

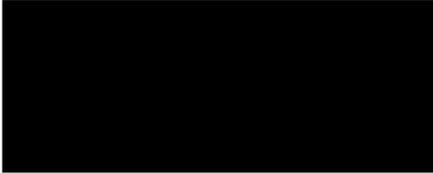


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U.S. Department of Justice

Immigration and Naturalization Service

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



Identifying data deleted to
prevent clearly unwarranted
invasion of personal privacy

File: LIN-99-035-50351

Office: Nebraska Service Center

Date:

MAY 24 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)

IN BEHALF OF PETITIONER:



Public Copy

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 and subsequent motion to reopen were denied by the director. The matter is now before the Associate Commissioner for Examinations on appeal. The appeal will be dismissed.

The petitioner is a non-profit organization promoting business and cultural exchange with three employees and a gross annual income of \$128,000. It seeks to employ the beneficiary as an assistant director of program development 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 petitioner had not demonstrated that the proffered position would require a baccalaureate degree in a specialized area. On appeal, counsel states that a bachelor's degree in a communications-related field is normally the minimum requirement in a public relations position. Counsel also states that the duties of the proffered position are so specialized and complex as to require a bachelor's degree.

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:

As the Assistant Director of Program Development with [the petitioner], [the beneficiary] will plan and coordinate activities to ensure that the Institute's goals and objectives are accomplished within a prescribed period of time and within budget. She will establish work plans for each project and will develop training

programs for Chinese delegations, initiate and design new international exchange programs, and communicate with collaborating organizations and agencies to coordinate programs. She will also be organizing lectures and acting as a liaison between U.S. organizations and Asian-Pacific missions/foreign delegations.

Specifically, [the beneficiary] will act as an advocate in promoting international cooperation and global interdependence through planning and coordinating public forum and private communication between participating U.S. collaborators and Chinese delegations. She will set-up [sic] cultural and academic exchange programs, and organize conferences and workshops to address major issues, including organizing lectures and itineraries, as well as coordinate U.S. missions to tour Asian-Pacific countries and host foreign delegations on their visits to the U.S.

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 of assistant director of program development in the field of public relations would normally require a bachelor's degree in a communications-related field. A review of the Department of Labor's Occupational Outlook Handbook, 2000-2001 edition, at page 26 finds no requirement of a baccalaureate degree in a specialized area for employment as a public relations specialist. Although a college degree combined with public

relations experience is considered excellent preparation for a public relations specialist position, there are no defined standards for entry into a public relations career. Some employers seek college graduates who have worked in electronic or print journalism and other employers seek applicants with demonstrated communications skills and training or experience in a field related to the firm's business. In addition, certain personal qualities and participation in in-house training programs are often considered as significant as the beneficiary's specific educational background. Thus, the petitioner has not shown that a bachelor's degree in a specialized area 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 communications, 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.

It is noted that the record contains opinion letters from three professors/experts of public relations, communications, and journalism from Marquette University where the beneficiary received her degree. All state that the proffered position would require a bachelor's degree. One of the professors further states that the beneficiary "must possess the skills of a trained scholar of communication theory, history, anthropology, political science, or international philosophy and a researcher skilled in quantitative methodologies, media management, and intercultural communication." The evidence in the record, however, demonstrates that the beneficiary's duties since August 1998, in the position of the petitioner's assistant director of program development include the following: a facsimile and a letter prepared by the beneficiary, both dated October 16, 1998, requesting that the president and executive director of the Near South Planning Board arrange a program/workshop for the Fujian Delegation of City Planning and Development from China; a letter of invitation to the deputy director of the Fujian Provincial Land Administration Bureau dated October 16, 1998, prepared by the beneficiary and signed by the petitioner's chairman; two itineraries prepared by the beneficiary; and, a letter dated November 6, 1998, addressed to the beneficiary from an administrative coordinator of The Art Institute of Chicago, with instructions where the van or bus should arrive. Such evidence does not support the petitioner's argument that the

beneficiary's proposed duties are so specialized and complex as to require a baccalaureate degree in a specialized area.

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.