



U.S. Citizenship
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FILE: WAC 04 255 52973 Office: CALIFORNIA SERVICE CENTER Date: **APR 27 2006**

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 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 engaged in the business of international freight forwarding and seeks to employ the beneficiary as a sales development 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 because he found the proffered position is not a specialty occupation. On appeal, counsel submits a brief.

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) counsel's response to the director's request; (4) the director's denial letter; and (5) Form I-290B 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 development manager. Evidence of the beneficiary's duties includes: the Form I-129; the attachments accompanying the Form I-129; the company support letter; and counsel's response to the director's request for evidence. According to this evidence, the beneficiary would perform duties that entail: directing staffing, training and performance evaluation to develop and control sales programs for South American markets (10% of time); reviewing market analysis to determine customer needs, volume potential, price schedules, and discount rates (10% of time); analyzing sales statistics to formulate policy (10% of time); analyzing competition activity and adjusting strategy to suit to identify new markets (10% of time); developing and implementing sales programs (15% of time) coordinating sales distribution by establishing sales territories, quotas, and goals (15% of time); quoting and negotiating prices (5% of time); negotiating and preparing sales contracts (10% of time); representing the petitioner at various trade association meetings to promote its product (5% of time); and preparing periodic sales reports showing sales volume and potentials sales (10% of time). The petitioner stated that the proffered position requires a bachelor's degree or its equivalent in business administration or related area.

The director determined that the proffered position was not a specialty occupation. The director found that the duties of the position as described by the petitioner, are primarily those of a sales manager. The director noted that the Department of Labor's *Occupational Outlook Handbook (Handbook)* indicated that the positions of advertising, marketing, promotions, public relations, and sales managers are occupations that do not require a baccalaureate level of education in a specific specialty as a normal, industry-wide minimum for entry into the occupation. The director stated that the evidence submitted is insufficient to establish that the position being offered requires the attainment of a baccalaureate or higher degree or its equivalent and is normally the minimum requirement for entry into the particular position; the degree requirement is common to the industry in parallel positions among similar organizations or that the position is so complex or unique that it can be performed only by an individual with a degree; or that the employer normally requires a degree or its equivalent for the position; or 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.

On appeal, counsel notes that the director relied on the *Handbook* for his decision. Counsel disagrees with the director's interpretation of the *Handbook* and asserts that the *Handbook* supports his contention that a baccalaureate degree is required for entry into the position of sales development manager. Counsel states that CIS also relies on the Department of Labor's *Dictionary of Occupational Titles (DOT)*. Counsel refers to the *DOT*, the Federal Register and the SOC O*Net as supporting his contention that the proffered position is a specialty occupation.

Counsel's reliance on the *DOT* and the *O*Net* is misplaced. The *DOT* is not a persuasive source of information regarding whether a particular job requires the attainment of a baccalaureate or higher degree in a specific specialty, or its equivalent, as a minimum for entry into the occupation. Although not noted by the petitioner, the *DOT* provides an SVP rating. An SVP rating is meant to indicate only the total number of years of vocational preparation required for a particular position. It does not describe how those years are to be divided among training, formal education, and experience required for particular employment, and it does not specify the particular type of degree, if any, that a position would require. The *O*NET* system supercedes the seventy-year old *DOT*. The *O*NET* database is a comprehensive source of descriptors, with ratings of importance, level, frequency or extent, for occupations that are key to the economy. *O*NET* descriptors include: skills, abilities, knowledge, tasks, work activities, work context, experience levels required, job interests, and work values/needs. It does not describe the amount of training, formal education, and

experience required for particular employment, and it does not specify the particular type of degree, if any, that a position would require. For this reason, the AAO does not rely on *DOT* or *O*NET* information.

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 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 *Handbook* 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.

Based on the record of proceeding and as noted by the director, the AAO has determined that the proffered position is most similar to that of a sales manager as described in the *Handbook*. According to the *Handbook*, sales managers direct the firm's sales program. They assign sales territories, set goals, and establish training programs for the sales representatives. 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.

