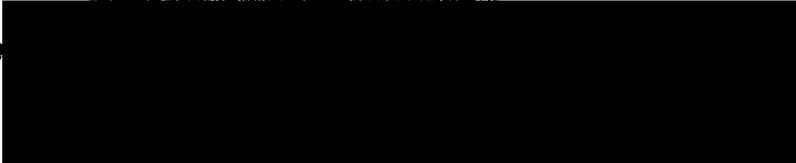




U.S. Citizenship
and Immigration
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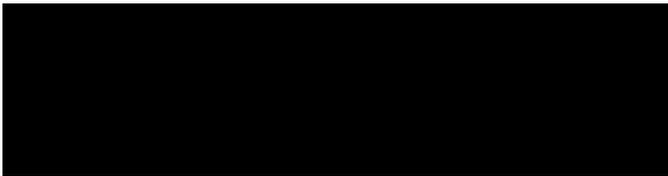
FILE: EAC 02 291 52878 Office: VERMONT SERVICE CENTER Date:

IN RE: Petitioner: [Redacted]
Beneficiary: [Redacted]

2004

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:



2004

INSTRUCTIONS:

This is the decision of the Administrative Appeals Office 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.

Mari Johnson

for Robert P. Wiemann, Director
Administrative Appeals Office

DISCUSSION: The service center director denied the nonimmigrant visa petition and the matter is now before the Administrative Appeals Office (AAO) on appeal. The director's decision will be withdrawn and the matter remanded for entry of a new decision.

The petitioner is a designer and manufacturer of packaging for the cosmetics and personal care industry. It has five manufacturing facilities worldwide and is primarily engaged in the injection molding and extrusion-blow molding of plastic components and containers. It seeks to employ the beneficiary as a financial administrator and to classify him as a nonimmigrant worker in a specialty occupation pursuant to 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).

The director denied the I-129 petition stating that the proffered position was not a specialty occupation. On appeal, counsel submits a brief and additional information.

The first issue to be discussed in this proceeding is whether the position offered to the beneficiary qualifies as a specialty occupation.

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:

[A]n 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 are so specialized and complex that knowledge required to perform the duties is usually associated with the attainment of a baccalaureate or higher degree.

Citizenship and Immigration Services (CIS) interprets the term “degree” in the criteria at 8 C.F.R. § 214.2(h)(4)(iii)(A) to mean not just any baccalaureate or higher degree, but one in a specific specialty that is directly related to the proffered position.

The record of proceedings before the AAO contains: (1) Form I-129 and supporting documentation; (2) the director’s request for additional evidence; (3) the petitioner’s response to the director’s request; (4) the director’s denial letter; and (5) Form I-290B with counsel’s brief. The AAO reviewed the record in its entirety before issuing its decision.

The petitioner is seeking the beneficiary’s services as a financial administrator. Evidence of the beneficiary’s duties was included with the I-129 petition and in response to the director’s request for evidence. According to the evidence the beneficiary would: prepare reports that summarize and forecast financial position relating to income, expenses, and earnings based on past, present, and expected operations; analyze future earnings or expenses; oversee the accounting, audit, and budget functions of the company; review and provide assistance in connection with certain tax or legal matters having a financial implication; supervise a team of administrative, bookkeeping, and accounting personnel; direct financial planning and investment of funds in coordination with management; examine, evaluate, negotiate, and recommend loans or other transactions; and act as a liaison with the production, financial, legal and administrative departments of the petitioner’s parent company. These duties were explained in greater detail in the petitioner’s response to the director’s request for evidence. The petitioner requires a minimum of a bachelor’s degree in finance, accounting or a related field for entry into the offered position.

The director found that the duties of the offered position appeared to be those of a financial manager, and that a financial manager’s position was a specialty occupation. The director further held, however, that the petitioner had not established that the nature of the petitioner’s business was such that it requires the services of a financial manager.

