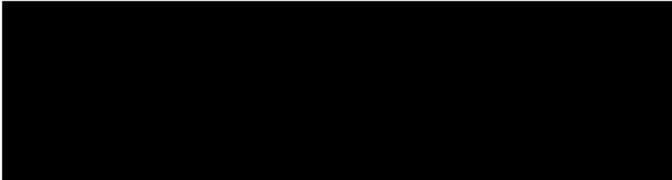


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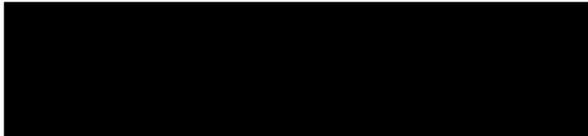
02

FILE: LIN 05 137 54105 Office: NEBRASKA SERVICE CENTER

Date:

NOV 30 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, Chief
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 involved in the sale of Silestone quartz surfaces and seeks to employ the beneficiary as a district (regional) sales manager. The petitioner 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 because the position did not qualify as a specialty occupation. On appeal, counsel submits a brief asserting that the proffered position is a specialty occupation.

The issue to be discussed in this proceeding is whether the proffered position qualifies as 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)(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.

The term "specialty occupation" is further defined at 8 C.F.R. § 214.2(h)(4)(ii) as:

[A]n 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 are 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) the 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) the Form I-290B with supporting documentation. The AAO reviewed the record in its entirety before issuing its decision.

The petitioner is seeking the beneficiary's services as a district (regional) sales manager. Evidence of the beneficiary's duties includes the Form I-129 petition with attachment and the petitioner's response to the director's request for evidence. According to this evidence the beneficiary would:

- Direct the petitioner's sales program;
- Direct the distribution of products and services to customers;
- Establish company sales goals;
- Assign sales territories and develop training programs for sales representatives;
- Recommend ways to improve the company's sales performance;
- Develop and maintain a working relationship with manufacturers, wholesale and retail establishments, construction contractors, government agencies, and other related organizations;
- Analyze sales statistics to determine sales potential and inventory requirements;
- Monitor company performance to ensure customer needs are met; and
- Negotiate and resolve customer problems as they arise.

The petitioner requires a minimum of a bachelor's degree in business administration or a related field for entry into the proffered position.

The AAO routinely consults the Department of Labor's *Occupational Outlook Handbook (Handbook)* for information about the duties and educational requirements of particular occupations. The duties of the

proffered position are essentially those of a sales manager and are discussed in the *Handbook* section entitled advertising, marketing, promotions, public relations, and sales managers. The *Handbook* notes that a wide range of educational backgrounds is suitable for entry into advertising, marketing, promotions, public relations, and sales manager positions, but that many employers prefer related experience plus a broad liberal arts background. Bachelor's degrees in sociology, psychology, literature, journalism, philosophy, or other subjects are suitable. Requirements will vary, however, depending on the duties of a particular position. For example, some employers prefer a bachelor's or master's degree in business administration with an emphasis in marketing, for marketing, sales, and promotion management positions. In highly technical industries such as computer and electronics manufacturing a degree in engineering or science combined with a business degree may be preferred. In public relations management positions some employers prefer a bachelor's or master's degree in public relations or journalism. The *Handbook* notes that most advertising, marketing, promotions, public relations, and sales management positions are filled by promoting experienced staff or related professional or technical personnel. Many managers are former sales representatives, purchasing agents, or promotions specialists. A baccalaureate or higher degree in a specific specialty or its equivalent is not, therefore, the minimum requirement for entry into the position. A degree in a wide range of disciplines will suffice. The petitioner has failed to establish the first criterion of 8 C.F.R. § 214.2(h)(4)(iii)(A).

The petitioner asserts that a degree requirement, in a specific specialty, is common to the industry in parallel positions among similar organizations. In support of this assertion the petitioner submitted copies of three job advertisements. The advertisements submitted, however, do not establish the petitioner's assertion. One of the advertisements states that a bachelor's degree in business/marketing is required for the advertised position. One states that a bachelor's degree or "significant expertise in prior work experience" is required, but does not require the degree to be in any specific discipline. The third advertisement states that a bachelor's degree (no educational discipline specified) or previous management experience is required. From the advertisements submitted it cannot be determined that a degree in a specific specialty is required for parallel positions in similar organizations. The evidence submitted fails to establish the referenced criterion at 8 C.F.R. § 214.2(h)(4)(iii)(A)(2).

The petitioner does not assert that it normally requires a degree in a specific specialty for the offered position, and offers no evidence in this regard. The petitioner has not established the criterion at 8 C.F.R. § 214.2(h)(4)(iii)(A)(3).

Finally, the record does not establish that the duties to be performed by the beneficiary are not so specialized or complex that knowledge required to perform them is usually associated with the attainment of a baccalaureate or higher degree in a specific specialty. Nor does the record establish that the duties are so complex or unique that they can be performed only by an individual with a degree in a specific specialty. The duties appear to be routine in the industry for sales management positions in the petitioner's work environment, and are regularly performed by individuals with a wide range of education in a number of different disciplines. The director noted that the petitioner's requirement of a degree of generalized title, business administration, does not establish the position as a specialty occupation. The AAO agrees. 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).

On appeal, the petitioner indicates that the position qualifies as a specialty occupation because the beneficiary took related courses such as business law, economics, finance, mathematics and statistics. The petitioner, however, did not submit copies of the beneficiary's university transcripts. Simply going on the record without supporting documentary evidence is not sufficient for purposes 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 190 (Reg. Comm. 1972)). Further, the petitioner does not require a specific course of study within the field of business administration, but states that a degree in business administration or a related field "provides the necessary background in business management to enable the district (regional) sales manager to fulfill these duties." As the petitioner requires a degree of generalized title to fill the position, it had not established the position as a specialty occupation. The petitioner has failed to establish the referenced criteria at 8 C.F.R. §§ 214.2(h)(4)(iii)(A)(2) or (4).

The petitioner also asserts that the proffered position qualifies as a specialty occupation because of the SVP rating assigned to it by the Department of Labor. Neither the *Department of Labor's* SVP rating nor a Job Zone category indicate that a particular occupation requires the attainment of a baccalaureate or higher degree, or its equivalent, in a specific specialty as a minimum for entry into the occupation. An SVP rating and Job Zone category are meant to indicate only the total number of years of vocational preparation required for a particular position. Neither classification describes how those years are to be divided among training, formal education, and experience, nor specifies the particular type of degree, if any, that a position would require.

The petitioner has failed to establish that the offered position meets any of the criteria listed at 8 C.F.R. § 214.2(h)(4)(iii)(A). 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 and the appeal shall accordingly be dismissed.

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