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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-02-119-51318 Office: Nebraska Service Center Date: JAN 24 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 is now before the Associate Commissioner for Examinations on appeal. The appeal will be dismissed.

The petitioner is a machine parts production business with 110 employees and a stated gross annual income of $10 million. It seeks to employ the beneficiary as an assistant import/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 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.

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 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 director denied the petition because the petitioner had not established that the proffered position requires a baccalaureate degree in a specific specialty.

On appeal, counsel asserts that the duties of the proffered position are so specialized and complex that the knowledge required to perform the duties is usually associated with the attainment of a baccalaureate or higher degree in a specific specialty and also that the degree requirement is common to the industry in parallel positions among similar organizations. Counsel further asserts that the Service has already determined that the proffered position

is a specialty occupation since the Service has in the past approved other H-1B visa petitions filed by different petitioners for the same position, import/export manager.

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 and the percentage of time the beneficiary will spend in the performance of each duty as follows:

> Assist general manager in coordinating overseas orders (35%)
>
> Monitoring sales (10%)
>
> Negotiating with overseas vendors on deliveries and discounts (15%); and
>
> Manage overall inventory and cost of goods sold (40%).

In response to a Service request for additional evidence, the petitioner provided the following, expanded description of the job's duties:

> Assist general manager in coordinating overseas orders with foreign buyers and shippers; coordinating international shipments with overseas agents; planning and directing air and surface transportation to overseas destinations; reviewing shipping manifests, invoices, way billings, duties and tariffs to minimize custom delays; monitoring sales, currency fluctuations, and exchange rates to minimize arbitrage losses; communicating and negotiating with overseas customers on settlements, deliveries, and discounts; preparing overseas transcription reports on shippers and foreign carriers; and managing overall inventory and cost of goods sold.

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.

The Service does not agree with counsel's assertion that the proffered position of assistant import/export manager is a specialty occupation. The position appears to combine the duties of a purchasing manager with those of a marketing manager. A review of the Department of Labor's (DOL) Occupational Outlook Handbook (Handbook) 2002-2003 edition, at page 82 finds no requirement of a baccalaureate degree in a specific specialty for employment as a purchasing manager. 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. (It is noted that a baccalaureate degree in a specific specialty appears to be a preference by large distributors and stores rather than a requirement.) 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.

Additionally, a review of the Handbook at pages 26-29 finds no requirement of a baccalaureate degree in a specific specialty for employment as a marketing manager. A wide range of educational backgrounds are considered suitable for entry into marketing managerial positions. Many employers prefer those with experience in related occupations plus a broad liberal arts background. A bachelor's degree in sociology, psychology, literature, journalism, or philosophy, among other subjects, is also acceptable. Most marketing management positions are filled by promoting experienced staff or related technical or professional personnel. Thus, the petitioner has not shown that a bachelor's degree in a specific specialty or its equivalent is a normal minimum requirement for the position being offered to the beneficiary.

Second, the petitioner did not present sufficient documentary evidence to show that the degree requirement is common to the industry in parallel positions among similar organizations.

Third, the petitioner has not shown that it required a baccalaureate degree in a specific specialty as part of the hiring process.

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 in a specific specialty. The DOL, which is an authoritative source for educational requirements for certain occupations, does not indicate that a bachelor's degree in a specific specialty is the minimum requirement for employment as an assistant import/export manager.

Counsel asserts that the Service has already determined that the proffered position is a specialty occupation since the Service has in the past approved other H-1B petitions filed by different petitioners for the same position. In support of this assertion, counsel has previously submitted two Form I-797 H-1B approval notices, along with the corresponding I-129 petitions filed by Lucky Trading Ltd. and Hunan Station Inc., for import/export manager positions. The record does contain the supporting documentation submitted with these petitions. If the prior petitions were approved based on the same evidence contained in this record of proceeding, however, the approval of those petitions would have involved gross error. Indeed, the Service denied an H-1B visa petition filed by one of those petitioners, Lucky Trading Ltd., seeking extension of its authorization to employ Chee H. Teo as assistant import/export manager. The petitioner's appeal to the denial of that petition was subsequently dismissed by the Administrative Appeals Office.

The Service is not required to approve petitions where eligibility has not been demonstrated, merely because of prior approvals which may have been erroneous. See, e.g., Matter of Church Scientology International, 19 I&N Dec. 593, 597 (Comm. 1988). Neither the service nor any other agency must treat acknowledged errors as binding precedent. Sussex Engg. Ltd. v. Montgomery 825 F.2d 1084, 1090 (6th Cir. 1987); cert denied 485 U.S. 1008 (1988). The Associate Commissioner, through the AAO, is not bound to follow the contradictory decision of a service center. *Louisiana Philharmonic Orchestra v. INS*, No. Civ.A. 98-2855, 2000 WL 28275, at *3 (E.D. La. Mar. 15, 20000), *aff'd.* 248 F.3d 1139 (5th Cir. 2001) (unpublished table decision), *cert. denied*, ___U.S.___, 122 S.Ct. 51 (2001).

Beyond the director's decision, it is noted that the record does not contain sufficient evidence to show that the beneficiary qualifies to perform services in a specialty occupation. The petitioner has not submitted any evidence to show that the beneficiary's bachelor's degree in business administration from the University of San Martin de Porras is equivalent to a baccalaureate

degree in a specific specialty from a regionally accredited college or university in the United States such as an evaluation from a reliable credentials evaluation service. It is noted that the beneficiary has subsequently completed some college course work in the United States, but she has not earned a baccalaureate or higher degree in any specialty during her studies in this country. Furthermore, the petitioner has not submitted any evidence to show that the beneficiary's foreign education and work experience are equivalent to a U.S. baccalaureate degree in a specific specialty such as an evaluation from an official who has authority to grant college-level credit for training and/or experience in the specialty at an accredited college or university which has a program for granting such credit based on an individual's training and/or work experience as required by 8 C.F.R. 214.2(h)(4)(iii)(D)(1).

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 appeal is dismissed.