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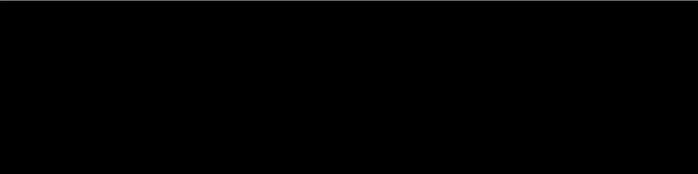
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FILE: EAC 04 254 53126 Office: VERMONT SERVICE CENTER Date: JUN 06 2006

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 materials 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. The matter is now on appeal before the Administrative Appeals Office (AAO). The appeal will be dismissed. The petition will be denied.

The petitioner is a manufacturer's representative for U.S. clients trading with Asian suppliers. It seeks to employ the beneficiary as a sales manager 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 petition on the grounds that the record failed to establish that the proffered position is a specialty occupation or that the petitioner is qualified to perform services in a specialty occupation.

Section 214(i)(1) of 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.

As provided in 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 decision; and (5) Form I-290B, an appeal brief, and supporting materials. The AAO reviewed the record in its entirety before issuing its decision.

In a letter accompanying the Form I-129 the petitioner described itself as manufacturer's representative for trade between U.S. retail stores and brands and Asian suppliers. The petitioner stated that it was established in 2003, had four employees, and was in its first year of operation. The petitioner indicated that it wished to hire the beneficiary as a sales manager, and provided the following job description:

[The beneficiary] will be working on fine tuning and improving a variety of operations and managerial procedures. [He] will work to ensure effective and efficient distribution of resources. This will entail management of our business system's capability, which reflects the technical sophistication consistent with the needs and budgetary requirements of our organization. The beneficiary will conduct his responsibilities through a process of reviewing and analyzing reports and directives in order to confer with management to obtain business-processing requirements.

[The beneficiary]'s primary employment responsibilities will include: source products directly in Asia, attend trade shows, accompany larger clients to the producing factories, hold meetings with suppliers to update them on changing trends with relevant markets in the U.S. and understand suggestions from suppliers. In addition, [the beneficiary] will be responsible for communicating retail and supplier sales requests through various communication channels.

The beneficiary is qualified for the position, the petitioner declares, by virtue of his bachelor of arts in international studies from Pepperdine University in Los Angeles, California, awarded on April 28, 2000.

In his decision the director cited information in the Department of Labor (DOL)'s *Occupational Outlook Handbook (Handbook)* indicating that sales manager positions do not require a bachelor's degree in a specific specialty as a normal minimum requirement for entry into the occupation. Considering the scale of the petitioner's business, the director found that the proffered position was not complex enough to be a specialty occupation and appeared to require a vocational, rather than a professional, degree. The director concluded that the position did not meet the statutory or regulatory requirements of a specialty occupation. The director also found that the beneficiary's degree – in international studies – is not in a specific specialty that would qualify him to perform services in a specialty occupation.

On appeal counsel explains that the beneficiary will be doing business with Chinese and Taiwanese producers of consumer products such as footwear, apparel, bedding, and sporting goods. The nature of the job and its geographical reach, counsel asserts, make the duties of the proffered position specialized and complex. Two opinion letters have been submitted from industry representatives who assert that the petitioner requires the services of a sales manager and that the sales manager must have a bachelor's degree to adequately perform the duties of the job. Counsel also contends that the beneficiary's degree in international studies qualifies him to perform the services of the sales manager position.

In determining whether a position meets the statutory and regulatory criteria of a specialty occupation, CIS routinely consults the DOL *Handbook* as an authoritative source of information about the duties and educational requirements of particular occupations. Factors typically considered are whether the *Handbook* indicates a degree is required by the industry; 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.Minn. 1999) (quoting *Hird/Blaker Corp. v. Sava*, 764 F.Supp. 1095, 1102 (S.D.N.Y. 1989)). CIS also analyzes the specific duties and complexity of the position at issue, with the *Handbook*’s occupational descriptions as a reference, as well as the petitioner’s past hiring practices for the position. See *Shanti, Inc. v. Reno, id.*, at 1165-66.