On appeal, counsel indicates that the offered position satisfies the requirements of 8 C.F.R. § 214.2(h)(4)(iii)(A), and provides additional documents relating to the size and nature of the petitioning entity.

The AAO routinely consults the U.S. Department of Labor’s *Occupational Outlook Handbook (Handbook)* for information about the duties and educational requirements of particular occupations. The duties of the

proffered position are essentially those of financial managers. Financial managers oversee the preparation of financial reports, direct investment activities, and implement cash management strategies. They are found in almost all firms, government agencies, and organizations. The *Handbook* notes that a bachelor's degree in finance, accounting, economics, or business administration is the minimum academic preparation for the position. The offered position, therefore, clearly qualifies as a specialty occupation as a baccalaureate or higher degree, or its equivalent, in a specific specialty is normally the minimum requirement for entry. 8 C.F.R. § 214.2(h)(4)(iii)(A)(1). In addition to meeting this criterion, the offered position also satisfies the criterion at 8 C.F.R. § 214.2(h)(4)(iii)(A)(4), in that the nature of the position's duties is so specialized and complex that knowledge required to perform them is usually associated with the attainment of a baccalaureate or higher degree in a specific specialty. The criterion at 8 C.F.R. § 214.2(h)(4)(iii)(A)(2) & (3) will not be discussed as it has been determined that other qualifying criteria apply.

Section 214(i)(2) of the Act, 8 U.S.C. § 1184(i)(2), states that an alien applying for classification as an H-1B nonimmigrant worker must possess:

- (A) full state licensure to practice in the occupation, if such licensure is required to practice in the occupation,
- (B) completion of the degree described in paragraph (1)(B) for the occupation, or
- (C) (i) experience in the specialty equivalent to the completion of such degree, and
(ii) recognition of expertise in the specialty through progressively responsible positions relating to the specialty.

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;
- (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.

Beyond the decision of the director, the beneficiary does not appear qualified to perform the duties of a

specialty occupation. A credentials evaluation service determined that the beneficiary's foreign education was equivalent to a bachelor's degree in Business Administration from an accredited institution of higher education in the United States. 8 C.F.R. § 214.2(h)(4)(iii)(C)(2). The record does not contain, however, copies of the beneficiary's educational transcripts to determine whether he completed courses specifically applicable to the duties of the offered position. Examples of applicable courses could include: finance; financial management; accounting; economics; operations management; commerce; strategic business planning; management banking; financial accounting; cost accounting; management accounting; and other courses related to financial management. For the beneficiary to be qualified to perform the duties of the offered position it must be established that his education includes a precise and specific course of study that relates directly and closely to the duties of the offered position. Since there must be a close corollary between the required specialized studies and the position offered, a degree of generalized title, such as business administration, without further specification, would not qualify the beneficiary to perform the duties of a specialty occupation. *Cf. Matter of Michael Hertz Associates*, 19 I&N Dec. 558 (Comm. 1988); and *Matter of Ling*, 13 I&N Dec. 35 (Reg. Comm. 1968). The record does not establish that the beneficiary's degree in business administration was obtained with an emphasis in finance, or some other closely related discipline. As such, it has not been established that the beneficiary's degree qualifies him to perform the duties of the proffered position. Furthermore, the record is not sufficient for CIS to determine that the beneficiary has obtained the equivalent of the degree required by the offered position through a combination of education, specialized training, and/or work experience in areas related to the specialty, and that the beneficiary has achieved recognition of expertise in the specialty occupation as a result of such training and experience. 8 C.F.R. § 214.2(h)(4)(iii)(D)(5). As such, the director's decision must be withdrawn and this matter remanded to the director to determine whether the beneficiary qualifies to perform the duties of a specialty occupation. The director may request such additional evidence as he deems necessary in rendering his decision.

As always, the burden of proof in these proceedings rests solely with the petitioner. Section 291 of the Act, 8 U.S.C. § 1361.

ORDER: The director's decision is withdrawn. This matter is remanded to the director to issue a new decision commensurate with the directives of this opinion.