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U.S. Citizenship and Immigration Services

[redacted]

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FILE: EAC 02 234 53599 Office: VERMONT SERVICE CENTER Date: MAY 06 2004

IN RE: Petitioner: [redacted]
Beneficiary:

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

ON BEHALF OF PETITIONER:

[redacted]

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.

Mari Johnson

for Robert P. Wiemann, Director
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 a telecommunications company that seeks to employ the beneficiary as a sales representative. To do so, 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 petitioner had failed to establish that the proffered position meets the definition of a specialty occupation at 8 C.F.R. § 214.2(h)(4)(iii)(A). The record establishes that the director was correct in denying the petition on the ground that he specified. Accordingly, his decision shall not be disturbed.

The AAO notes that the record presents an issue regarding waiver of the two-year foreign residency requirement of section 212(e) of the Act, and that, since the date of the director's decision, the record has added a letter from the U.S. Department of State that recommends that the waiver be granted. As this matter is beyond the AAO's jurisdiction, the AAO will not comment upon it.

The AAO based its decision upon its review of the entire record, which includes: (1) the Form I-129 and supporting documentation; (2) the director's request for additional evidence (RFE); (3) the matters submitted in response to the RFE; (4) the director's denial letter; and (5) the Form I-290B and counsel's brief in the form of a two-page statement.

Upon review of the entire record and all of counsel's assertions on appeal, the AAO has determined that the petitioner has satisfied none of the criteria outlined at 8 C.F.R. § 214.2(h)(4)(iii)(A). Therefore, the proffered position is not a specialty occupation.

The Form I-129 and its addendum page provided this nontechnical description of the proffered position:

> Sell, explain and educate distributors and their sales force about products, investigate competitors, analyze and report on buyers and competitors and find ways to improve products.

The Form I-129 described the proposed duties as follows:

> Use system engineering degree and sales work experience to sell, educate and teach buyers about products; answer technical questions about products; explain how [the] technology of [the] company benefits buyers; gather and collect information on competitors; analyze and report on products, buyers, and competitors; create new ideas to benefit [the] company; make surveys; provide ideas to improve technologies used by [the] company with [its] products; meet and report to supervisors and management about all aspects of sales, products, and telecommunications.

While these work descriptions are expanded upon elsewhere in the record, there is insufficient evidence to establish that, in counsel's words, the sales representative's product is "an abstract product that needs an education in technology to understand and sell." The assertions of counsel will not suffice. They do not

constitute evidence. *Matter of Obaigbena*, 19 I&N Dec. 533, 534 (BIA 1988); *Matter of Ramirez-Sanchez*, 17 I&N Dec. 503, 506 (BIA 1980).

The AAO has noted that the petitioner's brochure, its slides, and its notes to its financial statements reference only one specific product: prepaid telephone cards. Also, the evidence of record on the petitioner's hiring practices does not substantiate counsel's assertion about the need for a technical degree. Rather, the petitioner only asserts that the two other sales representatives on the petitioner's staff have baccalaureate degrees, without specifying the academic area of those degrees. Also, the tenor of the petitioner's letter of support that was filed with the I-129 is to the effect that sales representatives need at least a bachelor's degree, but that a technical degree such as the beneficiary's would be ideal.

Section 214(i)(l) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1184 (i)(l), 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.

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 evidence of record does not provide a sufficient evidentiary basis for finding that the proffered position is a specialty occupation under any criterion at 8 C.F.R. § 214.2(h)(4)(iii)(A).

The record does not qualify the sales representative position at issue here under section *1* of 8 C.F.R. § 214.2(h)(4)(iii)(A), because the evidence does not establish that entry in this particular position normally requires at least a baccalaureate or higher degree, or equivalent, in a specific specialty. As described in the record, the proffered position comports with the sales representative occupation as described in the "Sales Representative, Wholesale and Manufacturing" section of the Department of Labor's *Occupational Outlook*

Handbook (Handbook), which Citizenship and Immigration Services (CIS) recognizes as an authoritative source on the duties and educational requirements of a wide variety of occupations. The *Handbook's* information indicates that employers generally do not require that their sales representatives hold a bachelor's or higher degree, or equivalent, in a specific specialty. Although the *Handbook* also indicates that firms selling complex, technical products may require a technical degree, the evidence of record here does not establish that a telephone calling card is that type of product, even if clients desire background information on how that fits into the telecommunication system. In the absence of concrete information in the record, the AAO will not speculate as to what other products the sales representatives may be involved with.

The evidence does not satisfy either of the two prongs of section *2* of 8 C.F.R. § 214.2(h)(4)(iii)(A). First, the record does not present evidence of a specialty degree requirement that is common to the industry in parallel positions among similar organizations. Second, the petitioner has not shown that, in the alternative, the particular position at issue is so complex or unique that it can be performed only by someone who holds at least a bachelor's degree in a specific specialty.

The petitioner's assertion, in its RFE reply letter, that its two other sales representatives "have Baccalaureate Degrees" does not satisfy section *3* by establishing that the employer normally requires a specialty degree or its equivalent for the position. A petitioner must demonstrate that the degree it requires is in 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, a petitioner's normally requiring a degree with a generalized title, such as business administration or liberal arts, without further specification, does not meet the section *3* standard. Likewise, the mere requirement of a college degree for the sake of general education, or to obtain what an employer perceives to be a higher caliber employee, also does not establish eligibility. *See Matter of Michael Hertz Associates*, 19 I&N Dec. 558 (Comm. 1988).

Finally, the petitioner has not met the criterion at 8 C.F.R. § 214.2(h)(iii)(A)(*4*). The evidence of record does not present convincing evidence that the sales representative duties are so specialized and complex as to require the highly specialized knowledge associated with a baccalaureate or higher degree in systems engineering or any other specific specialty.

As the director was correct in denying the petition because the proffered position does not meet the definition of a specialty occupation at 8 C.F.R. § 214.2(h)(4)(iii)(A), the director's decision shall not be disturbed.

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.