



U.S. Department of Justice

Immigration and Naturalization Service

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OFFICE OF ADMINISTRATIVE APPEALS
425 Eye Street N.W.
ULLB, 3rd Floor
Washington, D.C. 20536



Public Copy

File: EAC 99 056 53203

Office: Vermont Service Center

Date: JAN 7 2000

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)

IN BEHALF OF PETITIONER:



Identifying data deleted to
prevent clearly unwarranted
invasion of personal privacy

INSTRUCTIONS:

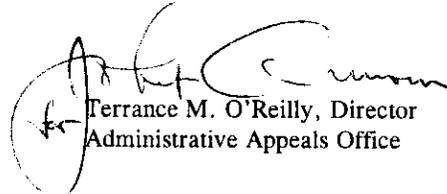
This is the decision in your case. All documents have been returned to the office which originally decided your case. Any further inquiry must be made to that office.

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 which 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 the Service 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 which originally decided your case along with a fee of \$110 as required under 8 C.F.R. 103.7.

FOR THE ASSOCIATE COMMISSIONER,
EXAMINATIONS


Terrance M. O'Reilly, Director
Administrative Appeals Office

DISCUSSION: The nonimmigrant visa petition was denied by the director of the Vermont Service Center. The matter is now before the Associate Commissioner on appeal. The appeal will be dismissed.

The petitioner, an importer of men's apparel, seeks to employ the beneficiary for three years as an international buyer in the H-1B classification for specialty occupations. In a decision issued April 21, 1999 (denial), the director determined that the beneficiary did not have a baccalaureate degree or equivalent in the specialty occupation. The petitioner appealed on May 24, 1999 (appeal). It offered further documents, said to clarify the beneficiary's qualifications for H-1B status. Such data were a certificate of his employment as sales manager from 1989-1994, proof of his payment of taxes on such income, and the employer's corporate registration in the Republic of Korea, all relative to J.K. Mode Co., Inc. (Mode Documents).

Provisions of § 101(a)(15)(H)(i)(b) of the Immigration and Nationality Act (the Act), 8 U.S.C. 1101(a)(15)(H)(i)(b), accord nonimmigrant classification to qualified aliens who are coming temporarily to the United States to perform services in a specialty occupation. The definition in § 214(i)(1) of the Act, 8 U.S.C. 1184(i)(1), describes a "specialty occupation" as one which requires theoretical and practical application of a body of highly specialized knowledge and 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.

Regulations in 8 C.F.R. 214.2(h)(4)(ii) define the term specialty occupation as:

an occupation which requires theoretical and practical application of a body of highly specialized knowledge to fully perform the occupation in such 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.

The Act, in § 214(i)(2), 8 U.S.C. 1184(i)(2), exacts from a qualified alien coming to perform in a specialty occupation either:

(A) full state licensure to practice in the occupation, if such licensure is required to practice in the occupation,

(B) completion of the degree described in paragraph (1)(B) for the occupation, or

(C)(i) experience in the specialty equivalent to the completion of such degree, and (ii) recognition of expertise in the specialty through progressively responsible positions relating to the specialty.

In respect to section (B) of that statute, the proceedings revealed that the beneficiary's baccalaureate did not relate to the specific specialty of international buying. See § 214(i)(1)(B) of the Act, 8 U.S.C. 1184(i)(1)(B). The appeal relied wholly on experience and recognition in the specific specialty under § 214(i)(1)(C)(i)-(ii) of the Act, 8 U.S.C. 1184(i)(1)(B)(i)-(ii).

To invoke experience and recognition in the specialty occupation, the beneficiary must 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. He must, further, demonstrate recognition of his expertise in the specialty through progressively responsible positions which are directly related to the specialty. 8 C.F.R. 214.2(h)(4)(iii)(C)(4). No resumé supported the progression of the beneficiary's positions.

The petitioner advised, notwithstanding, that the 13 year career of the beneficiary included seven connected with the Mode documents. They vouchsafed less than five and implicitly reduced active employment to under 11 years. Another offer of proof regarded his ownership of a business for one unspecified year, but it laid no foundation for progressively more responsible positions. Except for the limited Mode documents, the record provided no chronology on which to base a finding of the progression of any work. No list of prior employers and positions' duties of any position supported the assessment of the level of responsibility with them. The petitioner's letter of December 2, 1998 (petition transmittal). Neither term of 8 C.F.R. 214.2(h)(4)(iii)(C)(4) was met.

The equivalence of experience to a degree depends, also, on several demands of 8 C.F.R. 214.2(h)(4)(iii)(D)(5). The evidence failed in most particulars. It did not detail the beneficiary's experience or the way it supported the theoretical and practical application of a specialized body of knowledge in the specialty occupation of an international buyer of men's apparel. It did not evidence three years of experience in the specific specialty for every year of the four of college level training which the beneficiary lacked in the specific specialty. 8 C.F.R. 214.2(h)(4)(iii)(D)(5)(i).

No evidence supported the application in favor of this petition of other provisions in 8 C.F.R. 214.2(h)(4)(iii)(D)(1)-(4), (5)(ii)-(v), or in 8 C.F.R. 214.2(h)(4)(iii)(C)(1)-(3). The record

demonstrated neither the beneficiary's baccalaureate in the specific specialty of the proposed occupation nor equivalent experience in the specialty occupation, and it failed to prove the recognition of his expertise through progressively responsible positions.

The burden of proof in these proceedings rests solely with the petitioner. Section 291 of the Act, 8 U.S.C. 1361. The petitioner did not sustain that burden.

ORDER: The appeal is dismissed.