With respect to the educational qualifications required of sales managers, the *Handbook* 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. 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.

Counsel asserts that the *Handbook* states that a baccalaureate degree is required for entry in the proffered position. However, the *Handbook* reports that a wide range of educational backgrounds is suitable for employment as a sales manager. An employer's preference for experience in related occupations is not a requirement. As noted above, 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.

Consequently, there is insufficient evidence in the record to establish that a baccalaureate or higher degree or its equivalent in a specific specialty is the normal minimum requirement for entry into the sales development manager position.

To satisfy the first alternative prong of the second criterion - a specific degree requirement is common to the industry in parallel positions among similar organizations - counsel submits internet job postings from a variety of companies which include an engineering prototyping specialist company, an online information company, a law firm, and an advertising company.

This evidence fails to establish that a specific baccalaureate degree is common to the industry in parallel positions among similar organizations. One deficiency in the postings is that the companies are obviously dissimilar to the petitioner. The education requirements for the internet job postings are different from the proffered position. For instance, Sun Man Engineering requires a bachelor's degree in electrical engineering; IGN Entertainment, the law firm, and ██████████ Advertising indicate generally that a bachelor's degree is required without indicating a specific specialty. Consequently, the postings fail to establish that there is a specific baccalaureate degree that is a common industry-wide requirement.

As evident in the discussion of the first criterion, the petitioner has not established that the proffered position is so complex or unique that it can be performed only by an individual with a degree in a specific specialty. Thus, the petitioner also fails to satisfy the second alternative prong of the second criterion at 8 C.F.R. § 214.2(h)(4)(iii)(A).

Nor is there evidence in the record to establish the proffered position as a specialty occupation under the third criterion at 8 C.F.R. § 214.2(h)(4)(iii)(A): the petitioner normally requires a specific degree or its equivalent for the position. The petitioner asserts that it has a past practice of hiring persons with a baccalaureate degree or higher to perform the duties of the proffered position. The petitioner indicates that it has hired two business development managers with baccalaureate or higher degrees. The petitioner has not, however, established that the duties of these positions are similar to the proffered position. Neither has the petitioner provided evidence of its employment of these individuals, such as payroll records, or their education to support its claims. Going on 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 Dec. 190 (Reg. Comm. 1972)).

The fourth criterion at 8 C.F.R. § 214.2(h)(4)(iii)(A) requires that the petitioner establish that the nature of the specific duties is so specialized and complex that the knowledge required to perform the duties is usually associated with the attainment of a baccalaureate or higher degree. To the extent they are described in the record, the duties of the position are not so specialized and complex that the knowledge required to perform them is usually associated with the attainment of a baccalaureate or higher degree in a specific specialty. The duties parallel those in the *Handbook* for a sales manager, an occupation that does not require a specific baccalaureate degree. Counsel asserts that the job duties are very complex. Counsel explains that the job duties must be taken in context with the petitioner's company. Counsel asserts that the petitioner is a large company with many employees and revenues in excess of \$13 million. The petitioner has not provided evidence of the number of its employees or its revenue, such as quarterly or yearly tax returns. Without documentary evidence to support the claim, the assertions of counsel will not satisfy the petitioner's burden of proof. The unsupported assertions of counsel do not constitute evidence. *Matter of Obaigbena*, 19 I&N Dec.

533, 534 (BIA 1988); *Matter of Laureano*, 19 I&N Dec. 1 (BIA 1983); *Matter of Ramirez-Sanchez*, 17 I&N Dec. 503, 506 (BIA 1980). Counsel contends that the duties of the position require a knowledge of statistics and its application; and the principles and methods for showing, promoting and selling products or services, including marketing strategy and tactics. These duties fall within the typical position of a sales manager as described in the *Handbook* and do not require skills beyond those normally held by a sales manager. The petitioner has not established that the duties to be performed for its business are so complex as to require a degree in a specific specialty. The petitioner therefore fails to satisfy the fourth criterion.

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.