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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

File: WAC-99-210-52264 Office: California Service Center

Date: JUN 19 2001

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:
[Redacted]

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
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 construction company with 15 employees and a gross annual income of \$1.2 million. It seeks to employ the beneficiary as a budget analyst 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 in part because the petitioner had not demonstrated that the proffered position was a reasonable and credible offer of employment that was consistent with the needs of the petitioning organization. On appeal, counsel states in part that the beneficiary's proposed duties are consistent with those of a budget analyst position. Counsel submits a letter from the president of a job placement agency in support of his claim.

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:

...our Budget Analyst will be required to examine our budget estimates prior to bidding for a position, and will partake in a thorough review of cost analysis, potential manpower expenditures, prevailing wage determinations, cost/overrun diagnostics, private and city financial status, and other related aspects will have to be reviewed at great length by the Budget Analyst

in order to ensure that our projections are in line with economic realities.

Other budgetary aspects must be processed and analyzed by our Budget Analyst. For example, prior to submitting a bid on a job, our Budget Analyst must also project such significant corollary costs including sub-contractor building (i.e., electrical jobs, plumbing assignments...) and must further augment the report by providing a detailed financial report in the areas of income and capital expenditures...

...we will require our Budget Analyst, as part of his responsibilities, to be engaged in internal control procedures. This will require that the individual institute a check and balance system in order to verify such aspects as expenses, assets and liabilities. In conjunction with this aspect of the position, the Budget Analyst will be instituting and developing a computerized budgetary-oriented software system that will adapt to our own particularized needs.

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 beneficiary is a budget analyst, an occupation that would normally require a bachelor's degree in accounting or a related field. In these proceedings, the duties of the position are dispositive and not the job title. The proffered position appears to be that of a

part-time construction manager with computer programming skills. A review of the Department of Labor's Occupational Outlook Handbook, 2000-2001 edition, at pages 31-33 finds no requirement of a baccalaureate or higher degree in a specialized area for employment as a construction manager. Individuals interested in becoming a construction manager need a solid background in building science, business, and management, as well as related work experience within the construction industry. They need to understand plans, contracts, and specifications, and to be knowledgeable about construction methods, materials, and regulations. Familiarity with computers and software programs for job costing, scheduling, and estimating is increasingly important. Traditionally, persons advance to construction management positions after having substantial experience as construction craft workers or after having worked as construction supervisors or owners of independent specialty contracting firms overseeing workers in one or more construction trades. It is also noted that the position of computer programmer for business applications normally requires training commonly gained and widely available outside of college or university studies. It is, therefore, usually not considered to be within the professions. 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 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.

Counsel has provided a letter from an individual involved in job placement. She states that the usual requirement for positions such as the proffered position is a baccalaureate degree in business administration or a related field. The Service does not dispute her argument that a budget analyst position is a specialty occupation. The record, however, does not sufficiently demonstrate that the beneficiary would be primarily engaged in budget analyst duties.

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.