

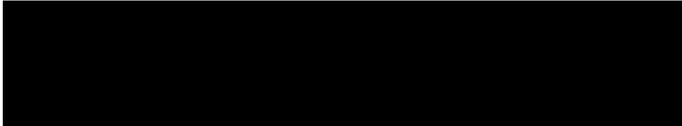


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U.S. Department of Justice

Immigration and Naturalization Service

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



File: WAC-00-050-52192 Office: California Service Center

Date: JUN 6 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 a wholesale computer parts distributor with three employees and a gross annual income of \$400,000. It seeks to employ the beneficiary as an assistant operational 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.

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 a general manager or executive. The director did not find the duties described by the petitioner to be so complex as to require a baccalaureate degree in a specialized area. On appeal, counsel states in part that the proposed duties are more similar to those of an operational or industrial manager than a general manager. Counsel further states that the proffered position requires an individual with training in the management of industrial manufacturing operations, who has familiarity with computers and the appropriate skills for effective customer relations and troubleshooting and resolving conflicts among the diverse components of sophisticated computers.

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:

The duties of the position include supervising and coordinating wholesale computer parts distribution warehouse operations, including incoming merchandise and customer orders; planning and coordinating distribution activities with purchasing and sales departments; assigning work; overseeing proper assembly of customer computer equipment orders and the resolution of any software or hardware conflicts; developing methods for improved efficiency in operations; supervising the input and tracking of sales and parts and products; contacting customers via phone or computer as necessary to verify orders and shipment; reporting to Operational Manager concerning the foregoing matters.

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 is that of an industrial manager that would require a bachelor's degree in industrial management or business administration. Counsel asserts that the Department of Labor has determined that the proffered position is a specialty occupation. However, a reference in the Department of Labor's Dictionary of Occupational Titles (DOT), Fourth Edition, 1977, standing alone, is not enough to establish an occupation is a specialty occupation. The DOT classification system and its categorization of an occupation as "professional and kindred" are not directly related to membership in a profession or specialty occupation as defined in immigration law. In the DOT listing of occupations, any given

subject area within the professions contains nonprofessional work, as well as work within the professions.

The latest edition of the DOT does not give information about the educational and other requirements for the different occupations. This type of information is currently furnished by the Department of Labor in the various editions of the Occupational Outlook Handbook (Handbook). The latter publication is given considerable weight (certainly much more than the DOT) in determining whether an occupation is within the professions. This is because it provides specific and detailed information regarding the educational and other requirements for occupations.

The petitioner's business is not a manufacturing business such as an aircraft assembly plant that would require an industrial production manager as described on pages 61 and 62 of the Handbook. Furthermore, there is no evidence that the duties of the position offered are similar to those of an industrial production manager such as determining which machines will be used, whether overtime or extra shifts are necessary, and the sequence of production.

The record reflects that the petitioner, which is in the wholesale computer distributor parts business, employs approximately three persons and has a gross annual income of \$400,000. The proffered position appears to combine the duties of a general manager or executive with those of a computer technician. A review of the 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.

Positions in the computer industry are not clearly defined, in part, due to the relative sophistication and fast growth of the industry. Generally, positions in that industry are considered to fall within several groups: engineers (who may design the actual hardware used in computer systems); systems analysts (who may determine the needs of a process, select equipment, plan processing methods, and prepare specifications for programmers); and programmers (who, in turn, write instructions or programs for technicians).

The Service has found that the positions of systems engineer (and related engineering positions including designer), pure systems analyst, and programmer of computers used for scientific or engineering applications are considered to be within the professions, as contemplated by section 101(a)(32) of the Act. The positions of programmer of computers used for business applications and technician, on the other hand, normally require training

commonly gained and widely available outside of college or university studies. They are, therefore, usually not considered to be within the professions. (See the sections of the Handbook, 2000-2001 edition, on electrical and electronics engineers, computer systems analysts, computer programmers, and computer service technicians.)

The Handbook at page 115 indicates that while a baccalaureate degree is usually required, a degree in a specialized area does not appear to be a requirement. The Handbook states:

Employers using computers for scientific and engineering applications prefer college graduates who have degrees in computer or information science, mathematics, engineering or the physical sciences. Employers who use computers for business applications prefer to hire people who have had college courses in information systems...and business and who possess strong programming skills.

The petitioner has not shown why a position not considered a profession should be considered a specialty occupation. Additionally, the petitioner has not established that the proffered position is of such complexity that a baccalaureate degree in a specific specialty, as distinguished from familiarity with computers or a less extensive education, is necessary for the successful completion of its duties. 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, the petitioner has not shown that it has, in the past, required the services of individuals with baccalaureate or higher degrees in a specialized area such as industrial management or business administration, for the offered position. Third, 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 appeal is dismissed.