



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: WAC-00-084-51299 Office: California Service Center

Date: NOV 20 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)

Public Copy

IN BEHALF OF PETITIONER: SELF-REPRESENTED

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 nonprofit educational and research institution with 16,620 employees. It seeks to employ the beneficiary as a research coordination specialist 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 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 degree. The director also found that the beneficiary holds an associate's degree in the English language. On appeal, the petitioner submits an expanded version of the beneficiary's proposed duties and states in part that the beneficiary performs such complex duties as developing and monitoring a budget plan and handling the publicity of the research projects. The petitioner further states that the beneficiary has special education and training to handle the accounting and financial management of the research projects and has computer skills equivalent to a baccalaureate degree in computer science.

The petitioner'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:

Her responsibilities of the position include preparation of administrative, financial and technical reports to JST and NTT with limited review by or direction from the PI, making and up-dating the home pages of the two projects for an international end-user audience, and preparation of scientific papers and figures and transfer of the files through the internet.

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 petitioner has not persuasively demonstrated that the proffered position would normally require a bachelor's degree in a specific area or an equivalent. It is noted that the beneficiary holds an associate's degree in English and despite the petitioner's claim that the beneficiary's skills are equivalent to a baccalaureate degree in computer science, the record contains no independent evaluation to support such claim. The proffered position appears to be that of a secretary/administrative assistant. In its Occupational Outlook Handbook (Handbook), 2000-2001 edition, at pages 324-325, the Department of Labor (DOL) describes the job of a secretary/administrative assistant in part as follows:

...secretaries increasingly use personal computers to run spreadsheet, word processing, database management, desktop publishing, and graphics programs--tasks previously handled by managers and other professionals.

Executive secretaries and administrative assistants, for example, perform fewer clerical tasks than lower-level secretaries. In addition to greeting visitors, arranging conference calls, and scheduling meetings, they may handle more complex responsibilities such as conducting research, preparing statistical reports, training employees, and supervising other clerical staff.

Some secretaries, such as legal and medical secretaries, perform highly specialized work requiring knowledge of technical terminology and procedures...Other technical secretaries who assist engineers or scientists may prepare correspondence, maintain the technical library, and gather and edit materials for scientific papers.

According to the DOL at page 325 of Handbook, secretaries and administrative assistants acquire skills in various ways. Training ranges from high school vocational education programs that teach keyboarding and office skills to 1- to 2-year programs in office administration offered by business schools, vocational-technical institutes, and community colleges. In addition, certain personal qualities and participation in in-house training programs 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 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.