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U.S. Department of Homeland Security

Citizenship and Immigration Services

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ADMINISTRATIVE APPEALS OFFICE  
1100 ... 3/F  
45 ... Street, N.W.  
Washington, DC 20536



File: LIN 02 085 53542 Office: NEBRASKA SERVICE CENTER

Date: OCT 20 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:



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 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, Nebraska Service Center, and the matter is now before the Administrative Appeals Office (AAO) on appeal. The decision of the director is withdrawn. The matter is remanded to the director for further consideration of the beneficiary's qualifications.

The petitioner is a Chicago organization that represents a not-for-profit investment promotion program for northern France sponsored by the French government. It has two employees and a gross annual income of \$400,000. It seeks to temporarily employ the beneficiary as a chief executive officer for a period of three years. The director determined that the proffered position was not a specialty occupation.

On appeal, counsel asserts that CIS erroneously identified the position as a combination of marketing manager and real estate agent. Counsel also states that the proffered position is both specialized and technical. Counsel submits additional documentation.

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.

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 proffered position is a specialty occupation. In the original petition received by the Nebraska Service Center on January 14, 2002, the petitioner described the duties of the proffered position as follows:

The position of Chief Executive will report directly to the headquarters in northern France in Lille. The Chief Executive will be responsible for the overall management and day-to-day running of the organization in the [United States]. He will identify senior level management in potential clients and meet with them. He will evaluate opportunities for different sectors and industries of the [United States] and North America in the northern France region, and advise the clients regarding opportunities in northern France. He will consult with clients regarding funding operations and arrangements to secure financing where necessary. He will possess significant knowledge of the business environment in northern France and government- and private sector-oriented incentives for investing in northern France. He will have a great knowledge of business concepts and operations with experience in advising in relocation and expansion activities with large businesses. He will have hands-on experience in managing a business organization at the senior level. He will have oversight responsibilities for the personnel of the organization in the United States and North America, and will interface between both personnel and clients on the one hand, and headquarters on the other. The position requires no less than a bachelor's degree in business and finance, with a preference for a graduate degree in business administration, as well as fluent French and English abilities. The position also requires experience in managing or turning around an existing operation.

The petitioner also provided the following description of its business activities:

[The petitioner] is the North American office and operation of Nord-Pas de Calais Developpement, which is a non-profit organization in the northern region of France. The organization is wholly government created and funded. The primary objective of this organization is the pursuance of policies that affect the promotion of trade between the northern region of France and the outside world. The organization works closely with partners from all over the world at all levels assisting international companies and other investors in establishing and developing their activities in northern France, especially as a strategic entry point to the European market.

. . . .The organization is strategically placed to offer advice and consultations to enable partners and clients to take advantage of the vast policy and legislative incentives for foreign companies and investors coming to northern France. . . . Some of the methods of assistance include the following: economic and socio-economic information, initial and subsequent site proposals, real estate and property searches, identification of potential partners and subcontractors in the region, organization of visits to selected sites, review of administrative duties and formalities and financing arrangements, and creation of specialized training programs, and personalized follow-up and support.

On March 8, 2002, in a request for further evidence, the director described the proffered position as a combination executive and marketing manager. Referencing the Department of Labor's (DOL's) *Occupational Outlook Handbook (Handbook)*, the director stated that neither a marketing manager nor an executive required a baccalaureate degree in a specialized area for entry into the field. (Emphasis in original.) The director requested further information as to how the proffered position met any criteria of 8 C.F.R. § 214.2(h)(4)(iii)(A).

In response, the petitioner submitted a letter from Phillipe Yvergniaux, director of Nord France Experts in Lille, France, that stated the employees of the economic promotion agency in France had both baccalaureate and master's degrees or the equivalent Grande Ecole diplomas. The petitioner submitted a list of nine project managers with the French organization that identified academic degrees for all project managers. Also submitted were the resumes of three project managers with a partial translation of the educational backgrounds of these three employees. Finally, the petitioner submitted four job advertisements primarily taken from the Internet as documentary evidence that a baccalaureate degree in management or a related area was required in parallel positions throughout the economic development industry.

On June 3, 2002, the director denied the petition. The director stated that the proffered position combined the duties of a general manager or executive with those of a marketing manager and real estate agent. The director determined that none of these job categories required a baccalaureate degree for entry into employment. In addition, the director did not find the job advertisements submitted by the petitioner to be dispositive, as they did not identify a baccalaureate degree in a specific specialty as a requirement for entry into the respective positions.

