

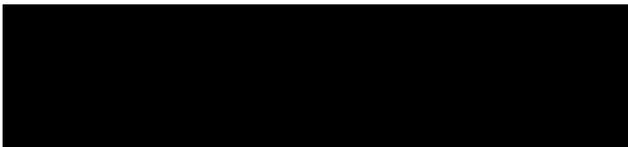


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U.S. Department of Justice

Immigration and Naturalization Service

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



File: WAC-00-062-53819 Office: California Service Center

Date: JUN 7 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.

FOR THE ASSOCIATE COMMISSIONER,
EXAMINATIONS

Robert P. Wiemann
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 The director's decision will be withdrawn and the matter will be remanded to her for further action and consideration.

The petitioner is a foreign exchange and banking business with 46 employees and a gross annual income of \$2,756,315. It seeks to employ the beneficiary as a time study engineer 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 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 proffered position was not that of a general office manager but was similar to that of an industrial engineer or an industrial production manager. Counsel further states that the duties of the offered position are more complex than the duties of a general office 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 [REDACTED] petition, the petitioner described the duties of the offered position as follows:

...establish standard operating procedures for controlling product costs and program development in reducing those costs...promote efficient and economical utilization of personnel and the facilities...planning

the utilization of production facilities and personnel to improve the efficiency of the business...review and evaluate the operation and determine the areas that require modification or improvement, and then formulate a plan which will provide the most efficient use of the workforce and budget without sacrificing product quality...conduct feasibility studies on specific business opportunities and establish product costs which involve standard labor requirements and material usage...document standard operating procedures and recommend improvements as deemed necessary to promote an efficient workforce. Applies mathematical analysis to determine validity and reliability of sampling and work study statistics. Will evaluate work methods proposals and develop recommendations to management affecting work methods, wage rates, and budget decisions.

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 these proceedings, the duties of the position are dispositive and not the job title. The proffered position appears to be that of a management analyst. In its [REDACTED]

[REDACTED] 2000-2001 edition, at page 69, the Department of Labor (DOL) describes the job of a management analyst as follows:

Management analysts, often referred to as management consultants in the private sector, analyze and propose ways to improve an organization's structure, efficiency, or profits...In all cases, analysts and consultants collect, review, and analyze information, in order to make recommendations to management...management analysts first define the nature and extent of the problem...they

analyze relevant data, which may include annual revenues, employment, or expenditures, and interview managers and employees while observing their operations. The analyst or consultant then develops solutions to the problem. In the course of preparing their recommendations, they take into account the nature of the organization, the relationship it has with others in that industry, and its internal organization and culture. Insight into the problem is often gained by building and solving mathematical models...

The record reflects that the petitioner, which is in the banking business, employs approximately 46 persons and has a gross annual income of over \$2 million. The business in which the beneficiary is to be employed does not require the services of an industrial production manager, as argued by counsel, as the organization is not a manufacturing business such as an aircraft assembly business. 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. It is additionally noted that the business in which the beneficiary is to be employed does not require the services of an industrial engineer, as argued by counsel, as the position offered does not include duties such as designing manufacturing and information systems as described on page 91 of the [REDACTED]

The duties that the petitioner endeavors to have the beneficiary perform are similar to the duties of a management analyst. A review of the [REDACTED] at page 70 finds that employers in private industry generally seek applicants with a master's degree in business administration or a related discipline and at least five years of experience in the field in which they plan to consult. In view of the foregoing, it is concluded that the petitioner has demonstrated that the proffered position is a specialty occupation within the meaning of regulations.

The director has not determined whether or not the beneficiary is qualified to perform the duties of the proffered position. Accordingly, the matter will be remanded to her to make such a determination and to review all relevant issues. The director may request any additional evidence she deems necessary. The petitioner may also provide additional documentation within a reasonable period to be determined by the director. Upon receipt of all evidence and representations, the director will enter a new decision.

ORDER: The decision of the director is withdrawn. The matter is remanded to her for further action and consideration consistent with the above discussion and entry of a new decision which, if adverse to the petitioner, is to be certified to the Associate Commissioner for review.