



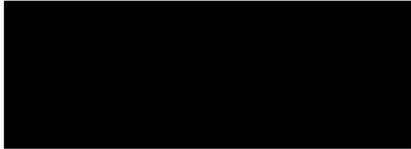
U.S. Department of Justice

Immigration and Naturalization Service

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PUBLIC FILE

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



File: SRC-99-098-51573 Office: Texas 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:



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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 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 conveyor and storage equipment distributor with 100 employees and a gross annual income of \$30-40 million. It seeks to employ the beneficiary as a Latin American manager for a period of three years. The director determined the petitioner had not established that the proffered position is a specialty occupation or that the beneficiary qualifies to perform services in 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 duties described by the petitioner did not appear to be so complex as to require a baccalaureate or higher degree. On appeal, counsel states in part that the beneficiary's duties include supervising 15 engineers. Counsel further states that the proffered position is similar to that of an administrative services manager which is a specialty occupation.

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. (It is noted that counsel's claim that the beneficiary will supervise 15 engineers was not mentioned in the initial description of duties.) In the initial I-129 petition, the petitioner described the duties of the offered position as follows:

1. He will direct and manage all of Cisco's International affairs, including sales and currency evaluations programs with client institutions, such as manufacturers,

banks, factories and joint ventures with other companies in Mexico and South America;

2. Direct and coordinate International activities of the company. He will examine and analyzes [sic] custom rates, international tariffs, operating costs to coordinate expansion or changes in international operations;

3. He will make recommendations designed to increase efficiency and revenues for the International Branch of Cisco. Will coordinate advertising and sales promotion programs for Mexico and Latin America through traditional means of advertising and [utilizing] the internet;

4. He will discuss and facilitate International trade financing for client companies by developing methods of payment, such as drafts, letters of credit, bills of exchange, and forfaiting [sic], etc.;

5. Apply his knowledge of computer Information systems to analyze and upgrade present computer operations at Cisco Eagle to effective [sic] compete worldwide;

6. Prepare reports and translate written proposals to clients in English and Spanish languages.

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 computer information systems or a related field. The proffered position appears to be similar to that of an administrative services manager. A review of the Department of Labor's Occupational Outlook Handbook (Handbook), 2000-2001 edition, at pages 23-24 finds no requirement of a baccalaureate or higher 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.

It is noted that the beneficiary's foreign education (two years of university studies in architecture) and employment experience have been found by an academic expert to be equivalent to a baccalaureate degree in computer information systems. As the academic expert's evaluation includes no mention of the beneficiary's certificates from the University of San Moritz indicating that the beneficiary also holds a bachelor's degree in business administration and a master's degree in computer information systems, the significance and authenticity of the said certificates are in question.

Doubt cast on any aspect of the petitioner's proof may lead to a reevaluation of the reliability and sufficiency of the remaining evidence offered in support of the visa petition. Further, it is incumbent on the petitioner to resolve any inconsistencies in the record by independent objective evidence, and attempts to explain or reconcile such inconsistencies, absent competent objective evidence pointing to where the truth, in fact, lies will not suffice. Matter of Ho, 19 I&N Dec. 582. (Comm. 1988).

Although counsel argues that the beneficiary's proposed duties are highly complex and cites the Handbook pertaining to managers of highly complex services such as contract administration generally needing a bachelor's degree in business, human resources, or finance, the petitioner has not persuasively demonstrated that the beneficiary holds a degree in business, human resources, or finance, or that the beneficiary's proposed duties primarily involve contract administration. Thus, the petitioner has not persuasively shown that a bachelor's degree or its equivalent in a related area 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 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.

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.

As the petitioner has not sufficiently established that the proffered position is a specialty occupation, the beneficiary's qualifications need not be examined further in this proceeding.

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.