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U.S. Citizenship
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Services

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FILE: LIN 05 255 52441 Office: NEBRASKA SERVICE CENTER Date: JAN 08 2007

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 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 sustained. The petition will be approved.

The petitioner produces and distributes lumber. It seeks to employ the beneficiary as a vice president of operations. 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 finding that the petitioner failed to establish the proposed position as a specialty occupation and that the beneficiary is qualified to perform the duties of 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 evidence (RFE); (3) the petitioner's response to the RFE; (4) the director's denial letter; and (5) Form I-290B and the petitioner's letter. The AAO reviewed the record in its entirety before issuing its decision.

The petitioner is seeking the beneficiary's services as a vice president of operations. 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. The beneficiary's duties are as follows:

- Participates in formulating and administering company policies and developing long range goals and objectives.
- Coordinates manufacturing activities with all other functions of the organization including sales and time to optimize margin and product sales.
- Directs and coordinates activities of the department or division for which responsibility is delegated to further attainment of goals and objectives. Develops and maintains manufacturing operations business plans to include all program requirements, labor hours, cycle, production costs, and image.
- Provides guidance to the development of new product development or capital project plan(s), including personnel requirements, material needs, subcontract requirements, facility needs, and tooling and equipment needs.
- Establishes production and quality control standards, develops budget and cost controls, and reviews and holds responsible parties accountable for such established goals.
- Reviews production costs and product quality, and modifies production and inventory control programs to maintain and enhance profitable operation of division.
- Provides input to the development of product strategy and research and development of new and emerging products.
- Reviews production and operating reports and directs the resolution of operational, manufacturing, and maintenance problems to ensure minimum costs and prevent operational delays.
- Reviews operations of competing organizations and plans and works with sales program to develop new markets.
- Serves as a member of management committees on special studies.

The petitioner requires at least a bachelor's degree or the equivalent in business administration with a specialization in management or a related field. It also requires knowledge of managerial and organizational concepts, operations management, project management, comparative management systems, principles of accounting and marketing, operations research, business communications, business strategy, organizational behavior, technology and innovation management, cost accounting, business information systems, and leadership principles and practices.

The director denied the petition. He stated that the petitioner has not established that the proposed position requires a baccalaureate degree in a specialized area, the requirement indicated in *Matter of Michael Hertz Associates*, 19 I&N Dec. 558, 560 (Comm. 1988). The submitted job postings, expert opinion letters, and *Occupational Information Network (O*Net)* information did not prevail in establishing the offered position as a specialty occupation. According to the director, the Department of Labor's (DOL) *Occupational Outlook Handbook* (the *Handbook*) indicates that managerial or executive-level positions do not qualify as specialty occupations. The director also concluded that the beneficiary is not qualified to perform the duties of a specialty occupation.

On appeal, the petitioner states that it is the largest lumber producer in Idaho and the 12th largest in the United States, with more than 600 million board feet of kiln dried lumber produced annually from its three mills. The petitioner conveys that it employs over 500 people and has over \$240 million in gross sales. It states that the beneficiary will direct and coordinate activities of all production facilities. The petitioner submits letters relating to other companies to establish the proposed position as a specialty occupation. The petitioner asserts that CIS discredited the previously submitted opinion letters, even though the authors of the letters have many years of experience in business management and are fully qualified to provide their professional opinion. The petitioner indicates that the beneficiary is qualified to perform the duties of a specialty occupation based on his educational background and work experience.

Based on the evidence in the record, the AAO finds that the record establishes that the proposed position qualifies as a specialty occupation and that the beneficiary is qualified to perform the duties of a specialty occupation.

To establish the position as a specialty occupation under 8 C.F.R. § 214.2(h)(4)(iii)(A)(4), the petitioner must show that 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 in a specific academic discipline. In the context of the nature of the petitioner, which is corroborated by the evidence of record, the AAO finds that the nature of the proposed duties is so specialized and complex that knowledge required to perform the duties would require the attainment of a baccalaureate degree in a specific academic discipline such as business administration with a concentration in management or a related field. It is noted that in the denial letter the director referenced *Matter of Michael Hertz*. This case indicates that there must be "a close corollary between the required specialized studies and the position" and that "the requirement of a degree of generalized title, such as business administration or liberal arts, without further specification, does not establish eligibility." The AAO finds that the petitioner's educational requirement of a bachelor's degree in business administration is further specified by its requirement of a concentration in management or a related field; thus it does require a baccalaureate degree in a specific academic discipline for the proposed position. The petitioner has established the last criterion at 8 C.F.R. § 214.2(h)(4)(iii)(A)(4).

The evidence of record indicates that the beneficiary is qualified to perform the duties of the proposed position. The record contains the beneficiary's master of business administration degree and transcript of record from the University of Western Ontario. The educational evaluation from Educated Choices, LLC, the Education Consulting Firm, indicates that the beneficiary holds the educational equivalent of a master's

degree in business administration as awarded by a regionally accredited U.S. college or university. It is noted that the record also contains the beneficiary's juris doctor from the University of Toronto.

As related in the discussion above, the petitioner has established that the proffered position is a specialty occupation and that the beneficiary is qualified to perform the duties of the proposed position.

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 sustained that burden.

ORDER: The appeal is sustained. The petition is approved.