



U.S. Department of Justice

Immigration and Naturalization Service

D2

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

**PUBLIC COPY**



06 NOV 2001

File: WAC-00-023-50150 Office: California Service Center

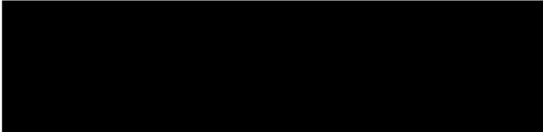
Date:

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:



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, 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 The decision of the director will be withdrawn and the petition will be remanded for further consideration.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 engaged in the import and export of high technology and industrial equipment, and the development, production, marketing, and servicing of the full range of Hitachi Group products, including electronics, power plant and industrial equipment, and high technology consumer products. It has approximately 5,400 employees and an approximate gross annual income of \$2.9 billion. It seeks to employ the beneficiary as an expatriate relations specialist 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.

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 the beneficiary's proposed position appeared to be that of a manager, an occupation that does not require a baccalaureate degree in a specialized area. On appeal, counsel states in part that the proffered position is similar to a that of a labor relations manager whose duties are so complex as to require a baccalaureate degree in a specific area.

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:

...[the beneficiary] will perform a number of sophisticated tasks relating to the design, development, and implementation of comprehensive programs to facilitate the integration of expatriate personnel into the company's United States workforce. These programs will be designed to aid our expatriate personnel, most of whom are transferees from our parent company in Japan, to feel sufficiently confident with their new lifestyle and employment practices so that they may maintain positive morale and provide satisfactory work performance. The programs will provide our expatriate personnel with rudimentary knowledge of a wide range of issues ranging from interpersonal relations to tax compliance, so that they may gain an appreciation and awareness of American cultural, social, and work practices.

Specifically, [the beneficiary] will draw upon her theoretical expertise in international relations to assist in the development of educational programs to enhance the company's expatriates' skills in international communications, human relations, staff supervision and management, as well as conflict resolution. She will also apply her academic training in law to participate in the preparation of immigration petitions and visa applications for the company's expatriate employees, assisting United States attorneys to solve individual issues as these arise. [The beneficiary] will also facilitate the provision of general training and workshops on the procedures associated with payroll, benefits, and immigration programs available to expatriate personnel, as well as issues in the United States tax and employment law and practices.

In these proceedings, the duties of the position are dispositive and not the job title. The proffered position appears to be that of a human resources, training, and labor relations specialist. A

review of the Department of Labor's Occupational Outlook Handbook, 2000-2001 edition, at pages 57-60 finds that the educational backgrounds of human resources, training, and labor relations specialists and managers vary considerably. Many employers prefer applicants who have majored in human resources, industrial and labor relations, or personnel administration. A background in law is also desirable for employee benefits managers and other who must interpret the increasing number of laws and regulations.

The petitioner's vice president further states in part that:

Given the large presence of Japanese companies in the United States and the commitment of such companies to ensure the effective integration of their employees into a United States business context, the position of Expatriate Relations Specialist has become an increasingly common one in the past few years. There therefore exists a sufficiently large sampling group to be studied, and from which to draw the conclusion that persons holding this position are required to have at least a baccalaureate degree with an appropriate specialization.

It is noted that not all human resources, training, and labor relations specialist and manager positions may be considered specialty occupations. Each position must be evaluated based upon the nature and complexity of the actual duties. In this instance, the duties are of such complexity as to require a baccalaureate degree in a specialized and related area. 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 the specialty occupation. It is noted that the beneficiary does not hold a degree in human resources, industrial and labor relations, or personnel administration. Accordingly, the matter will be remanded to the director to make such a determination and to review all relevant issues. She 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.