has demonstrated all the legal and regulatory requirements with regard to the petition.

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 field 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.

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 issue in this proceeding is whether the petitioner has established that the position offered to the beneficiary is a specialty occupation. In the original petition received by the Texas Service Center on October 15, 2001, the petitioner described the position as sales director with primary activities for laboratory and bacteriology equipment. The petitioner further explained the duties of the proffered position as follows:

Will apply proof of quality control to bacteriology analysis in order to guarantee equipment uses, functions and quality.

Will fulfill norms of biosecurity required in Latin American countries.

Will plan daily activities for sales in Latin American [sic], in coordination with sales agents and representatives-distributors in the markets.

Will target new markets such as hospitals, clinic, ambulatories in USA hispanic communities and Latin America' [sic] countries.

Will maintain and evaluate different programs of quality guarantee for equipment sold.

Will elaborate [sic] orders for equipment and other goods or materials for sale.

Will learn and handle manuals regarding health and industrial security rules in USA and Latin America [sic] countries.

Will represent the company in fairs, seminars and other trade shows and demonstrate uses of equipment for bacteriology industry.

Will oversee development of all related activities to the above-mentioned duties.

Will organize trade shows and seminars to increase sales, when necessary.

Will train sales personnel.

Will do monthly report of all activities.

The petitioner also submitted an educational equivalency document that recognized the beneficiary's undergraduate degree from La Universidad del Valle in Cali, Colombia, as the equivalent of a U.S. bachelor of science degree in medical laboratory technology.

On February 4, 2002, the director requested further information with regard to the petition. He requested a specific statement on the minimum academic requirements of the job offered. He also requested a list of workers the beneficiary would be directly managing and their job positions. Finally he requested an official credentials evaluation regarding the beneficiary's combination of education and work experience.

In response, the petitioner submitted the following information with regard to the academic requirements of the proffered position:

The minimum academic requirement of the job offered has to be a bacteriology and/or laboratorist. The [petitioner] has found that for this position, used to do the mistake on hiring qualified personnel in sales, with experience in sales, but not really knowledge [sic] in the equipment to handle for the company's business. Since this position requires someone who knows how to conduct business with a bacteriology and laboratorist mentality, the company has decided to try on testing how someone with this focus could be able to prove the quality control and uses of equipment. The candidate has to speak Spanish to be able to communicate with people in charge of the hospital, clinics and ambulatories of the Latin America countries the company has connection with. Shall be able to understand the goods, equipment or materials to be sold, be capable to handle manual and literature for all those countries. [sic] (Emphasis in original.)

The petitioner also submitted four service contracts between the petitioner and other business entities either in the United States or in Colombia that outlined the petitioner's responsibilities. With regard to the beneficiary's duties, all four documents stated that the director of sales would be the person who directly works on resolving all problems brought up by Hispanic clients.

With regard to other employees, the petitioner indicated that the beneficiary would not be supervising other staff, but rather would be training subcontractor sales personnel to give them a basic understanding of the goods and equipment to be sold. The

beneficiary would be in contact directly with the employees or managers of company customers.

The petitioner also resubmitted the educational equivalency document previously submitted with the I-129 petition, along with a letter from the beneficiary's previous employer in Colombia as to her work as a bacteriologist coordinator of a hospital blood bank and as a supervisor of blood bank personnel.

On April 15, 2002, the director denied the petition. The director determined that the evidence presented to date did not establish that a baccalaureate degree in a "focused, job-related" field was required to engage in any of the duties of the proffered job. The director also pointed out that the only specific statement made with regard to the relevant qualifications of the position was the mention of a bacteriology and/or laboratorist. The director also cited to *Matter of Shin*, 11 I&N Dec. 686 (D.D. 1966) in determining that any position can not be said to be a specialty occupation if the only reason for requiring a baccalaureate degree for the position is to acquire a higher caliber of employee.

On appeal, the petitioner submits an experience evaluation report from [REDACTED] Chair, Department of Decision Science and Information Systems, College of Business Administration, Florida International University, and a consultant to Global Education Group, Inc., an educational equivalency certification company. [REDACTED] evaluated the beneficiary's work experience and stated the following:

[The beneficiary] has worked in the business field since November of 1991. She was employed by [the] Mario Corre Renjifo Departmental Hospital in Colombia as a bacteriologist coordinator from November of 1991 to May of 2001.

. . . .

[The beneficiary] has completed over nine years of professional work experience in the business field. The U.S. degree of bachelor of business administration awarded by a regionally accredited university in the United States requires four years of undergraduate study. [The beneficiary's] education and responsibilities during her over nine years of work experience in the field of business demonstrate both the broad and professional knowledge that would be acquired in four years of academic study towards the award of the U.S. degree of bachelor of business administration. . . .In conclusion, [the beneficiary's] academic study and over nine years of professional work experience in the field of business are equivalent to

the U.S. bachelor's degree in business administration four-year degree).

The petitioner also submits job vacancy announcements for the position of sales representative in the Orlando, Florida area. Two vacancy announcements are for sales representatives of medical devices. Finally the petitioner submits excerpts from the H-1B section of Gordon, Mailman and Yale-Loehr's *Immigration Law and Procedures*.

The Immigration and Naturalization Service, now the Bureau of Citizenship and Immigration Services (Bureau), often looks to the Department of Labor's (DOL) *Occupational Outlook Handbook (Handbook)* when determining whether a baccalaureate or higher degree or its equivalent is normally the minimum requirement for entry into a particular position.

