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

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

SEP 10 2003

File: WAC 02 184 50893

Office: CALIFORNIA SERVICE CENTER

Date:

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

The petitioner is a corporation operating interior design and furniture/kitchen and bath stores. It has nine employees and a gross annual income of \$2,500,000. The petitioner seeks to employ the beneficiary as a show room manager for a period of three years. The director determined that the proffered position did not qualify as a specialty occupation.

On appeal, counsel asserts that the proffered position is a specialty occupation. Specifically, counsel contends that the complexity of the position requires a minimum of a bachelor's degree, with associated work experience, to successfully perform the duties of the position.

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.

The petitioner detailed the duties of the proffered position with the filing of the I-129 petition:

In this position, [the beneficiary's] responsibilities include: overseeing and coordinating showroom activities[;] promoting communication between customers, contractors and the company[;] implementing and maintaining [the] company's inventory data[;] costing and pricing control[;] [and] issuing, verifying and coordinating employee's timetable[s]. In addition, she will be training new employees and resolv[ing] H/R related issues.

Subsequent to the filing of the initiating petition, the director requested additional evidence from petitioner. Specifically, the director asked the petitioner to establish that the beneficiary was qualified to perform duties associated with a specialty occupation. In response to that request, the petitioner noted that the beneficiary had a bachelor's degree in communications and psychology, and had completed the following related courses:

1. Economics
2. Economic Structure of Mass Communication
3. Math for Economists
4. Statistics
5. Electronic Information Network Market Place
6. Communication in Organizations
7. Abnormal Psychology, and
8. Social Psychology and Everyday Life

The petitioner also provided a letter from the beneficiary's last employer [REDACTED], stating that the beneficiary had been employed with that company from 1988 - 2002. According to the letter, she worked for that organization as Executive Manager, being charged with showroom/office management in terms of daily operations, sales, training and staff supervision. The beneficiary also assisted in the implementation of marketing and promotional plans for local and Asian markets. Other responsibilities included the initiation and maintenance of the company's computerized inventory control system, while assisting with purchasing and procurement.

An independent evaluation of the beneficiary's education was performed by Globe Language Services, Inc. (Globe). Globe determined that the beneficiary's foreign education was equivalent to a bachelor's degree in Mass Communications and Psychology at an accredited U.S. university.

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 qualify the offered position as a specialty occupation. The proffered position requires general managerial skills, and those skills do not arise from any particular specialty. Indeed, many management or top executive positions are filled by promoting experienced, lower level managers from within an organization. A college degree is not a minimum requirement for entry into the field of management. See *Occupational Outlook Handbook*, 2002-03, (*Handbook*) at 87. The petitioner has, therefore, failed to establish the first criterion listed above.

Second, the petitioner has not established that the degree requirement is common to the industry in parallel positions among similar organizations, or that the position is so complex or unique that it can be performed only by individuals with a degree. The duties assigned to the beneficiary are performed by management on a regular basis in other retail and business enterprises. Likewise, the fact that the beneficiary serves a diverse clientele in a bi-lingual environment does not render the proffered position so complex or unique as to require a degree for the performance of the required duties.

Third, the petitioner has not established that it normally requires a degree, or its equivalent, for the proffered position. Finally, the nature of the specific duties do not appear to be so specialized and complex that knowledge required to perform them are usually associated with the attainment of a baccalaureate or higher degree.

Counsel asserts in his brief that the proffered position qualifies as a specialty occupation because the petitioner requires a bachelor's degree for entry into the position. Citing

Tapis International v. Immigration and Naturalization Service, 94 F. Supp.2d 172 (D.Mass. 2000), counsel states that a bachelor's degree in a **specific specialty** is not required for the position's qualification as a specialty occupation, and that the proffered position qualifies simply because the employer requires a bachelor's degree in **any** discipline, for entry into the position. The court in *Tapis*, however, made no such finding. The court held that a position may qualify as a specialty occupation where an employer requires a bachelor's degree in a related field, in addition to specialized training or experience. In *Tapis*, the employer required a bachelor's degree in marketing, business administration, or a related field, as well as experience in interior design. The petitioner in this instance, requires a bachelor's degree, but in no particular discipline. The position does not qualify as a specialty occupation simply because the employer imposes a non-descript degree requirement for entry into the position. The proffered position does not require the theoretical and practical application of a body of highly specialized knowledge, and attainment of a bachelor's degree in a specific specialty, or its equivalent, for entry into the position. Accordingly, the proffered position does not qualify as a specialty occupation.

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.