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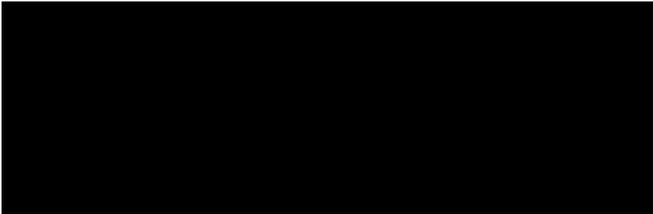
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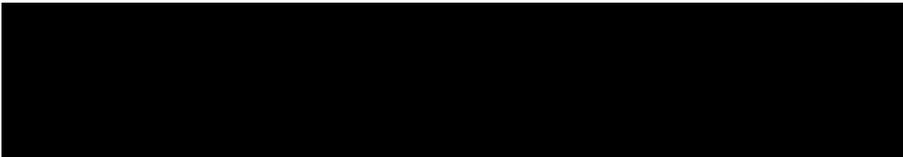
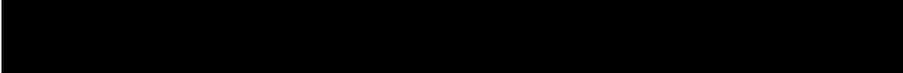
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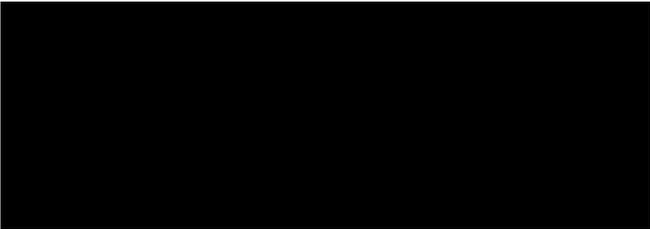


FILE: EAC 03 220 50498 Office: VERMONT SERVICE CENTER Date: **AUG 31 2005**

IN RE: Petitioner: 
Beneficiary: 

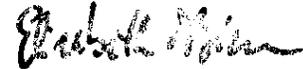
PETITION: Petition for a Nonimmigrant Worker Pursuant to Section 101(a)(15)(H)(i)(b) of the
Immigration and Nationality Act, 8 U.S.C. § 1101(a)(15)(H)(i)(b)

ON BEHALF OF PETITIONER:



INSTRUCTIONS:

This is the decision 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 Vermont 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 engaged in the retail trade of general merchandise. It seeks to hire the beneficiary as a sales manager. The director denied the petition based on his determination that the petitioner had failed to establish that its proffered position was a specialty occupation.

The record of proceeding before the AAO contains: (1) Form I-129 and supporting documentation; (2) the director's request for evidence; (3) counsel's response to the director's request for evidence; (3) the director's denial letter; and (4) Form I-290B, with counsel's brief and previously submitted documentation. The AAO reviewed the record in its entirety before reaching its decision.

The issue before the AAO is whether the petitioner's proffered position qualifies as a specialty occupation. To meet its burden of proof in this regard, a petitioner must establish that the job it is offering to the beneficiary meets the following statutory and regulatory requirements.

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 one 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 fields 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.

Citizenship and Immigration Services (CIS) interprets the term “degree” in the above criteria to mean not just any baccalaureate or higher degree, but one in a specific specialty that is directly related to the proffered position.

To determine whether a particular job qualifies as a specialty occupation, CIS does not simply rely on a position’s title. The specific duties of the proffered position, combined with the nature of the petitioning entity’s business operations, are factors to be considered. CIS must examine the ultimate employment of the alien, and determine whether the position qualifies as a specialty occupation. *Cf. Defensor v. Meissner*, 201 F. 3d 384 (5th Cir. 2000). The critical element is not the title of the position nor an 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 baccalaureate or higher degree in the specific specialty as the minimum for entry into the occupation, as required by the Act.

The petitioner states that it is seeking the beneficiary’s services as a sales manager. Evidence of the beneficiary’s duties includes: the Form I-129; a July 16, 2003 letter of support from the petitioner; and counsel’s February 2, 2004 response to the director’s request for evidence. According to this evidence, the beneficiary would perform duties that entail managing the retail store engaged in selling a general line of merchandise; reviewing market analysis to determine customer needs, volume potential, price schedules, and discount rates, and developing sales campaigns to accommodate goals of company; directing product simplification and standardization to eliminate unprofitable items from sales lines; preparing periodic report showing sales volume and potential sales; planning and preparing work schedules and assigning employees to specific duties; formulating pricing policies on merchandise according to requirements for profitability of store operations; coordinating sales promotion activities and preparing, or directing workers preparing merchandise displays and advertising copy; supervising employees engaged in sales work, taking inventories, reconciling cash with sales receipts, keeping operating records, or preparing daily record of transactions; ordering merchandise or preparing requisitions to replenish merchandise on hand; answering customers complaints or inquiries. The petitioner indicated that the position requires a bachelor’s degree with a major in business administration or its equivalent.