Upon review of the record, the petitioner did not identify with any specificity the baccalaureate degree that it required for the proffered position, but only mentioned the professions of "bacteriologist" and "laboratorist". It is not clear from the record what academic disciplines these titles represent to the petitioner.

It should be acknowledged that the critical element is not the title of the position or an employer's self-imposed standards, but whether the position actually requires the theoretical and practical application of a body of highly specialized knowledge, and the attainment of a bachelor's degree in the specific specialty as the minimum for entry into the occupation as required by the Act.¹

As stated previously, the statute establishes that the petitioner must show that the proffered position requires a baccalaureate degree or higher, or the equivalent, in a specific specialty. (Emphasis added.) To interpret the criteria in 8 C.F.R. 214.2(h) (4)(iii) (A) as solely requiring a bachelor's degree is an incorrect interpretation.

Upon a review of the job duties for the proffered position and the nature of the petitioner's business, it appears that the proffered position is that of sales representative with background or knowledge of equipment used by medical laboratory personnel. The job description contains both elements of daily business and marketing activities as well as duties involving knowledge of the handling and disposing of medical testing byproducts and

¹ The court in *Defensor v. Meissner* observed that the four criteria at 8 C.F.R. 214.2 (h) (4) (iii) (A) present certain ambiguities when compared to the statutory definition, and "might also be read as merely an additional requirement that a position must meet, in addition to the statutory and regulatory definition." See *Defensor v. Meissner* 201 F.3d 388 (5th Cir. 2000)

maintaining and evaluating a quality control program in place for equipment sold by the petitioner to medical laboratories.

The Department of Labor's *Occupational Outlook Handbook*, (*Handbook*), 2002-2003 edition, examines the occupation of sales representatives on page 368.

Sales representatives are an important part of manufacturers' and wholesalers' success. Regardless of the type of product they sell, their primary duties are to interest wholesale and retail buyers and purchasing agents in their merchandise, and to address any of the client's questions or concerns. . . . Sales Representatives also advise clients on methods to reduce costs, use their products, and increase sales.

With regard to training and education for the sales representative position, on page 369, the *Handbook* states the following:

The background needed for sales jobs varies by product line and market. Most firms require a strong educational background and increasingly prefer or require a bachelor's degree as the job requirements have become more technical and analytical. Nevertheless, many employers still hire individuals with previous sales experience who do not have a college degree. For some consumer products, factors such as sales ability, personality, and familiarity with brands are as important as a degree. On the other hand, firms selling complex, technical products may require a technical degree in addition to some sales experience.

To the extent that the petitioner has not identified a specific academic or technical discipline required for the proffered position of sales representative, it cannot be determined how analogous this *Handbook* classification is to the proffered position. Without more persuasive evidence, the petitioner has not established that a baccalaureate or higher degree or its equivalent in a specific specialty is normally the minimum requirement for entry into the particular position.

With regard to the second criterion of 8 C.F.R. § 214.2 (h) (4) (iii) (A), namely that a degree requirement is common to the medical equipment sales industry in parallel positions, the petitioner has submitted two job vacancies for sales representative for medical devices in the Orlando, Florida area. In referring to educational requirements, the cardiovascular medical devices sales representative position requires a four year degree (no specific degree listed) with three to five years of pharmaceutical sales, while the other position for a cardiovascular metabolic sales associate, requires a bachelor's degree, preferably in life sciences, pharmacy or a business related discipline. These two job vacancies establish that no specific

degree is needed for these two positions, although one employer lists some preferences in specific degrees. As such they do not provide sufficient evidence to establish that parallel positions within the medical equipment sales industry require a bachelor's degree with a specific specialty. (Emphasis added.)

With regard to the third criterion, namely, that the employer normally requires a degree or its equivalent for its sales director position, in its response to the director's request for further information, the petitioner mentioned hiring other sales persons who lacked knowledge or prior work in the medical equipment industry; however, these employees would not be viewed as performing the sales director position described by the petitioner. In addition, the petitioner indicated that it had only one employee and it did not identify this one employee as a sales director. Therefore the petitioner did not establish the third criterion of 8 C.F.R. § 214.2 (h)(4)(iii)(A).

With regard to the final criterion of 8 C.F.R. § 214.2 (h)(4)(iii)(A), namely that 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 beneficiary's duties while numerous, are no more specialized or complex than the duties of any other sales director of medical equipment. For example, the job description lists twelve duties, with some seven duties directed at sales activities and one directed at marketing activities. The other remaining duties describe areas such as "learning and handling manuals regarding health and industry security rules in the United States and Latin America," "applying proof of quality control to bacteriology analysis", or "fulfill norms of biosecurity required in Latin American countries."

While these duties indicate a certain amount of research of numerous areas, the petitioner provides no explanation of what exactly the beneficiary does to perform these non-business duties, or the percentage of time to be utilized doing these duties. With regard to the duties more focused on sales or marketing, the record contains no information on any difficulties faced by doing business in Latin America, or marketing medical equipment either in the United States or in Latin America. Without more persuasive evidence, the petitioner has not established the specialized and complex nature of the duties to be performed by the beneficiary.

The petitioner has failed to establish that any of the four criteria 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. § 361. The petitioner has not sustained that burden. Accordingly, the appeal will be dismissed.

ORDER: The appeal is dismissed.