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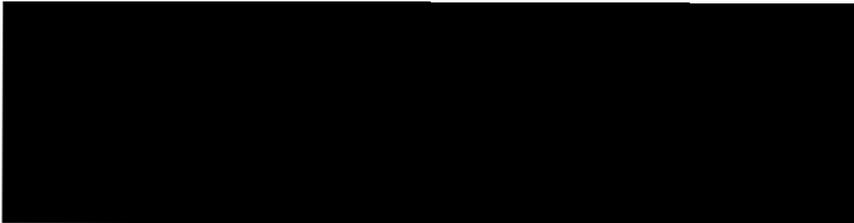
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FILE: SRC 03 153 52955 Office: TEXAS SERVICE CENTER Date: NOV 02 2006

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.

NOV 02 2006

Robert P. Wiemann, Chief  
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 an import/export business that seeks to employ the beneficiary as a 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 finding that the proffered position is not a specialty occupation. Counsel submitted a timely appeal.

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.

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, the brief, 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. Evidence of the beneficiary's duties includes: the Form I-129; the attachments accompanying the Form I-129; the petitioner's support letter; and the petitioner's response to the director's request for evidence. According to this evidence, the beneficiary would perform duties as follows:

- manage sales activities: direct staffing, training, and performance evaluations to develop and control the sales program;
- coordinate sales distribution by establishing sales territories, quotas, and goals and advise dealers, distributors and clients concerning sales and advertising techniques;
- assign sales territory to sales personnel;
- analyze sales statistics to form policy and assist dealers in promoting sales;
- review market analyses to determine customer needs, volume potential, price schedules, and discount rates, and develop sales campaigns to accommodate goals of the company;
- direct product simplification and standardization to eliminate unprofitable items from sales line;
- represent the petitioner at trade association meetings to promote the product;
- coordinate liaison between the sales department and other sales related units;
- analyze and control expenditures of the division to conform to budgetary requirements;
- assist other departments within the establishment to prepare manuals and technical publications;
- prepare periodic sales report showing sales volume and potential sales;
- may direct sales for manufacturer, retail store, wholesale house, jobber or other establishment;
- may direct product research and development;
- may recommend or approve budget, expenditures, and appropriations for research and development.

Counsel's August 6, 2003 letter described the beneficiary's day-to-day responsibilities; it stated that the petitioner requires a bachelor's degree in business administration or a related occupation for the proposed position.

The director denied the petition. She stated that the submitted information from the Department of Labor's *Occupational Outlook Handbook* (the *Handbook*) does not depict a sales manager as usually requiring a bachelor's degree. The director found the submitted H-1B approval notices and *Dictionary of Occupational Titles (DOT)* information unpersuasive in establishing the offered position as a specialty occupation. The director stated that the petitioner did not submit evidence that would establish that its degree requirement is common to the industry in parallel positions among organizations similar to the petitioner. The director concluded that the petitioner satisfied none of the criteria at 8 C.F.R. § 214.2(h)(4)(iii)(A).

On appeal, counsel states that the *Handbook* confirms that a sales manager, which is an executive position, requires a bachelor's degree. Counsel states that the petitioner's sales manager will recruit sales representatives in Asia and that these people will not be on the petitioner's payroll as they will be paid by commission. According to counsel, the petitioner exports highly technical and complex computer systems to

large corporations in Asia for assessment and analysis of geological information prior to construction of high rise buildings. Counsel states that the computer system is over \$50,000, and that the training fee to learn it is \$800 per day. Counsel maintains that the sales manager will be responsible for sales and technical support to customers in Asia. Counsel states that the petitioner submitted evidence that parallel positions in the industry require a bachelor's degree. According to counsel, the petitioner is a brokerage export company with exclusive rights to sell products manufactured by Pile Dynamics. As a brokerage exporter, counsel asserts that the petitioner has no manufacturing or administrative personnel since Pile Dynamics is responsible for the assembly, manufacture, and delivery of the equipment to the petitioner's clients. The beneficiary will train salespeople to contact and sell products to building contractors and construction companies, counsel asserts. Counsel states that the petitioner will not dispute the director's position that the Standard Vocational Preparation (SVP) rating is not considered in determining the educational requirements of a professional position.

