



U.S. Citizenship
and Immigration
Services

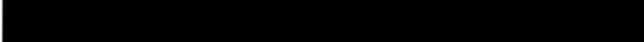
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FILE: EAC 04 142 54116 Office: VERMONT SERVICE CENTER Date: **MAY 26 2006**

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, Director
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 in the food business. It seeks to employ the beneficiary as a sales representative. 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 the proposed position is not a specialty occupation. On appeal, counsel submits a brief and additional evidence.

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) 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, the appeal, 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 representative. 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. According to the petitioner's March 26, 2004 letter, the beneficiary would perform duties that entail performing market research on Chinese food products; handling promotions and communications with clients; ordering and verifying incoming and outgoing inventory from Asia to South America; conducting quality control; communicating and dealing with overseas suppliers and buyers; and traveling to buy or sell the petitioner's products. The petitioner states that the offered position requires speaking the English, Spanish, Mandarin, and Cantonese languages, and having at least 10 years of experience in the food business. According to the petitioner, "[t]he demands of this position could not be performed without accumulated experience."

In denying the petition, the director stated that the Department of Labor's *Occupational Outlook Handbook* (the *Handbook*) indicates that the occupation of sales representative, which is similar to the offered position, does not require a bachelor's degree in a specific specialty.

On appeal, counsel describes the proposed duties, providing a breakdown of the time the beneficiary will spend performing each duty. Counsel asserts that the *Dictionary of Occupational Titles* (*DOT*) reveals that a sales manager requires a baccalaureate degree, thereby qualifying the offered position as a specialty occupation. Counsel contends that the proposed duties are specialized and complex, requiring the knowledge attained from a baccalaureate or higher degree. Counsel states that compilation and analysis of statistical data acquired by the use of studies requires a skill which is acquired through the completion of a bachelor's degree or its equivalent. Counsel states that rather than examining the duties of the position, the director overly emphasized its title.

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.

As noted earlier, the term "degree" in the criteria at 8 C.F.R. § 214.2(h)(4)(iii)(A) is interpreted by CIS to mean a baccalaureate or higher degree in a specific specialty that is directly related to the offered position. In the March 26, 2004 letter, the petitioner discusses a language and experience requirement for the offered position; however, the petitioner does not indicate that the offered position requires a baccalaureate degree in a specific academic specialty. The petitioner's requirement of languages and work experience for the proposed position is not enough to establish the position as a specialty occupation. The AAO notes that counsel's assertion on appeal, and former counsel's assertion in the August 9, 2004 letter, indicate that the petitioner requires a baccalaureate degree for the proffered position. The AAO notes that counsel's claim that the petitioner requires a baccalaureate degree contradicts the petitioner's requirements for the offered position, which are "[foreign languages] and having at least 10 years of experience in the food business." The assertions of counsel 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).

Based on the evidence of record, the petitioner establishes none of the criteria at 8 C.F.R. § 214.2(h)(4)(iii)(A): a baccalaureate or higher degree or its equivalent in a specific specialty is the normal minimum requirement for entry into the particular position; a specific degree requirement is common to the industry in parallel positions among similar organizations; the position is so complex or unique that it can be performed only by an individual with a degree in a specific specialty; the petitioner normally requires a degree or its equivalent for the position; or 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.

As related in the discussion above, the petitioner has failed to establish that the proposed position is a specialty occupation. 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.

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