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U.S. Department of Justice

Immigration and Naturalization Service

identifying data deleted to prevent clearly unwarranted invasion of personal privacy

[redacted]

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

File: EAC-01-072-53205 Office: Vermont Service Center Date: FEB 1 0 2003

IN RE: Petitioner: [redacted]
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)

PUBLIC COPY

IN BEHALF OF PETITIONER:

[redacted]

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

FOR THE ASSOCIATE COMMISSIONER,
EXAMINATIONS

Robert P. Wiemann, Director
Administrative Appeals Office

DISCUSSION: The nonimmigrant visa petition was denied by the Director, Vermont Service Center. A subsequent appeal was dismissed by the Associate Commissioner for Examinations. The matter is now before the Associate Commissioner for Examinations on a motion to reopen and reconsider. The motion will be granted. The previous decision of the Associate Commissioner will be affirmed.

The petitioner is a wholesale distributor of paper products. It has approximately ten employees and a gross annual income of $1.5 million. It seeks to employ the beneficiary as an import and export manager for a period of three years. The director determined the petitioner had not established that the proffered position is a specialty occupation.

On appeal, counsel had provided additional information in support of the appeal.

The Associate Commissioner dismissed the appeal reasoning that the proffered position appears to combine the duties of a general manager with those of a marketing manager, positions that may be filled by individuals with a wide range of educational backgrounds, rather than a baccalaureate degree in a specific specialty.

On motion, counsel states, in part, that the proffered position is similar to that of a purchasing manager, a position which requires a baccalaureate degree in business, according to the Department of Labor (DOL) in its Occupational Outlook Handbook (Handbook). Counsel further states that the petitioner plans on expanding its sales operations, and therefore an experienced manager in the international distribution of goods, who is fluent in the Urdu, Hindi, and English languages would be an ideal candidate. Counsel submits various Internet job advertisements to demonstrate that the proffered position normally requires a baccalaureate degree.

Counsel's statement on motion is not persuasive. The Service does not use a title, by itself, when determining whether a particular job qualifies as a specialty occupation. The specific duties of the offered position combined with the nature of the petitioning entity's business operations are factors that the Service considers. In the initial I-129 petition, the petitioner described the duties of the offered position as follows:

> In addition to performing regular duties of an **Export Import Manager**, the beneficiary will also direct import of South Asia and Middle East, negotiate with foreign sales and distribution centers. He will direct clerical staff in expediting correspondence, bid requests and credit collections. He will also make sure the imported goods meets [sic] American Standards and arrange shipping details such as import licenses, customs declarations and

> shipping, and routing of products. In addition to expediting import export arrangements, he will examine invoices and shipping manifests for conformity to tariff and customs regulations. He will contact custom officials to effect release of incoming freight and resolve other issues associated with the import business.

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.

The petitioner has not met any of the above requirements to classify the offered position as a specialty occupation.

First, the Service does not agree with counsel's argument that the proffered position would normally require a baccalaureate or higher degree in business administration or a related field. The proffered position appears to be primarily that of an office and administrative support worker supervisor or manager. In its Handbook, 2002-2003 edition, at pages 417-418, the DOL describes the job of office and administrative support worker supervisors and managers, in part, as follows:

> These workers are employed in virtually every sector of the economy, working in positions as varied as *customer services manager, teller supervisor, and shipping-and-receiving supervisor*.
>
> Planning the work of their staff and supervising them are key functions of this job. To do these effectively, the supervisor must know the strengths and weaknesses of each member of the staff, as well as the required level of quality and time allotted to each job.

> After allocating work assignments and issuing deadlines, office and administrative support supervisors and managers oversee the work to ensure that it is proceeding on schedule and meets established quality standards.
>
> Office and administrative support supervisors and managers usually interview and evaluate prospective clerical employees.
>
> Office and administrative support supervisors and managers often act as liaisons between the clerical staff and the professional, technical, and managerial staff. This may involve implementing new company policies or restructuring the workflow in their departments. They must also keep their superiors informed of their progress and abreast of any potential problems. Often this communication takes the form of research projects and progress reports. Because they have access to information such as their department's performance records, they may compile and present these data for use in planning or designing new policies.

The types of duties the petitioner ascribes to the beneficiary fall primarily within the scope of an office and administrative support worker supervisor or manager. For example, the petitioner states that the beneficiary will "direct clerical staff in expediting correspondence, bid requests and credit collections" and "make sure the imported goods meets [sic] American Standards and arrange shipping details such as import licenses, customs declarations and shipping, and routing of products..." Such duties are normally associated with an office and administrative support worker supervisor or manager position.

Counsel's assertion that the proffered position is similar to that of a purchasing manager is noted. Even if the Service were to conclude that the proffered position was primarily that of a purchasing manager, the position would still not qualify as a specialty occupation. A review of the DOL's Handbook finds no requirement of a baccalaureate or higher degree in a specific specialty for employment as a purchasing manager, buyer, and purchasing agent. Educational requirements tend to vary according to the size of the organization. Large distributors and stores, especially those in wholesale and retail trade, prefer applicants who have completed a bachelor's degree program with a business emphasis. (Emphasis added.) (It is noted here that a baccalaureate degree appears to be a preference by large distributors and stores rather than a requirement. It is also noted that the petitioner has only ten employees.) Regardless of their academic preparation, new employees must learn the specifics of their employers' business. Training periods vary in length, with most lasting 1 to 5 years.

Furthermore, the petitioner has not established that the beneficiary's duties involving the Urdu, Hindi, and English languages are of such complexity that a baccalaureate degree in a specific specialty, as distinguished from familiarity with such languages or a less extensive education, is necessary for the successful completion of its duties. In view of the foregoing, the petitioner has not shown that a bachelor's degree or its equivalent is required for the position being offered to the beneficiary.

Second, the petitioner has not shown that it has, in the past, required the services of individuals with baccalaureate or higher degrees in a specific specialty, for the offered position. Third, although the record contains various job advertisements, the petitioner did not present any documentary evidence that businesses similar to the petitioner in their type of operations, number of employees, and amount of gross annual income, require the services of individuals in parallel positions. Finally, the petitioner did not demonstrate that the nature of the beneficiary's proposed 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.

The petitioner has failed to establish that any of the four factors enumerated above are present in this proceeding. Accordingly, it is concluded that the petitioner has not demonstrated that the offered position is a specialty occupation within the meaning of the regulations.

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 decision of the Associate Commissioner dated February 27, 2002, is affirmed.