On appeal, counsel asserts that the position is not just that of a marketing manager or real estate agent, but rather a very intricate, highly specialized, and narrowly defined position requiring a significant level of skills. Counsel provides the following four letters in support of the H-1B petition: a letter from the president of the Nord France Experts in France with regard to the necessity of employing a French national as its first official representative in the United States and Canada; a letter from Katherine Koch, United States Counsel, in northern France, as to the nature of the petitioner's business, and the nature of the beneficiary's job; a letter from Frontier Logistics LLC in Houston, Texas, a client of the French home company that worked previously with the beneficiary; and a letter from World Business Chicago, a public-private partnership funded by the City of Chicago and the Chicago business community that actively supports the work of economic development offices similar to the petitioner's office.

Upon review of the record, the director is correct in his analysis of the various job classifications contained in the Department of Labor's *Handbook*. None of the classifications, such as executive, general manager, or real estate agent, require a baccalaureate degree in a specific specialty for entry into the position. What is less clear in the director's analysis is whether the correct classifications have been identified and analyzed. As counsel asserts, there appears to be no link between the beneficiary's duties as outlined by the petitioner and the duties of a real estate agent. The job responsibility of identifying appropriate business sites in a particular part of France and advising American businesses with regard to these sites appears to be distinct from that of actually negotiating the sale or rental of a property or business in France. The latter responsibility in France appears to be the domain of attorneys and notaries, in addition to real estate agents.

Based on the complete description of the beneficiary's duties as outlined in the original petition, and the correspondence submitted on appeal, the proffered position appears to combine several jobs involving executive duties, liaison work, the representation of a particular region in France to other nationalities and businesses, as well as extensive knowledge of the intricacies of international business and finance. No classification in the *Handbook* examines such an amalgam position.

Nevertheless, in reviewing the nature of the petitioner's business and the prospective duties of the beneficiary, the petitioner has presented a persuasive argument for classifying the position as a specialty occupation, based on 8 C.F.R. § 214.2(h)(4)(iii)(A)(4), namely, 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.

Given the multiple job responsibilities involving the knowledge of commercial and business law and practices in France, with particular emphasis on the Nord-Pas de Calais geographic area, as well as the nature of the petitioner's combined federal/state operating and financial structure in France, and its business activities both in France and in the United States, it does not appear excessive that the petitioner requires at least a bachelor's degree in finance or business, with emphasis on French or European business or a closely related field.

The critical element in the analysis of this criterion is not the 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.<sup>1</sup> In the instant petition, the petitioner appears to have met both the statutory requirements as outlined in the Act and the regulatory criteria as outlined in 8 C.F.R. § 214.2 (h)(4)(iii)(A).

Beyond the decision of the director, the evidence on the record is not persuasive that the beneficiary is qualified to perform the duties of the proffered position. Pursuant to 8 C.F.R. § 214.2(h)(4)(iii)(C), to qualify to perform services in a specialty occupation, the alien must meet one of the following criteria:

1. Hold a United States baccalaureate or higher degree required by the specialty occupation from an accredited college or university;
2. Hold a foreign degree determined to be equivalent to a United States baccalaureate or higher degree required by the specialty occupation from an accredited college or university;

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<sup>1</sup> 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 (5<sup>th</sup> Cir. 2000).

3. Hold an unrestricted State license, registration, or certification which authorizes him or her to fully practice the specialty occupation and be immediately engaged in that specialty in the state of intended employment; or
4. Have education, specialized training, and/or progressively responsible experience that is equivalent to completion of a United States baccalaureate or higher degree in the specialty occupation and have recognition of expertise in the specialty through progressively responsible positions directly related to the specialty.

Although the petitioner has provided copies and translations of the beneficiary's academic credentials, the petitioner provided no educational equivalency document as required by 8 C.F.R. § 214.2 (h)(4)(iii)(C)(2). Such a document would establish the equivalency between the beneficiary's diploma in commercial, administrative and financial higher studies and a baccalaureate degree from an accredited U.S. institution of higher studies. Without such a document, the record is incomplete and the issue of whether the beneficiary is qualified to perform the duties of the position cannot be resolved.

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 sustained that burden with regard to the issue raised by the director as to whether the proffered position is a specialty occupation. However, the record remains incomplete with regard to whether the beneficiary is qualified to perform the proffered position due to the lack of an educational equivalency document. Accordingly, the decision of the director will be withdrawn and the matter remanded to the director for further consideration with regard to the beneficiary's qualifications.

**ORDER:** The decision of the director is withdrawn. The matter is remanded to the director for further consideration of the beneficiary's qualifications and entry of a new decision that, if adverse to the petitioner, shall be certified to the AAO for review.