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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



Public Copy

JUN 19 2001

File: WAC-00-022-53279 Office: California Service Center Date:

IN RE: Petitioner: [Redacted]
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)

identification data deleted to prevent clearly unwarranted invasion of personal privacy.

IN BEHALF OF PETITIONER:



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, 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 The decision of the director will be withdrawn and the petition will be remanded for further consideration.

The petitioner is a banking business with 140 employees and a gross annual income of \$4,943.724. It seeks to employ the beneficiary as its president and CEO for a period of one year. The director determined the petitioner had not established that the proffered position is a specialty occupation.

On appeal, counsel submits a brief.

The term "specialty occupation" is defined at 8 C.F.R. 214.2(h)(4)(ii) 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 a review of the Department of Labor's Occupational Outlook Handbook (Handbook) finds no requirement of a baccalaureate or higher degree for a bank manager position. The director also found that managerial and executive duties do not generally fall within the definition of "specialty occupation." On appeal, counsel states in part that a review of the Handbook finds that the position of bank president 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.

The duties of the proffered position are described in pertinent part as follows:

1. Formulates the policies and directs the operations of business.
2. Delegates authority to oversee the executives who direct the activities of various departments and are responsible for implementing the organization's day-to-day basis.
3. Manages, organizes and directs the bank's corporate and individual loan and credit service, investment finance, and strategic planning operations.
4. Reviews and approves commercial loans and investments and makes management decisions regarding provision of such loans and finance assistance to customers.
5. Directs the financial decision making, investment planning, and budget preparation of the bank.
6. Directs budgetary performance and planning activities of the bank.
7. In charge of financing liaison regarding between the bank and the customers.
8. Formulates the bank's investment strategy in order to maximize the bank's share of the market and bank's profit.
9. Analysis and evaluation of the bank's budget request to determine business expenditures, cost reductions, and profit maximization.
10. Review and revise the work of subordinate professionals.

In these proceedings, the duties of the position are dispositive and not the job title. The proffered position appears to be similar to that of a financial manager. A review of the Department of Labor's Occupational Outlook Handbook, 2000-2001 edition, at pages

46-47 finds that the usual requirement for employment as a financial manager is bachelor's degree in finance, accounting, economics, or business administration, although employers increasingly seek applicants with a master's degree in such fields as business administration, economics, finance, or risk management. 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 the beneficiary qualifies to perform services in a specialty occupation. It is noted that the record contains no evidence of the beneficiary's qualifications. Accordingly, the matter will be remanded to the director 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.