D2

U.S. Department of Justice

Immigration and Naturalization Service

identifying data deleted to prevent clearly unwarranted invasion of personal privacy

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

[redacted]

File: LIN 01 250 56324 Office: NEBRASKA SERVICE CENTER Date: JAN 13 2003

IN RE: Petitioner:
Beneficiary: [redacted]

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:

[redacted]

PUBLIC COPY

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, Nebraska Service Center, and the matter is now before the Associate Commissioner for Examinations on appeal. The appeal will be dismissed.

The petitioner is an international food importer/exporter with headquarters in Tacoma, Washington. It has 60,000 employees and a net annual income of $20.3 billion. It seeks to temporarily employ the beneficiary as an Import Sales Coordinator for a period of three years. The director determined that the petitioner had not established that the proffered position was a specialty occupation.

On appeal, counsel submits additional information with regard to previous employees hired as import sales coordinators. In addition, counsel asserts that the proffered position is a specialty occupation.

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.

8 C.F.R. 214.2(h)(4)(ii) defines the term "specialty occupation" as:

> an occupation which requires theoretical and practical application of a body of highly specialized knowledge in field 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 issue in this proceeding is whether the petitioner has established that the position offered to the beneficiary is a specialty occupation.

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.

In the original petition, the petitioner stated that the beneficiary would work as an Import Sales Coordinator. The non-technical description of the job stated: "Source products, coordinate with customer and vendor." In the materials submitted with the petition, the petitioner expanded on the job duties as follows:

> As an import coordinator, [the beneficiary] will be responsible for negotiating contracts with foreign sales and distribution centers to establish outlets. Directs staff in expediting export correspondence, bid requests, and credit collections. Directs conversion of products from American to foreign standards and specifications to ensure efficient operation under foreign conditions. Arranges shipping details, such as import clearances, customs declarations, and packing, shipping, and routing of product. Directs import and technical staff in preparation of foreign language sales manuals. Expedites import-export arrangements and maintains current information on import-export tariffs, licenses, and restrictions. The successful Export Coordinator must be knowledgeable about payment methods such as letters of credit and prepayments, and their respective effect on customer shipments.

The petitioner further outlined the following duties for the position:

1. Respond and process customer orders internally in a timely manner. Requires the tactical management and follow up of the procurement and delivery process. Order entry and processing, freight arrangements, advertising the warehouse of an incoming load, and continuous communication with customers and vendors.

2. Negotiate product availability and price with vendors, manufacturers, brokers or alternative supply sources.

3. Ability to use a complicated quoting process requiring research. Knowledge of market you are selling goods to and knowledge of local supply issues.

4. Provide value-added services such as the coordination of logistic, special arrangements, stickering, bonded beer, liquor and cigarette sales, and any other special customers requests or circumstances.

5. Direct the updates and enter the information to internal product databases for inventory control, item ordering and warehouse stock issues.

6. Must be knowledgeable about payment methods, Letter of Credit, prepayments and how these affect customer shipments.

7. Strong accounting skills required for file reconciliation, must ensure finalizing of orders and coordination with the warehouse.

8. Responsible for confirmation of all final details and ability to resolve possible problems of each order.

In addition to the above qualifications, a successful candidate is expected to develop relationship with his/her customers, know and understand their needs, negotiate with them on continuous basis, and be responsible for maintaining them as clients. As with any Import Sales Coordinator position in our company, the usual minimum requirement for performance of the job duties is a bachelor's degree in International Business or a related field or direct work experience equivalent to education. Knowledge of international business transactions, especially international shipping and international payment methods, is desirable.

The petitioner also submitted the beneficiary's coursework and a diploma from the University of Washington. These documents showed that the beneficiary received a bachelor of arts in economics on August 18, 2000.

On November 2, 2001, the director asked for further evidence that the proffered position met one of the criteria for a specialty occupation as outlined in 8 C.F.R. §214.2(h)(4)(iii)(A). In particular, the director drew attention to the need for documentation to show that it is a normal practice for similar firms to employ individuals with baccalaureate degrees in a specialized area and for specific documentation to show that individuals with baccalaureate or higher degrees in a specialized area had been previously employed by the petitioner.

In response, the petitioner reiterated the job duties outlined in the original petition. The petitioner also submitted a letter from the director of Administration that listed two persons employed in the position of Import Coordinator who held bachelor's degrees. On individual was listed as graduating from the University of Washington with no specific degree listed, while the other individual was listed as graduating from City University in International Business. It also submitted excerpts from the Department of Labor's Occupational Outlook Handbook (Handbook) for the classification of purchaser, purchasing agent, or import specialist. In addition, the petitioner submitted copies of ten Internet job vacancy announcements for various positions that primarily encompassed a range of jobs involving import/export coordination and licensing. Finally the petitioner submitted a list of ten individuals with a description of their educational backgrounds and positions. The petitioner described these individuals as former employees. Nine of these employees were identified as export sales coordinators, while one was identified as import/export sales coordinator.

On January 25, 2002, the director denied the petition stating that the petitioner's evidence had not established that the petitioner required a baccalaureate or higher degree, in a **specialized area** for the proffered position. (Emphasis in original.) In reaching this determination, the director stated that the section of the Handbook that examined the classification of purchasing manager, buyer or purchasing agent contained no requirement for a baccalaureate or higher degree in a specialized area for employment in the field. The director stated that "[d]egrees in business and in technical fields appear equally welcome." The director also did not find the Internet job vacancy announcements sufficient to establish that similar firms with parallel positions required a bachelor's degree in a specific specialty. Finally the director also determined that the names of two employees that the petitioner submitted had no major field of study listed for the individuals.

