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20 Mass. Ave., N.W., Rm. 3000
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U.S. Citizenship
and Immigration
Services

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FILE: LIN 04 264 52866 Office: NEBRASKA SERVICE CENTER Date: **AUG 25 2006**

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:



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, Chief
Administrative Appeals Office

DISCUSSION: The service center director denied the nonimmigrant visa petition. A subsequent motion to reopen was granted and the director affirmed his previous decision. The matter is now before the Administrative Appeals Office (AAO) on appeal. The decision of the director will be withdrawn and the matter will be remanded to him for further consideration.

The petitioner is a retail jeweler that seeks to employ the beneficiary as a sales manager. The petitioner endeavors to classify the beneficiary as a nonimmigrant worker in a specialty occupation pursuant to § 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 is not qualified to perform the duties of a specialty occupation. On appeal, counsel does not submit a separate brief or evidence, maintaining that the evidence demonstrates that the beneficiary holds a bachelor's degree that is directly related to the proffered position.

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 full state licensure to practice in the occupation, if such licensure is required to practice in the occupation, and completion of the degree in the specialty that the occupation requires. If the alien does not possess the required degree, the petitioner must demonstrate that the alien has experience in the specialty equivalent to the completion of such degree, and 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, an 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.

The record of proceeding before the AAO contains, in part: (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 a sales manager. The petitioner's vice president indicated in his September 21, 2004 letter that, due to the specialized nature of the position, a bachelor's degree in business administration is required.

The director found that the beneficiary was not qualified for the proffered position because the beneficiary's baccalaureate degree in business administration with a concentration in hospitality management does not qualify him for the proffered position. On appeal, counsel states, in part, that the beneficiary's coursework is directly related to the proffered sales management position. Counsel states further that the record contains evaluations from two experts as supporting documentation that the beneficiary is qualified for the proffered position.

The AAO does not concur with the director's finding that the beneficiary is not qualified for the proffered sales manager position. A review of the Advertising, Marketing, Promotions, Public Relations, and Sales Managers occupational category in the *Handbook*, 2006-2007 edition, finds no evidence that a baccalaureate or higher degree in a specific specialty, or its equivalent, is normally required for a sales manager job. A wide range of educational backgrounds is suitable for entry into a sales manager job including liberal arts, sociology, psychology, literature, and journalism. In this case, a company that specializes in evaluating academic credentials finds that the beneficiary has the equivalent of a U.S. bachelor's degree in business administration with a concentration in hospitality management. The beneficiary is therefore qualified for the proffered position.

The petition may not be approved, however, as it does not appear that the position is a specialty occupation. As indicated in the *Handbook*, a broad range of degrees is acceptable for entry into the occupation. In order for a position to be a specialty occupation, the degree requirement must be for a degree in a specific field, not a range of fields. It is noted that the Internet address of <http://www.bershirejobs.com/public> finds a sales associate job advertisement for the petitioner, indicating that a high school diploma is preferred. As such, it appears that the beneficiary would be primarily supervising nonprofessional workers. Further, although information on the petition reflects that the petitioner was established in 1980 and has 500 employees, the record contains no evidence that its current sales managers hold a bachelor's degree in a specific specialty. Accordingly, the matter will be remanded to the director to make such a determination and to review all relevant issues. The director may request any additional evidence he deems necessary. The petitioner may also provide additional documentation within a reasonable period to be determined by the director. Upon receipt of all evidence and representations, the director will enter a new decision.

ORDER: The decision of the director is withdrawn. The matter is remanded to him for further action and consistent with the above discussion and entry of a new decision, which, if adverse to the petitioner, is to be certified to the AAO for review.