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 first considers the criteria at 8 C.F.R. §§ 214.2(h)(4)(iii)(A)(1) and (2): a baccalaureate or higher degree or its equivalent 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. Factors often considered by CIS when determining these criteria include: whether the 2006-2007 edition of the *Handbook*, a resource that the AAO routinely consults, 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.Minn. 1999)(quoting *Hird/Blaker Corp. v. Sava*, 712 F. Supp. 1095, 1102 (S.D.N.Y. 1989)).

In determining whether a position qualifies as a specialty occupation, CIS looks beyond the title of the position and determines, from a review of the duties of the position and any supporting evidence, whether the position actually requires the theoretical and practical application of a body of highly specialized knowledge, and the attainment of a baccalaureate degree in a specific specialty as the minimum for entry into the occupation as required by the Act.

The AAO notes that the proposed duties of assisting other departments within the establishment to prepare manuals and technical publications; directing sales of the manufacturer, retail store, wholesale house, jobber, or other establishment; directing product research and development; and recommending or approving the budget, expenditures, and appropriations for research and development are incongruous with the nature of the petitioner's business enterprise, an import/export business. Furthermore, on appeal, counsel states that the petitioner is a brokerage exporter and that it has no manufacturing or administrative personnel as Pile Dynamics is responsible for the assembly, manufacture, and delivery of equipment to the petitioner's clients. Thus, there is no evidence in the record that supports the petitioner's claim that the beneficiary would perform these specific duties. Simply going on record without supporting documentary evidence is not sufficient for

the purpose of meeting the burden of proof in these proceedings. *Matter of Soffici*, 22 I&N Dec. 158, 165 (Comm. 1998) (citing *Matter of Treasure Craft of California*, 14 I&N Dec. 190 (Reg. Comm. 1972)).

The AAO agrees with counsel's assertion that the proposed position is analogous to a sales manager, which is depicted in the *Handbook* as follows:

*Sales managers* direct the firm's sales program. They assign sales territories, set goals, and establish training programs for the sales representatives. (See the *Handbook* statement on sales representatives, wholesale and manufacturing.) 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 to monitor customers' preferences. Such information is vital in the development of products and the maximization of profits.

According to the *Handbook*, a bachelor's degree in a specific academic discipline is not required for a managerial position in sales; it states:

A wide range of educational backgrounds is suitable for entry into advertising, marketing, promotions, public relations, and sales managerial jobs, but many employers prefer those with experience in related occupations plus a broad liberal arts background. A bachelor's degree in sociology, psychology, literature, journalism, or philosophy, among other subjects, is acceptable. However, requirements vary, depending upon the particular job.

For marketing, sales, and promotions management positions, some employers prefer a bachelor's or master's degree in business administration with an emphasis on marketing. Courses in business law, economics, accounting, finance, mathematics, and statistics are advantageous. In highly technical industries, such as computer and electronics manufacturing, a bachelor's degree in engineering or science, combined with a master's degree in business administration, is preferred.

Most advertising, marketing, promotions, public relations, and sales management positions are filled by promoting experienced staff or related professional personnel. For example, many managers are former sales representatives, purchasing agents, buyers, or product, advertising, promotions, or public relations specialists. In small firms, where the number of positions is limited, advancement to a management position usually comes slowly. In large firms, promotion may occur more quickly.

In the August 6, 2003 letter, which was submitted in response to the request for evidence, counsel stated that the petitioner requires a "[b]achelor's degree in [b]usiness [a]dministration or a related occupation" for the

proposed position. This educational requirement fails to establish the proposed position as 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. 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).

Counsel maintains that the offered position is a specialty occupation because the petitioner's enterprise is in a highly technical industry. Although the petitioner is in a highly technical industry, the import/export and sale of piling equipment, it does not have a requirement of a bachelor's degree in a specific academic discipline for the proposed position. Thus, the offered position does not qualify as a specialty occupation.

In conclusion, the AAO finds that the offered position is not a specialty occupation under 8 C.F.R. § 214.2(h)(4)(iii)(A)(1): a baccalaureate or higher degree or its equivalent in a specific specialty is the normal minimum requirement for entry into the particular position.

