



U.S. Department of Justice

Immigration and Naturalization Service

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



File: LIN-99-239-52024

Office: Nebraska Service Center

Date:

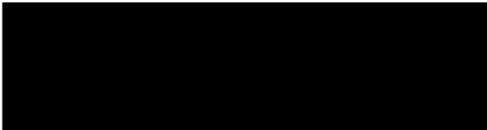
NOV 14 2001

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:



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 J. 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 travel agency with 15 employees and a gross annual income of \$12 million. It seeks to employ the beneficiary as an office administrator 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 statement.

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 a review of the Department of Labor's (DOL) Occupational Outlook Handbook (Handbook) finds no requirement of a baccalaureate or higher degree in a specialized area for employment as an administrative services manager. On appeal, counsel states in part that the petitioner had submitted various job descriptions and job advertisements to document that a baccalaureate degree is the minimum requirement for entering into an office administrative position and that it is a common requirement of the travel industry in general.

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:

...maintain the company's account database using computer packages including MS Word, Excel, PowerPoint, & Quickbooks Pro; update airfares in company's web site, develop strategic company plans; establish and implement processes to train new travel agents; maintain and update employee's payroll, commission, attendance, tax, and

vacation records; maintain and monitor [sic] vendor accounts, including airlines, maintain and order inventory of airline ticket stocks, assist management in functional analysis of all accounts; assist for improving employee motivation including assisting in performance appraisals; act as liaison between company and reservation system vendor and outside agents.

The Office Administrator also will be required to study and analyze our current office operating methods and make recommendations to management for improvement, develop and update the company's procedural manuals, and plan and coordinate weekly staff office meetings to discuss and resolve issues.

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 would normally require a bachelor's degree in business administration with a major in computer science or a related field. The proffered position appears to combine the duties of an administrative services manager with those of a payroll and timekeeping clerk. A review of the Handbook, 2000-2001 edition, at pages 23-24 finds no requirement of a baccalaureate degree in a specialized area for employment as an administrative services manager. While in large organizations, administrative support managers are normally hired from outside and each position has formal education and experience requirements, in small organizations, experience may be the only requirement needed to

enter a position as office manager. Managers of highly complex services such as contract administration generally need a bachelor's degree in business, human resources, or finance.

A review of the Handbook at pages 315-317 also finds no requirement of a baccalaureate degree in a specialized area for employment as a payroll and timekeeping clerk. Employers typically require at least a high school diploma or its equivalent for entry into payroll and timekeeping clerk positions. Although many employers prefer to hire applicants with a higher level of education, it is only required in a few records processing occupations such as those hired by some brokerage firms and high-technology firms. Payroll and timekeeping clerks often learn the skills they need in high schools, business schools, and community colleges. In addition, certain personal qualities and participation in in-house training programs are often considered as significant as the beneficiary's specific educational background.

The proffered position includes computer-related duties. The record indicates that the petitioner currently has the Sabre Travelbase Accounting System. The record contains a letter from an unidentified writer from Sabre who states in part that:

In order to enhance the system and utilize its functions we recommend a Bachelor of Science degree, computer knowledge, travel industry and most importantly accounting skills.

The writer's recommendation does not persuasively establish that the beneficiary's proposed computer-related duties are of such complexity that a baccalaureate degree in a specific specialty, as distinguished from familiarity with computers or a less extensive education, is necessary for the successful completion of such duties. 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 with a major in computer science, 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. The job advertisements submitted by the petitioner are from businesses such as telecommunications and internet software. None of the advertisements are from travel agencies. 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 also provided three letters from individuals involved in the travel industry. One states that a bachelor's degree in "commerce/account/management or any other discipline" is required for the proffered position. (Emphasis added.) Another states that the proffered position requires "a College graduate." The third states that two to seven years of experience in the related field with "a minimum of [a] Bachelor Degree with computer skills." Such letters are insufficient evidence that the proffered position requires 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.