The director requested additional evidence, specifically, a breakdown of the percentage of time to be spent on each duty. In response, counsel for the petitioner augmented a portion of the job description, which did not include a percentage breakdown. Additionally, the petitioner submitted an opinion letter from the professor and management department chair for the School of Business of Seattle University. The professor indicated that he reviewed a copy of the petition support letter and stated “[t]he position in question is both sales manager and retail store manager; both are typical marketing career goals for which a bachelor’s degree in business administration with a major in marketing are appropriate and normal preparation.” The professor further opined “[I]n my opinion the duties of the proffered position are so specialized and complex that the knowledge required to perform the duties is associated with at least a bachelor’s degree in business administration or a related field.”

In his denial, the director reviewed the proffered position’s duties and referred to the Department of Labor’s *Occupational Outlook Handbook* (the *Handbook*) and noted “sales worker supervisors usually acquire knowledge of management principles and practices—an essential requirement for a supervisory or managerial

position in retail trade—through work experience. Many supervisors begin their careers on the sales floor as salespersons, cashiers, or customer service representatives.” The director acknowledged that the petitioner submitted job listings from the Internet but found that the evidence did not demonstrate that the size and nature of the companies are similar to the petitioner. The director also noted that the petitioner submitted an opinion letter but that the letter did not alter the director’s conclusion. The director found that the position did not meet any of the preceding criteria for classification as a specialty occupation.

On appeal, counsel contends that the position satisfies more than one of the criteria set by the regulations. Counsel highlights a section from the director’s decision: “it is noted that that your company does require a bachelor’s degree for the position being offered, however, the evidence of record does not support that it is common practice for your company to routinely employ sales managers with a bachelor’s degree in a specific specialty.” Counsel contends that this sentence signifies that the director made a factual finding, which is sufficient to declare the position as a specialty occupation pursuant to 8 C.F.R. § 214.2(h)(3)(iii)(A). Additionally, counsel refers to the Department of Labor’s *Dictionary of Occupational Titles (DOT)* to support his contention that the proffered position is a specialty occupation. Counsel notes that the position of sales manager listed in the *DOT* is similar to the proffered position and that the *DOT* indicates that the SVP for the position of sales manager is 8. Counsel states that Job Zone descriptions for level four occupations indicate that these jobs require at least a bachelor’s degree. Finally, counsel contends that the director’s reliance on the *Handbook* is misplaced. Counsel contends that the position is that of a sales manager and is not the same as a sales supervisor.

Counsel’s reliance on an SVP rating from the *DOT* is misplaced. The *DOT* is not a persuasive source of information regarding whether a particular job requires the attainment of a baccalaureate or higher degree in a specific specialty, or its equivalent, as a minimum for entry into the occupation. An SVP rating is meant to indicate only the total number of years of vocational preparation required for a particular position. It does not describe how those years are to be divided among training, formal education, and experience, and it does not specify the particular type of degree, if any, that a position would require. For this reason, the AAO does not rely on the *DOT* information.

The AAO recognizes the *Handbook* as an authoritative source on the duties and educational requirements of a wide variety of occupations, and, accordingly, considered the evidence of record in the light of the 2004-2005 edition of the *Handbook*. Based on the record of proceeding, the AAO has determined that the proffered position is most similar to that of a sales supervisor in the *Handbook*. According to the *Handbook*, sales worker supervisors oversee the work of sales and related workers, such as retail salespersons, cashiers, customer service representatives, stock clerks and order fillers, sales engineers, and wholesale and manufacturing sales representatives. Sales worker supervisors are responsible for interviewing, hiring, and training employees, as well as for preparing work schedules and assigning workers to specific duties. Many of these workers hold job titles such as *sales manager* or *department manager*. Under the occupational classification system used in the *Handbook*, however, workers with the title *manager* who mainly supervise nonsupervisory workers are called *supervisors* rather than *managers*, even though many of these workers often perform numerous managerial functions.

The *Handbook* further describes the duties of sales supervisors as including:

Sales worker supervisors in large retail establishments, often referred to as department managers, provide day-to-day oversight of individual departments These workers establish and implement policies, goals, objectives, and procedures for their specific departments; coordinate activities with other department heads; and strive for smooth

operations within their departments. They supervise employees who price and ticket goods and place them on display; clean and organize shelves, displays, and inventories in stockrooms; and inspect merchandise to ensure that nothing is outdated. Sales worker supervisors also review inventory and sales records, develop merchandising techniques, and coordinate sales promotions. In addition, they may greet and assist customers and promote sales and good public relations . . . They may prepare budgets, make personnel decisions, devise sales-incentive programs, assign sales territories, or approve sales contracts.

