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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: [Redacted] Office: California Service Center

Date: 1002 NOV 03

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:

SELF-REPRESENTED

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 law office with 3 employees and a gross annual income of \$100,000. It seeks to employ the beneficiary as an office 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, the petitioner argues that the proffered position is a specialty occupation and the beneficiary is qualified to perform the duties of a specialty occupation. The petitioner submits additional documentation in support of the appeal.

Pursuant to section 214(i)(2) of the Act, 8 U.S.C. 1184(i)(2), to qualify as an alien coming to perform services in a specialty occupation the beneficiary must hold full state licensure to practice in the occupation, if such licensure is required to practice in the occupation. In addition, the beneficiary must have completed the degree required for the occupation, or have experience in the specialty equivalent to the completion of such degree and recognition of expertise in the specialty through progressively responsible positions relating to the specialty.

Pursuant to 8 C.F.R. 214.2(h)(4)(iii)(C), to qualify to perform services in a specialty occupation, the alien must meet one of the following criteria:

1. Hold a United States baccalaureate or higher degree required by the specialty occupation from an accredited college or university;
2. Hold a foreign degree determined to be equivalent to a United States baccalaureate or higher degree required by the specialty occupation from an accredited college or university;
3. Hold an unrestricted State license, registration, or certification which authorizes him or her to fully practice the specialty occupation and be immediately engaged in that specialty in the state of intended employment; or
4. Have education, specialized training, and/or progressively responsible experience that is equivalent to completion of a United States baccalaureate or higher degree in the specialty occupation and have recognition of expertise in the

specialty through progressively responsible positions directly related to the specialty.

The director determined that the beneficiary was not qualified to perform services in a specialty occupation because the evidence of record did not establish that the beneficiary possessed a baccalaureate degree or its equivalent. On appeal, the petitioner asserts that the beneficiary is qualified to perform services in a specialty occupation because the petitioner has a bachelor's degree in Environmental Engineering from a Turkish university and a Professional Designation Degree in International Trade and Commerce from the University of Los Angeles UCLA Extension. The petitioner submits a photocopy of the applicant's bachelor's degree in environmental engineering, a photocopy of the beneficiary's certification in international trade and commerce which was originally submitted with the petition, and an evaluation of the beneficiary's academic credentials.

The educational evaluation service found that the beneficiary's degree is equivalent to a Bachelor of Science in Environmental Engineering awarded by regionally accredited colleges and universities in the United States. The petitioner asserts on appeal that a bachelor's degree is a prerequisite for admission to the UCLA program leading to the professional designation in international trade and commerce. The petitioner further asserts that the beneficiary's professional training in international trade and commerce is the equivalent of a Masters Degree in Business Administration. However, no evidence has been submitted to corroborate these assertions. Furthermore, the petitioner has not submitted any evidence to establish that his law office handles matters involving international trade and commerce and, therefore, would require an office manager with specialized knowledge and training in that area. Accordingly, although the beneficiary holds a degree that has been found to be equivalent to a Bachelor of Science degree in environmental engineering, the petitioner has not established that the job of office manager requires a degree in this field of study.

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 Department of Labor's Occupational Outlook Handbook does not indicate that a baccalaureate degree is a standard minimum requirement for an office manager position, and the petitioner had not established that it normally requires such degree for the proffered position. On appeal, the petitioner states that the duties of the proffered position are clearly professional in nature.

The petitioner's statement on appeal that the duties of the proffered position are clearly of a professional nature is not persuasive. 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:

.....coordinate the activities of the clerical personnel. There is [sic] three full-time clerks who Mr. Baris will supervise, assign duties, review the work progress and ensure the completeness of the work done. Other duties... include, analysing and organising office operations to reduce operation time, initialising procedures to cut costs, preparation of monthly financial and accounting reports. Also, he will compile and arrange the managerial database that consists of financial and client records. He will be in charge of scheduling court dates for the legal staff and manage and ensure proper handling of cases that have deadlines.

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 the petitioner's argument that the offered position is a specialty occupation. First, the proffered position appears to combine the duties of a general manager or executive with those of an office and administrative support 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.

A review of the Handbook at pages 311-312 also finds no requirement of a baccalaureate or higher degree in a specialized area for employment as an office and administrative support manager. Most businesses fill administrative and office support managerial positions by promoting clerical or administrative support workers within their organizations. In addition, certain personal qualities such as strong teamwork and problem solving skills and a good working knowledge of the organization's computer system are often considered as important as a specific formal academic background. 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 submitted any documentation to show, that he 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.

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.