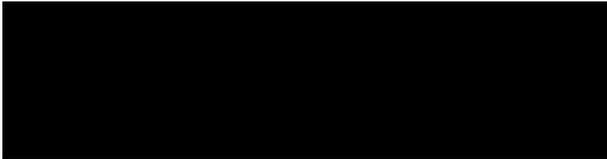
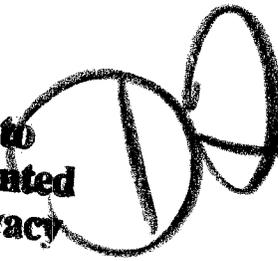


U.S. Citizenship
and Immigration
Services



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invasion of personal privacy**



FILE: SRC 02 100 50753 Office: TEXAS SERVICE CENTER Date:

MAR 08 2004

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

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

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.

Robert P. Wiemann, Director
Administrative Appeals Office

DISCUSSION: The director of the service center denied the nonimmigrant visa petition and the matter is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed. The petition will be denied.

The petitioner is a United States corporation (Florida) that seeks to employ the beneficiary as an international sales manager. The petitioner, therefore, endeavors to classify the beneficiary 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 petition because the petitioner failed to establish that: (1) the proffered position is a specialty occupation; and (2) the labor condition application is valid. On appeal, counsel submits additional evidence.

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.

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.

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 proceeding 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 and supporting documentation. The AAO reviewed the record in its entirety before issuing its decision.

The petitioner is seeking the beneficiary's services as an international sales manager. Evidence of the beneficiary's duties includes: the Form I-129 and the petitioner's response to the director's request for evidence. According to this evidence, the beneficiary will generate sales from prospective clients in Japan. The petitioner did not indicate the degree requirement for the position.

The director found that the proffered position was not a specialty occupation because the petitioner failed to establish any of the criteria found at 8 C.F.R. § 214.2(h)(4)(iii)(A). The director stated that the petitioner did not submit the proper documents in its response to the request for evidence, and noted that the submitted labor condition application was not certified.

On appeal, the petitioner states that the beneficiary will interface with company presidents and engineers; and oversee company assets outside the United States, such as interfacing with customers, providing technical support, and establishing a branch office. The petitioner claims that a candidate must possess at least a bachelor's degree, be fluent in the English language as well as one Asian and one European language, and have five years of experience.

Upon review of the record, the petitioner has established none of the four criteria outlined in 8 C.F.R. § 214.2(h)(4)(iii)(A). Therefore, the proffered position is not a specialty occupation.

The AAO finds that the petitioner establishes neither of the criteria at 8 C.F.R. § 214.2 (h)(4)(iii)(A)(1) and (2): a baccalaureate or higher degree or its equivalent in a specific specialty is the normal minimum requirement for entry into the particular position; a degree requirement is common to the industry in parallel positions among similar organizations; or a particular position is so complex or unique that it can be performed only by an individual with a degree in a specific specialty. In the first place, the petitioner does not state that a bachelor's degree in a specific specialty is required to perform the duties of the position. As already related, 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. Second, on appeal, the petitioner adds new job duties to those previously described. CIS will disregard the new job duties. CIS regulations affirmatively require a petitioner to establish eligibility for the benefit it is seeking at the time the petition is filed. See 8 C.F.R. 103.2(b)(12). Any facts that come into being subsequent to the filing of a petition cannot be considered when determining whether the proffered position is a specialty occupation. See *Matter of Michelin Tire*, 17 I&N Dec. 248, 249 (Reg. Comm. 1978).

Factors often considered by CIS when determining the first and second criteria at 8 C.F.R. § 214.2(h)(4)(iii)(A) include: whether the Department of Labor's *Occupational Outlook Handbook* (the *Handbook*) reports that the industry requires a degree; whether the industry's professional association has made a degree a minimum entry requirement; and whether letters or affidavits from firms or individuals in the industry attest that such firms "routinely employ and recruit only degreed individuals." See *Shanti, Inc. v. Reno*, 36 F. Supp. 2d 1151, 1165 (D.Min. 1999)(quoting *Hird/Blaker Corp. v. Slattery*, 764 F. Supp. 872, 1102 (S.D.N.Y. 1991)).

The AAO finds that the *Handbook* conveys that the duties of the proffered position, as described in the initial Form I-129, correspond to those performed by a sales representative. The *Handbook*, furthermore, reports that a bachelor's degree in a specific specialty is not required for a sales representative position. Accordingly, the first criterion is not established.

No evidence in the record establishes the second criterion - 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.

Neither is there evidence to establish the third criterion - that the employer normally requires a degree or its equivalent for the position. Nor is there evidence to establish the fourth criterion: that the nature of the specific duties is so specialized and complex that the knowledge required to perform the duties is usually associated with the attainment of a baccalaureate or higher degree.

With respect to the submitted labor condition application, pursuant to 8 C.F.R. § 214.2(h)(4)(iii)(B) the petitioner is required to submit the following with an H-1B petition involving a specialty occupation:

1. A certification from the Secretary of Labor that the petitioner has filed a labor condition application with the Secretary,
2. A statement that it will comply with the terms of the labor condition application for the duration of the alien's authorized period of stay,
3. Evidence that the alien qualifies to perform services in the specialty occupation . . .

Here, the AAO finds that the director correctly found that one of the grounds to deny the petition is based on the finding that the Department of Labor had not signed or certified the submitted labor condition application.

As related in the discussion above, the petitioner has failed to establish that the proffered position is a specialty occupation or that the labor condition application is valid. Accordingly, the AAO shall not disturb the director's denial of the petition.

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.

ORDER: The appeal is dismissed. The petition is denied.