Sales managers are a subcategory of the *Handbook*’s broad occupational category of advertising, marketing, promotions, public relations, and sales managers. As described in the *Handbook*, 2006-07 edition:

Sales managers direct the firm’s sales program. They assign sales territories, set goals, and establish training programs for the sales representatives. Managers advise the sales representatives on ways to improve their sales performance. Sales managers advise the sales representatives on ways to improve their sales performance. In large, multiproduct firms, they oversee regional and local sales managers and their staffs. Sales managers maintain contact with dealers and distributors. They analyze sales statistics gathered by their staffs to determine sales potential and inventory requirements and monitor customers’ preferences

The foregoing duties do not match the duties of the proffered position. The AAO determines that the proffered position’s duties more closely reflect another occupational category in the *Handbook* – sales representatives, wholesale and manufacturing. As described in the *Handbook*, 2006-07 edition:

Sales representatives’ . . . primary duties are to interest wholesale and retail buyers and purchasing agents in their merchandise and to address clients’ questions and concerns. Sales representatives represent one or several manufacturers or wholesale distributors by selling one product or a complementary line of products. Sales representatives demonstrate their products and advise clients on how using these products can reduce costs and increase sales. They market their company’s products to manufacturers, wholesale and retail establishments, construction contractors, government agencies, and other institutions.

. . . .

Sales representatives spend much of their time traveling to and visiting with prospective and current clients

In determining the nature of a particular position, and whether it qualifies as a specialty occupation, the duties that will actually be performed are determinative, not the title of the position. The petitioner must show that the performance demands of the position require a specialty degree. The critical issue is not the employer’s self-imposed standard, 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 a minimum for entry into the occupation. Cf. *Defensor v. Meissner*, 201 F.3d 384, 387-88 (5th Cir. 2000). The duties of the proffered position are akin to those of a sales representative, as described in the *Handbook*.

With respect to the educational requirements of sales representatives, the *Handbook, id.*, states the following:

The background needed for sales jobs varies by product line and market. Many employers hire individuals with previous sales experience who lack a college degree, but they increasingly prefer or require a bachelor's degree because job requirements have become more technical and analytical. Nevertheless, for some consumer products, factors such as sales ability, personality, and familiarity with brands are more important than educational background [F]irms selling complex, technical products may require a technical degree in addition to some sales experience

As the *Handbook* clearly indicates, a baccalaureate or higher degree in a specific specialty is not the normal, industry-wide requirement for entry into a sales representative position. While companies selling technical products may require a specialty degree, those selling common consumer goods generally do not. Some employers may prefer a baccalaureate degree, though it need not be in a specific specialty. Other employers are more interested in relevant experience and product knowledge than any educational degree. The AAO concludes that the proffered position does not meet the first alternative criterion of a specialty occupation, at 8 C.F.R. § 214.2(h)(4)(iii)(A)(I), because a baccalaureate degree in a specific specialty is not the normal minimum requirement for entry into a sales representative position.

Counsel has submitted two opinion letters – one from a sales/marketing consultant with his own company (Salesmark) and the other from the operations project manager of a consumer products company (Dorel Juvenile Group) – who recite the duties of the proffered position, as described by the petitioner, and declare that a baccalaureate degree is required to perform them. The author of the first letter, from Salesmark, fails to establish his expertise to evaluate the educational requirements of the proffered position. The author states that he is “a former adjunct professor and a long established certified sales/marketing consultant,” but does not show how that background gives him the requisite knowledge to evaluate the educational criteria for a sales representative at a consumer products company like the petitioner. Nor has any supporting documentation been submitted to show that the author is familiar with the petitioner's industry or its hiring practices with respect to sales representatives. The author links the duties of the proffered position with particular courses the beneficiary took in his baccalaureate program, which focused on international management. But he does not explain why the beneficiary's particular coursework is required to perform the duties of the position. The author of the second letter describes Dorel Juvenile Group (Dorel) as a large company and states that he has served as its operations project manager for one year. The record does not establish the author's expertise to evaluate the educational requirements for a sales representative at a small company like the petitioner. The letter is not supported by any evidence showing that Dorel requires its own sales representatives to have a specialty degree, or documenting the degrees of such employees. Moreover, the Dorel letter states only that a degree is required for the proffered position, not that the degree must be in a specific specialty.

