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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



File: WAC-00-041-52884 Office: California Service Center

Date: 20 NOV 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 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 healthcare services provider with 73 employees and an estimated gross annual income of over \$3.6 million. It seeks to employ the beneficiary as a personnel manager 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 argues that the proffered position is a specialty occupation and submits documentation in support of the appeal.

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 appeared to relate to the job of a general manager, an occupation that does not normally require professional skills. The director also found that the Department of Labor's (DOL) Occupational Outlook Handbook (Handbook) did not indicate that a baccalaureate degree was a standard minimum requirement for the proffered position. On appeal, counsel concludes that the Service does not question that the proffered position requires a bachelor's or higher degree or foreign equivalent, but rather whether the position requires "theoretical and practical application of a body of highly specialized knowledge." Counsel's conclusion is seemingly based upon characterizations relating to the position of personnel manager provided by the Department of Labor's Dictionary of Occupational Titles (DOT), as well as a listing contained in the Enhanced Guide for Occupational Exploration, JIST Works Inc., 1995.

Counsel's conclusion that the Service does not question that the proffered position requires a bachelor's or higher degree is clearly erroneous. 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 a letter dated November 2, 1999, the petitioner described the duties of the offered position as follows:

- (1) manage employee benefits program for organization;
- (2) plan and direct implementation and administration of benefits program designed to insure employees against loss of income due to illness, injury, layoff, or retirement;
- (3) direct preparation and distribution of written and verbal information to inform employees of benefits program, such as insurance and pension plans, paid time off, bonus pay, and special employer sponsored activities;
- (4) analyze existing benefits policies of organization, and prevailing practices among similar organizations, to establish competitive benefits programs;
- (5) evaluate services, coverage, and options available through insurance and investment companies to determine programs best meeting needs of organization; and
- (6) plan modification of existing benefits program, utilizing knowledge of laws concerning employee insurance coverage and insure compliance with legal requirements.

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.

The Service does not agree with counsel's conclusion that the proffered position would normally require a bachelor's degree in business administration or a related field. Counsel asserts that the Department of Labor has determined that the proffered position is a specialty occupation. However, a reference in the Department of Labor's DOT, Fourth Edition, 1977, or other similar publication, standing alone, is not enough to establish an occupation is a specialty occupation. The DOT classification system and its categorization of an occupation as "professional and kindred" are not directly related to membership in a profession or specialty occupation as defined in immigration law. In the DOT listing of occupations, any given subject area within the professions contains nonprofessional work, as well as work within the professions.

The DOT does not give information about the educational and other requirements for the different occupations. This type of information is currently furnished by the Department of Labor in the various editions of the Handbook. The latter publication is given considerable weight (certainly much more than the DOT) in determining whether an occupation is within the professions. This is because it provides specific and detailed information regarding the educational and other requirements for occupations.

In these proceedings, the duties of the position are dispositive and not the job title. The proffered position appears primarily to combine the duties of a general manager or executive with those of a employee benefits manager. A review of the Handbook, 2000-2001 edition, at pages 50-51 finds no requirement of a baccalaureate or higher degree in a specialized area for employment as a general manager or executive. Degrees in business and in liberal arts fields appear equally welcome. In addition, certain personal qualities and participation in in-house training programs are often considered as important as a specific formal academic background.

Similarly, a review of the Handbook at pages 57-60 finds no requirement of a baccalaureate degree in a specialized area for employment as either a employee benefits or human resources manager. Some employers prefer applicants who have majored in human resources, personnel administration, or industrial or labor relations while others look for a technical or business background or a well-rounded liberal arts education.

Additionally, 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 accounting, for the offered position. Furthermore, 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.

Counsel asserts that personnel management or human resources management is a specialized area and subset within general management, and that thousands of colleges across the United States provided academic programs offering a major in "Human Resources Management." While counsel has submitted published excerpts to support his assertions, neither the petitioner nor counsel has demonstrated that the nature of the beneficiary's proposed duties, as stated above, 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.

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.