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Citizenship and Immigration Services

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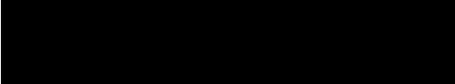
ADMINISTRATIVE APPEALS OFFICE
CIS, AAO, 20 Mass, 3/F
425 I Street, N.W.
Washington, DC 20536



File: WAC 01 216 51451 Office: CALIFORNIA SERVICE CENTER

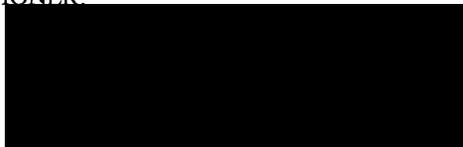
Date: **NOV 05 2003**

IN RE: Petitioner:
Beneficiary:



PETITION: Petition for a Nonimmigrant Worker Pursuant to Section 101(a)(15)(L) of the Immigration and Nationality Act, 8 U.S.C. § 1101(a)(15)(L)

ON BEHALF OF PETITIONER:



INSTRUCTIONS:

This is the decision 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.

If you believe the law was inappropriately applied or the analysis used in reaching the decision was inconsistent with the information provided or with precedent decisions, you may file a motion to reconsider. Such a motion must state the reasons for reconsideration and be supported by any pertinent precedent decisions. Any motion to reconsider must be filed within 30 days of the decision that the motion seeks to reconsider, as required under 8 C.F.R. § 103.5(a)(1)(i).

If you have new or additional information that you wish to have considered, you may file a motion to reopen. Such a motion must state the new facts to be proved at the reopened proceeding and be supported by affidavits or other documentary evidence. Any motion to reopen must be filed within 30 days of the decision that the motion seeks to reopen, except that failure to file before this period expires may be excused in the discretion of Citizenship and Immigration Services (CIS) where it is demonstrated that the delay was reasonable and beyond the control of the applicant or petitioner.
Id.

Any motion must be filed with the office that originally decided your case along with a fee of \$110 as required under 8 C.F.R. § 103.7.


Robert P. Wiemann, Director
Administrative Appeals Office

DISCUSSION: The nonimmigrant visa petition was denied by the Acting Director, California Service Center, and the matter is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed, and the petition will be denied.

The petitioner is a Walnut Creek, California exporter of food and beverage products with fifteen employees and a gross annual income of \$12,000,000. The petitioner seeks to temporarily employ the beneficiary as an operations manager. The beneficiary has been in H1B status since November 1, 1997. The acting director denied the instant petition, finding that the petitioner was unqualified in the specific specialty required by the operations manager position.

In the original I-129 filing, received by the California Service Center on June 20, 2001, the petitioner described the proposed job duties as follows:

- Supervision of day-to-day operations of the entire purchasing operation.
- Setting and adhering to operating policies and guidelines for the business.
- Supervision of inventory management.
- Supervision and management of staff.
- Negotiating contracts on behalf of the company with the vendors, freight companies and traders.
- Sourcing new vendors and new products.
- Solving management and inventory problems.
- Planning new business models.
- Setting and adhering to budgets.

Amongst other documentation, the original petition included three equivalency evaluations attesting that the beneficiary's 24 years of progressively more responsible experience in the field of business administration amount to the equivalent of a bachelor's degree in business administration awarded by a U.S. university.

On October 31, 2001, the acting director issued a Notice of Intent to Deny (NOID). In response to the NOID, the petitioner provided additional explanations as well as another evaluation of the beneficiary's education, training, and experience. On March 19, 2002, the acting director denied the petition, finding that the beneficiary was not qualified to perform a specialty occupation and that the proffered position was not a specialty occupation. On appeal, counsel contends that the beneficiary is qualified for employment as an operations manager, and that the latter is a specialty occupation.

The AAO turns first to the question of whether the position of operations manager is a specialty occupation. The term "specialty occupation" is defined at 8 C.F.R. § 214.2(h)(4)(ii)

as:

an 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 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 reviewing the nature of the petitioner's business and the prospective duties of the beneficiary, the petitioner has presented a persuasive argument for classifying the position as a specialty occupation, based on 8.C.F.R. § 214.2(h)(4)(iii)(A)(2), namely that the particular position is so complex or unique that it can be performed only by an individual with a degree. Given the multiple layers of duties with regard to the planning, organization, and supervision of operations, the development of policies and procedures, and the evaluation and administration of contracts, it does not appear excessive that the petitioner requires a bachelor's degree in business administration.

The critical element in the analysis of this criterion is not the employer's self-imposed standards, but whether the position actually requires the theoretical and practical application of a body of highly specialized knowledge, and the attainment of a bachelor's degree in the specific specialty as the minimum for

entry into the occupation as required by the Act.¹ In the instant petition, the petitioner appears to have met both the statutory requirements as outlined in the Act and one of the regulatory criteria outlined in 8 C.F.R. § 214.2(h)(4)(iii)(A).

The AAO now turns to an examination of the beneficiary's qualifications to perform a specialty occupation. Regulatory guidance at 8 C.F.R. § 214.2(h)(4)(iii)(C) provides that an alien must meet one of the following criteria to qualify to perform services in a specialty occupation:

- (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.

Pursuant to 8 C.F.R. § 214.2(h)(4)(iii)(D), for purposes of paragraph (h)(4)(iii)(C)(4) of this section, equivalence to completion of a United States baccalaureate or higher degree shall mean achievement of a level of knowledge, competence, and practice in the specialty occupation that has been determined to be equal to that of an individual who has a baccalaureate or higher degree in the specialty and shall be determined by one or more of the following:

- (1) An evaluation from an official who has authority to grant college-level credit for training and/or

¹ The court in *Defensor v. Meissner* observed that the four criteria at 8 C.F.R. § 214.2(h)(4)(iii)(A) present certain ambiguities when compared to the statutory definition, and "might also be read as merely an additional requirement that a position must meet, in addition to the statutory and regulatory definition." See *Defensor v. Meissner* 201 F.3d 388 (5th Cir. 2000).

experience in the specialty at an accredited college or university which has a program for granting such credit based on an individual's training and/or work experience;

- (2) The results of recognized college-level equivalency examinations or special credit programs, such as the College Level Examination Program (CLEP), or Program on Noncollegiate Sponsored Instruction (PONSI);
- (3) An evaluation of education by a reliable credentials evaluation service which specializes in evaluating foreign educational credentials;
- (4) Evidence of certification or registration from a nationally-recognized professional association or society for the specialty that is known to grant certification or registration to persons in the occupational specialty who have achieved a certain level of competence in the specialty;
- (5) A determination by the Service that the equivalent of the degree required by the specialty occupation has been acquired through a combination of education, specialized training, and/or work experience in areas related to the specialty and that the alien has achieved recognition of expertise in the specialty occupation as a result of such training and experience.

The documentation on the record is insufficient to establish any of the above five criteria regarding whether the beneficiary possesses the equivalent of a U.S. baccalaureate degree. None of the three evaluations of the beneficiary's education and experience specifically indicates that the evaluator has the authority to grant college level credit in business administration. Although the record contains letters of recommendation and other documents listing the duties, responsibilities, and accomplishments pertaining to the beneficiary's prior work experience, none of these documents fulfill the requirements of 8 C.F.R. § 214.2(h)(4)(iii)(D)(1), (2), (3), or (4). As to a determination by Citizenship and Immigration Services (CIS), pursuant to the fifth criterion, the record fails to demonstrate that the beneficiary has achieved recognition of expertise in the specialty occupation as a result of his training and experience.

Accordingly, the record does not establish that the beneficiary is qualified in the specific specialty required by the position of operations manager. 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.