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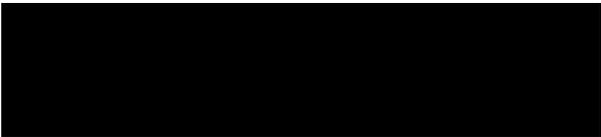
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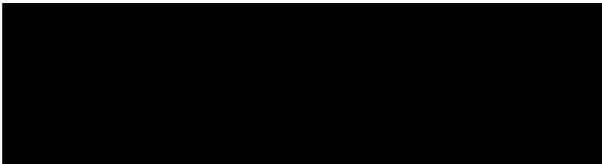
FILE: WAC 04 025 50059 Office: CALIFORNIA SERVICE CENTER Date: DEC 01 2005

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*

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 appeal will be dismissed. The petition will be denied.

The petitioner is a clothing manufacturer. It seeks to employ the beneficiary as an industrial production manager and endeavors 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 petition because the beneficiary did not qualify to perform the duties of a specialty occupation. On appeal, counsel submits additional information to establish that the beneficiary is qualified to perform the duties of a specialty occupation.

The first issue to be considered is whether the beneficiary is qualified to perform the duties of a specialty occupation.

Section 101(a)(15)(H)(i)(b) of 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)(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.

Pursuant to 8 C.F.R. § 214.2(h)(4)(iii)(D), for purposes of paragraph (h)(4)(iii)(C)(4) of this section, equivalence to completion of a United States baccalaureate or higher degree shall mean achievement of a level of knowledge, competence, and practice in the specialty occupation that has been determined to be equal to that of an individual who has a baccalaureate or higher degree in the specialty and shall be determined by one or more of the following:

- (1) An evaluation from an official who has authority to grant college-level credit for training and/or experience in the specialty at an accredited college or university which has a program for granting such credit based on an individual's training and/or work experience;
- (2) The results of recognized college-level equivalency examinations or special credit programs, such as the College Level Examination Program (CLEP), or Program on Noncollegiate Sponsored Instruction (PONSI);
- (3) An evaluation of education by a reliable credentials evaluation service which specializes in evaluating foreign educational credentials;
- (4) Evidence of certification or registration from a nationally-recognized professional association or society for the specialty that is known to grant certification or registration to persons in the occupational specialty who have achieved a certain level of competence in the specialty;
- (5) A determination by the Service that the equivalent of the degree required by the specialty occupation has been acquired through a combination of education, specialized training, and/or work experience in areas related to the specialty and that the alien has achieved recognition of expertise in the specialty occupation as a result of such training and experience.

The duties of the offered position are those of an industrial production manager. The U.S. Department of Labor's *Occupational Outlook Handbook (Handbook)* states that because of the diversity of manufacturing operation and job requirements, there is no standard preparation for this occupation. A college degree is, however, required even for managers who work their way up through the ranks. Many industrial production managers have a college degree in business administration, management, industrial technology, or industrial engineering. Others have a master's degree in industrial management or business administration. Although many employers prefer candidates with a business or engineering background, some companies hire well-rounded liberal arts graduates.

The petitioner seeks to qualify the beneficiary pursuant to 8 C.F.R. § 214.2(h)(4)(iii)(C)(4). In support of this assertion, the petitioner submitted an experiential evaluation from [REDACTED], Assistant Professor of Business Administration at Mercy College. [REDACTED] states that the beneficiary's past work experience is equivalent to a bachelor's degree in business administration from an accredited institution of higher education in the United States. The director determined that [REDACTED] evaluation did not establish that the beneficiary was

qualified to perform the duties of a specialty occupation as the record did not prove that [REDACTED] has authority to grant college-level credit for training and/or experience in the specialty at an accredited college or university which has a program for granting such credit. 8 C.F.R. § 214.2 (h)(4)(iii)(D)(I). On appeal, however, the petitioner submitted a statement from [REDACTED], Chairperson of the Division of Business and Accounting at Mercy College establishing that: Mercy College has a division that awards college credit based on student work experience, including business related experience; [REDACTED] has the authority to grant college credit based upon a student's professional experience; and Mercy College is an accredited institution of higher learning. The AAO notes, however, that a bachelor of business administration degree, without further specification does not qualify an alien to perform the work of a specialty occupation. A petitioner must demonstrate that the proffered position requires a precise and specific course of study that relates directly and closely to the position in question, and that the alien has that specialized degree. A degree of generalized title, such as business administration, without further specification, cannot qualify the alien to work in a specialty occupation. *Cf. Matter of Michael Hertz Associates*, 19 I&N Dec. 558 (Comm. 1988). Thus, the petitioner has not overcome the finding of the director that the beneficiary is not qualified.

Beyond the decision of the director, the position of industrial production manager does not appear to be a specialty occupation, as no degree requirement in a specific specialty is required, and none of the other criteria appear to have been met. For this additional reason, the petition may not be approved.

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 appeal is dismissed. The petition is denied.