On appeal, counsel submits an updated list of eleven current employees employed by the petitioner as import or export sales coordinators. Counsel asserts that all of these employees possess at minimum a bachelor's degree in economics, business administration or related disciplines. Counsel also submits the petitioner's Internet recruitment advertisement that states the position of import coordinator requires a bachelor's degree in business management, international business, finance or economics. Finally counsel submits a copy of the petitioner's position announcement posted at various college campuses and distributed at job fairs. Counsel states that this latter document also demonstrates that the person hired as a coordinator must possess a bachelor's degree in international business, finance or economics. Finally counsel asserts that this additional evidence provides clear evidence that the proffered position constitutes a specialty occupation as it meets the

criteria of 8 C.F.R. §214.2(h)(4)(iii)(A)(3) which states the employer normally requires a degree or its equivalent for the proffered position.

Upon review of the record, a basic distinction can be made between the reasoning underlying the director's decision and the reasoning behind the materials submitted in the petitioner's appeal. The director in his decision is referring to the statutory definition of specialty occupation which states that the proffered position requires a baccalaureate degree or higher or its equivalent in a specific specialty. The petitioner, in its response to the request for further evidence and in its appeal is using the regulatory standards in 8 C.F.R. §214.2(h)(4)(iii)(A) criteria which do not explicitly include the term "specific specialty" in their wording. To interpret the criteria in 8 C.F.R. §214.2(h)(4)(iii)(A) as solely requiring a bachelor's degree is incorrect.

Factors often considered by the Service when determining the industry standard include: whether Occupation Outlook 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." Shanti, Inc. v. Reno, 36 F.Supp.2d 1151, 1165 (D.Min. 1999)(quoting Hird/Blaker Corp. v. Slattery, 764 F.Supp. 872, 1102 (S.D.N.Y. 1991)).

The Department of Labor's Occupational Outlook Handbook, (Handbook) 2002-2003 Edition, on page 80, states the following with regard to purchasing managers, buyers and purchasing agents:

> Some firms promote qualified employees to these positions, while other employers recruit college graduates; regardless of academic preparation, new employees must learn the specifics of their employers' business.

On page 82, the Handbook states the following about the training of purchasing agents and managers:

> Qualified persons may begin as trainees, purchasing clerks, expediters, junior buyers, or assistant buyers. Retail and wholesale firms prefer to hire applicants who have a college degree and are familiar with the merchandise they sell and with wholesaling and retailing practices. Some retail firms promote qualified employees to assistant buyer positions; others recruit and train college graduates as assistant buyers. Most employers use a combination of methods. . . . Educational requirements tend to vary with the size of the organization. Large stores and distributors, especially those in wholesale and retail trade, prefer applicants who have completed a bachelor's degree program with a business emphasis.

Although the Handbook text supports the fact that retail and wholesale firms similar to the petitioner prefer to hire applicants with a college degree, it does not support the petitioner's assertion that a bachelor's degree or higher or its equivalent is normally the minimum requirement for entry into the import coordinator or analogous purchasing agent positions. Thus the petitioner has not established the first criterion of 8 C.F.R. §214.2(h)(4)(iii)(A).

With regard to the second criterion, namely that the degree requirement is common to the industry in parallel position, to date, the petitioner has not submitted sufficient evidence to establish this criterion. For example, the director correctly pointed out in his decision that the Internet job advertisements submitted by the petitioner were for a variety of positions and job titles and it was unclear whether the firms who were advertising were similar to the petitioner in size, scope or business focus. In addition the advertisements which predominately required a bachelor's degree with relevant work experience, did not establish the need for a bachelor's degree in a specific specialty.

With regard to the third criterion, namely that the employer normally requires a degree or its equivalent for the proffered position, the petitioner has clearly established that it requires a bachelor's degree for the proffered position. The list of eleven employees working in the field of import coordination amply establishes this fact. However, upon close examination of this list, the petitioner has not established that a bachelor's degree in a specific specialty is normally required for the proffered position. For example, the petitioner's list of eleven employees documents bachelor's degrees in business administration, international affairs, economics, international business, psychology, international marketing, and a master's degree in public administration. There appears to be a wide range of bachelor's degrees that the petitioner would normally require for the proffered position, as opposed to a specific specialty. Without more compelling documentation, the petitioner has not established the third criterion.

With regard to the final criterion, namely 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, the petitioner has submitted an extensive list of duties for the proffered position. Although the petitioner's information documents a very detail-oriented position, the nature of the specific duties is not seen as so specialized and complex that the knowledge is usually associated with the attainment of a bachelor's or higher degree. For example, "processing customer orders internally in a timely manner," "continuous communication with customers," and "be knowledgeable about payment methods" appear to characterize a position with many repetitive duties as opposed to complex duties.

Without more compelling testimony, the petitioner has not established the specialized and complex nature of the duties to be performed by the beneficiary.

The petitioner has failed to establish that any of the four criteria 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. Accordingly, the appeal will be dismissed.

ORDER: The appeal is dismissed.