In small or independent companies and retail stores, sales worker supervisors not only directly supervise sales associates, but also are responsible for the operation of the entire company or store. Some are self-employed business or store owners.

With respect to the educational qualifications required of sales worker supervisors, the *Handbook* states:

The educational backgrounds of sales worker supervisors vary widely. Regardless of the education they receive, recommended courses include accounting, marketing, management, and sales, as well as psychology, sociology, and communication. Supervisors also must be computer literate, because almost all cash registers, inventory control systems, and sales quotes and contracts are computerized.

Supervisors who have postsecondary education often hold associate's or bachelor's degrees in liberal arts, social sciences, business, or management. To gain experience, many college students participate in internship programs that usually are developed jointly by individual schools and firms.

Consequently, there is insufficient evidence in the record to establish that a baccalaureate or higher degree or its equivalent in a specific specialty is the normal minimum requirement for entry into the sales supervisor position.

To establish the second criterion - that a specific degree requirement is common to the industry in parallel positions among similar organizations - counsel relies on submitted internet job postings from various companies: TEG Solutions, AT&T Wireless and McKesson Corporation. This evidence fails to establish that a specific baccalaureate degree is common to the industry in parallel positions among similar organizations. The advertised positions are not parallel to the proffered position. For example; AT&T Wireless is in the wireless telecommunication industry and specifies a bachelor's degree in a related discipline or equivalent experience; McKesson Corporation is engaged in the business of medication supply management and indicated that it requires generally a BA or BS degree. Consequently, the postings fail to establish that there is a specific baccalaureate degree that is a common industry-wide requirement.

As noted above, the petitioner submitted an opinion letter from the Professor and Management Department Chair for the School of Business of Seattle University who indicated that his evaluation was based on a review of the letter of support from the petitioner. The professor concluded "the duties of the proffered position are so specialized and complex that the knowledge required to perform the duties is associated with at least a bachelor's degree in business administration or a related field." The author noted that he read the petitioner's support letter and the duties of the position, including scheduling, product management, merchandising, human resources management, forecasting sales, among others. The author did not indicate if he analyzed these duties in relation to the petitioner's volume of business conducted, the personnel to be

managed, etc. The AAO notes that the petitioner's letter referred to in the opinion letter does not indicate that the petitioner has 3 employees and a net income of \$21,013, as reflected elsewhere in the record. The AAO may, in its discretion, use as advisory opinion statements submitted as expert testimony. However, where an opinion is not in accord with other information or is in any way questionable, the AAO is not required to accept or may give less weight to that evidence. *Matter of Caron International*, 19 I&N Dec. 791 (Comm. 1988).

Again, the evidentiary record depicts the duties of the proffered position as a sales supervisor, an occupation that does not require a degree in a specific specialty. The AAO further notes that the petitioner requires a bachelor's degree in business administration without further specification for the position. A requirement for a degree in business administration is not sufficient to establish a specialty occupation. Since there must be a close corollary between the required specialized studies and the position, the requirement of a degree with a generalized title, such as business administration or liberal arts, without further specification, does not establish the position as a specialty occupation. *Matter of Michael Hertz Associates*, 19 I&N Dec. 558 (Comm. 1988).

Nor is there evidence in the record to establish the third criterion at 8 C.F.R. § 214.2(h)(4)(iii)(A): that the petitioner normally requires a specific degree or its equivalent for the position. The petitioner indicated that this is a new position. In response to counsel's assertion that the director made a factual finding that the petitioner requires a bachelor's degree for the proffered position, the AAO points out that the director clarified his statement by determining that the evidence of record does not support that it is common practice for the petitioner to routinely employ sales managers with bachelor's degrees in a specific specialty. Therefore, the petitioner has not met this criterion based on the director's sentence.

The fourth criterion at 8 C.F.R. § 214.2(h)(4)(iii)(A) requires that the petitioner establish 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. To the extent they are described in the record, the duties of the position are not so specialized and complex that the knowledge required to perform them is usually associated with the attainment of a baccalaureate or higher degree. The duties parallel those in the *Handbook* for a sales supervisor, an occupation that does not require a specific baccalaureate degree. The petitioner therefore fails to establish the fourth criterion.

Therefore, for the reasons related in the preceding discussion, the petitioner has failed to establish that the proffered position is a specialty occupation. 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.