CIS may, in its discretion, use as advisory opinions statements from universities, professional organizations, or other sources submitted in evidence as expert testimony. When an opinion is not accord with other information or is in any way questionable, however, CIS is not required to accept or may give less weight to that evidence. See *Matter of Caron International, Inc.*, 19 I&N Dec. 791, 795 (Comm. 1988). The AAO determines that the opinion letters submitted on appeal are not persuasive evidence that a baccalaureate or higher degree in a specific specialty, or its equivalent, is the normal minimum requirement for entry into the proffered position, as required for the position to qualify as a specialty occupation under 8 C.F.R. § 214.2(h)(4)(iii)(A)(I), or that a specialty degree is a common requirement

occupation under 8 C.F.R. § 214.2(h)(4)(iii)(A)(1), or that a specialty degree is a common requirement for sales representatives in the petitioner's industry, as required for the proffered position to qualify as a specialty occupation under the first prong of 8 C.F.R. § 214.2(h)(4)(iii)(A)(2).

Nor does the proffered position qualify as a specialty occupation under the second prong of 8 C.F.R. § 214.2(h)(4)(iii)(A)(2) because the record does not establish that the position is so complex or unique that it can only be performed by an individual with a baccalaureate or higher degree in a specific specialty.

As for the third alternative criterion of a specialty occupation, the proffered position is newly created and the petitioner has no hiring history for it. Accordingly, the petitioner cannot demonstrate that it normally requires a bachelor's degree in a specific specialty or its equivalent, as required for the position to qualify as a specialty occupation under 8 C.F.R. § 214.2(h)(4)(iii)(A)(3).

Finally, the record does not show that the duties of the proffered position are so specialized and complex that knowledge usually associated with a baccalaureate or higher degree in a specific specialty is required to perform them, as required to meet the fourth alternative criterion of a specialty occupation at 8 C.F.R. § 214.2(h)(4)(iii)(A)(4). Neither the petitioner's description of the proffered position's duties, nor the two opinion letters in the record which fail to establish the authors' requisite expertise to evaluate the educational requirements of the position, demonstrate that the duties of the job require knowledge beyond the scope of that required by a typical sales representative. As indicated in the *Handbook*, sales representatives do not ordinarily require baccalaureate level knowledge in a specific specialty. Based on the evidence of record, the AAO concludes that the duties of the position could be performed by an individual with less than baccalaureate level knowledge in a specific specialty.

For the reasons discussed above, the proffered position does not qualify as a specialty occupation under any of the criteria enumerated in 8 C.F.R. § 214.2(h)(4)(iii)(A). The petitioner has not established that the beneficiary will be coming temporarily to the United States to perform services in a specialty occupation, as required under section 101(a)(15)(H)(i)(b) of the Act, 8 U.S.C. § 1101(a)(15)(H)(i)(b).

As previously discussed, the director determined that the beneficiary was not qualified to perform services in a specialty occupation. Since the beneficiary's credentials are relevant only if the proffered position is a specialty occupation, which is not the case here, the AAO need not further address this issue.

The petitioner bears the burden of proof in these proceedings. *See* section 291 of the Act, 8 U.S.C. § 1361. The petitioner has not sustained that burden. Accordingly, the AAO will not disturb the director's decision denying the petition.

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