To establish the first alternative prong at 8 C.F.R. § 214.2(h)(4)(iii)(A)(2), which requires that the petitioner show that a specific degree requirement is common to the industry in parallel positions among similar organizations, counsel references approval notices issued to Computer Service of Carol, Chan's Food Service Distributors, and Dollar Discount Group, Inc. No evidence in the record reflects that these companies are similar in nature to the petitioner and that their H-1B positions are parallel to the sales manager position in the instant petition. Simply going on record without supporting documentary evidence is not sufficient for the purpose of meeting the burden of proof in these proceedings. *Id.*

Furthermore, each nonimmigrant petition is a separate proceeding with a separate record. *See* 8 C.F.R. § 103.8(d). In making a determination of statutory eligibility, CIS is limited to the information contained in the record of proceeding. *See* 8 C.F.R. § 103.2(b)(16)(ii). Although the AAO may attempt to hypothesize as to whether the prior cases were similar to the proffered position or were approved in error, no such determination may be made without review of the original record in its entirety. If the prior petitions were approved based on evidence that was substantially similar to the evidence contained in this record of proceeding, however, the approval of the prior petitions would have been erroneous. CIS is not required to approve petitions where eligibility has not been demonstrated, merely because of prior approvals that may have been erroneous. *See, e.g., Matter of Church Scientology International*, 19 I&N Dec. 593, 597 (Comm. 1988). Neither CIS nor any other agency must treat acknowledged errors as binding precedent. *Sussex Engg. Ltd. v. Montgomery* 825 F.2d 1084, 1090 (6th Cir. 1987), *cert denied*, 485 U.S. 1008 (1988).

Based on the above discussion, the petitioner fails to establish the first alternative prong at 8 C.F.R. § 214.2(h)(4)(iii)(A)(2).

The second alternative prong at 8 C.F.R. § 214.2(h)(4)(iii)(A)(2) requires that the petitioner show that the proffered position is so complex or unique that it can be performed only by an individual with a baccalaureate degree in a specific specialty. Counsel states that the proposed position is similar to the *Handbook's*

depiction of a sales manager. The *Handbook* reveals that managerial positions in sales do not require a bachelor's degree in a specific discipline. Counsel also states that the beneficiary will train salespeople to contact and sell products to building contractors and construction companies. The AAO notes that no evidence in the record suggests that the training duties would be complex or unique and therefore require a baccalaureate-level degree in a specific academic discipline. Furthermore, as previously discussed, the petitioner does not require a baccalaureate degree in a specific academic field for the proposed position. Consequently, the petitioner fails to establish the second alternative prong at 8 C.F.R. § 214.2(h)(4)(iii)(A)(2).

No evidence in the record establishes the criterion at 8 C.F.R. § 214.2(h)(4)(iii)(A)(3), which is that the petitioner demonstrate that it normally requires a degree or its equivalent for the position.

The criterion at 8 C.F.R. § 214.2(h)(4)(iii)(A)(4) requires that the petitioner establish that the nature of the specific duties is so specialized and complex that the knowledge required to perform such duties is usually associated with the attainment of a baccalaureate or higher degree in a specific specialty. The AAO concurs with counsel's assertion that the proposed position is similar to a sales manager as described in the *Handbook*. However, according to the *Handbook*, managerial positions in sales do not require a bachelor's degree in a specific academic discipline. The evidence of product brochures, buyers, the meeting report, invoices, the *Business Journal*, letters from companies in the boating industry, Internet pages from Olson Instruments, Inc., the certification of representation from Pile Dynamics, and other documents are insufficient to establish that the nature of the specific duties is so specialized and complex that the knowledge required to perform such duties is usually associated with the attainment of a baccalaureate degree in a specific specialty. Furthermore, as previously discussed, the petitioner does not require a baccalaureate degree in a specific academic field for the proposed position. Consequently, the petitioner fails to establish the last criterion at 8 C.F.R. § 214.2(h)(4)(iii)(A)(4).

As related in the discussion above, 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 on this ground.

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.