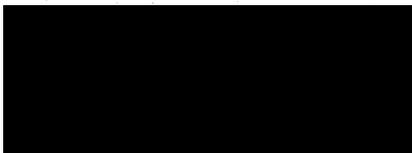


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U.S. Department of Homeland Security  
Citizenship and Immigration Services

**Identifying data deleted to  
prevent clearly unwarranted  
invasion of personal privacy**

ADMINISTRATIVE APPEALS OFFICE  
CIS, AAO, 20 MASS. 3/F  
425 Eye Street N.W.  
Washington, D.C. 20536



File: SRC 01 229 52458 Office: TEXAS SERVICE CENTER

Date: OCT 14 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**

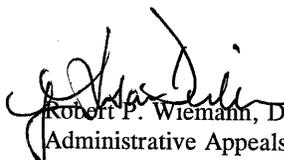
INSTRUCTIONS:

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 which 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 Citizenship and Immigration Services (CIS) 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. The matter is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed.

The petitioner is an import/export company and subsidiary of the Colombian corporation, Central Ltda. The petitioner was founded on March 12, 2001, presently has two employees, and an undisclosed gross annual income. The petitioner seeks to employ the beneficiary as a Vice President for a period of three years. The director determined that the proffered position failed to qualify as a specialty occupation.

On appeal, the petitioner submits a brief. The petitioner states that the proffered position qualifies as a specialty occupation, and that the duties of the proffered position are so specialized and complex that knowledge required to perform the duties is usually associated with the attainment of a baccalaureate or higher degree.

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 the classification of qualified nonimmigrant aliens who are coming temporarily to the United States to perform services in a specialty occupation.

Section 214(i)(1) of the Immigration and Nationality Act (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 further 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.

When determining whether a particular job qualifies as a

specialty occupation, the AAO considers the specific duties of the offered position, combined with the nature of the petitioning entity's business operations. Those duties were detailed as follows, with the filing of the I-129 petition:

As [V]ice President [the Beneficiary] will direct and coordinate the Latin American export department. She will formulate the administrative procedures of the department. She will direct and coordinate its long-term activities and goals, examine and analyze the financial activities, the operations costs and prognosis [sic] to determine the progress of the department. She will be in charge of hiring and training the department personnel and determining [sic] their functions. She will conceptualize the requirements of the distributors to circulate our products and replace the President in his accidental absences.

Subsequent to the filing of the I-129 petition, the director requested additional evidence from the petitioner. Specifically, the director requested evidence that the proffered position required at least a bachelor's degree. In response to that request, the petitioner indicated that it was a subsidiary of a Colombian company that had been in business for over 40 years. The petitioner was formed to purchase goods in the United States, and to export those goods to Colombia so that its parent company could expand its business to the remainder of Latin America. As the petitioner's Vice President, the beneficiary would:

[D]irect all the matters relating to the establishment of an export department for the promotion and opening of new markets, expand operations to other countries, conquer new markets and satisfy its needs, which implies the carrying out of professional work such as planning, development and establishing the policies and objectives of the business organization according to the Board of Directors. It is necessary to carry out this work before hiring personnel and requires the knowledge of management of someone who at least has a bachelor's degree.

[The beneficiary] will have to use her expertise and skill to start up the business, nurture it and ensure its growth in the short term. She will interview and hire the personnel under her supervision. According to our business objectives this [sic] personnel will include an Assistant, an Export and Sales Manager, a Purchasing Manager and two Sales Reps.

As Vice President[,] [the Beneficiary] will direct and coordinate the Latin American export department.

She will formulate the administrative procedures of the department, direct and coordinate its long-term activities and goals, examine and analyze the financial status of the operation's costs and prognosis in order to determine the progress of the department. She will be in charge of hiring and training the department personnel and determining their functions. She will conceptualize the requirements of the distributors to circulate our products and replace the President.

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 duties to be assigned to the beneficiary are normally performed by top executives in business organizations. Top executives devise strategies and formulate policies to meet specific business goals and objectives. In the *Occupational Outlook Handbook, 2002-03, (Handbook)* at 86, the Department Of Labor notes that in large organizations, duties are highly specialized and executives are responsible for the overall performance of one particular aspect of the organization. In smaller organizations, an executive may be responsible for performance of many different aspects of the business, as well as day-to-day supervisory duties. The *Handbook* further notes:

*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.

In some organizations, the duties of general and operations managers may overlap the duties of chief executive officers.

The petitioner has failed to qualify the proffered position as a specialty occupation. Formal education and experience of top executives vary greatly, depending on the nature of their responsibilities. Many have baccalaureate degrees of higher in business administration or liberal arts. Others are promoted from within the ranks of the organization. There is no requirement, however, that a top executive have a minimum of a baccalaureate or higher degree, or its equivalent, in a specific specialty for entry into the position. *Id.* at 87. The petitioner has, therefore, failed to establish the first criterion of 8 C.F.R. § 214.2(h)(4)(iii)(A).

The petitioner has also failed to establish that a degree requirement is common to the industry in parallel positions among similar organizations, or that the proffered position is so complex or unique that it can be performed only by an individual with a degree. The petitioner did submit statements from two companies indicating that vice presidents in those organizations held bachelor's degrees, or higher. Two opinion letters, however, are not sufficient to establish that a degree requirement is common to the industry as a whole. Further, there is no indication that the companies offering those opinions are similar in nature to the petitioner, or that the duties of those company's vice presidents are substantially similar to those to be performed by the beneficiary.

Finally, the petitioner did not establish that it normally requires a degree or its equivalent for the offered position, or 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 duties to be performed by the beneficiary are routinely performed by general or operations managers in a variety of business endeavors.

The petitioner has failed to establish that any of the four factors enumerated above are present in this proceeding. It is, therefore, 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 and the appeal shall accordingly be dismissed.

**ORDER:** The appeal is dismissed.