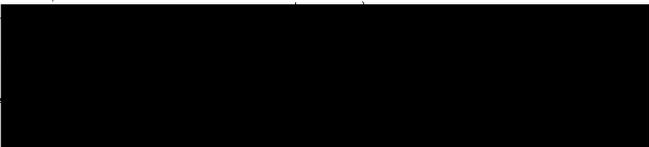




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U.S. Department of Justice
Immigration and Naturalization Service

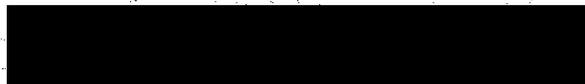
OFFICE OF ADMINISTRATIVE APPEALS
425 Eye Street N.W.
ULLB, 3rd Floor
Washington, D.C. 20536



File: EAC-00-036-51441 Office: Vermont Service Center

Date: JUL 3 2001

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)

Public Copy

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

Robert P. Wiemann, Acting Director
Administrative Appeals Office

DISCUSSION: The nonimmigrant visa petition was denied by the director and is now before the Associate Commissioner for Examinations on appeal. The appeal will be dismissed.

The petitioner is an international freight forwarder business with six employees and a gross annual income of \$2.7 million. It seeks to employ the beneficiary as an administrative assistant 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.

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 duties described by the petitioner appeared to relate to the job of an administrative assistant/secretary. The director did not find the duties described by the petitioner to be so complex as to require a baccalaureate level or higher degree. On appeal, counsel states that the degree requirement is an industry standard and the petitioner also has such requirement. Counsel further states that the complexity of the position and its changing nature have led to new knowledge and skill requirements.

Counsel's statement on appeal 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:

- (1) To advise exporters of shipping and market conditions and to assist the manager in marketing research for better sales rates and market prices by utilizing professional knowledge in Marketing, Management and International Trade;

(2) To coordinate activities of operations for air, motor, railroad and/or water transportation in forwarding various types of freights and merchandises;

(3) To arrange with the shipper for proper packing, marking, invoicing, and other procedures, to meet the requirements of the buyer and foreign government;

(4) To conduct studies on company freight classifications, rates and tariffs;

(5) To arrange for the most economical inland transportation to the most favorable port of exist [sic];

(6) To trace goods, if necessary, to assure steamer connection and to arrange and book steamer space;

(7) To conduct Tariff Filling with the Federal Maritime Commission and Maritime Claims against Bill of Lading.

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 position of administrative assistant would normally require a bachelor's degree in business administration with concentrated studies in shipping and transportation management or a related field. The proffered position appears to combine the duties of a general manager or executive with those of an administrative assistant. A review of the Department of Labor's Occupational

Outlook Handbook (Handbook), 2000-2001 edition, at pages 50-51 finds no requirement of a baccalaureate or higher degree in a specialized area for employment as a general manager or executive. Degrees in business and in liberal arts fields appear equally welcome. In addition, certain personal qualities and participation in in-house training programs are often considered as important as a specific formal academic background.

A review of the Handbook at pages 324-325 also finds no requirement of a baccalaureate or higher degree in a specialized area for employment as an administrative assistant. High school graduates with basic office skills may qualify for entry-level administrative assistant positions. Training ranges from high school vocational education programs to 1-to 2-year programs in office administration offered by business schools, vocational-technical institutes, and community colleges. Thus, the petitioner has not shown that a bachelor's degree or its equivalent is required for the position being offered to the beneficiary.

Second, although the petitioner states that it has, in the past, required the services of [REDACTED] and [REDACTED] who held baccalaureate or higher degrees in a specialized area and held similar positions as the offered position, their 1999 W-2 wage and tax statements reflect \$1,250 and \$9,000 in earnings, respectively. It is noted that the petition indicates that the annual salary for the administrative assistant position is \$25,000. It is also noted that the record contains no evidence of the degrees held by Mr. Guan and Ms. Shih. As such, the petitioner has not persuasively established that a baccalaureate or higher degree in a specialized area is its normal requirement for the proffered position.

Third, although the petitioner presented letters from two similar business (one with a notice of approval from the Service), indicating that they require the services of individuals in parallel positions, this Service is not required to approve applications or petitions where eligibility has not been demonstrated. The record of proceeding, as presently constituted, does not contain a copy of the previously approved petition and its supporting documentation. It is, therefore, not possible to determine definitively whether it was approved in error or whether the facts and conditions have changed since its approval. It is also noted that two letters are insufficient evidence of an industry standard. The writers have not provided evidence in support of their assertions. In addition, neither of the writers have indicated the number or percentage of administrative assistants in the freight forwarding industry who hold such degrees.

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 appeal is dismissed.