



U.S. Department of Justice

Immigration and Naturalization Service

DR

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



File: WAC-98-133-51733 Office: California Service Center

Date: **NOV 27 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:



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, Director
Administrative Appeals Office

DISCUSSION: The nonimmigrant visa petition was denied by the Director, California Service Center. A subsequent appeal was dismissed by the Associate Commissioner for Examinations. The matter is now before the Associate Commissioner for Examinations on motion to reopen and reconsider. The motion will be granted. The previous decision of the Associate Commissioner will be affirmed.

The petitioner is an international freight forwarding and marine insurance company with three employees and a gross annual income of \$6 million. It seeks to employ the beneficiary as an international freight consultant 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 had stated in part that the proffered position had the same training requirements as a management analyst.

The Associate Commissioner dismissed the appeal reasoning that the proposed position appeared to be primarily that of a general manager or executive, an occupation that does not require a baccalaureate degree in a specialized area. The Associate Commissioner also found, beyond the decision of the director, that the beneficiary did not qualify for the position of a management consultant.

On motion, counsel states, in part, that the proffered position is that of a freight consultant rather than a general manager. Counsel also states that the proposed duties are so complex as to require a baccalaureate degree.

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.

Counsel's statement on motion 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:

[The beneficiary] is being offered employment in the position of International Freight Consultant to assist the company in its global shipping operations, with concentration in North Asia, and to insure that the company provides the most efficient and cost effective freight forwarding and processing service. Part of the duties of the International Freight Consultant will be to establish new business relationships, as well as to maintain existing long-term connections with importers, cargo shipping lines, other maritime insurance companies, and the administrative offices of sea-ports worldwide.

Among [the beneficiary's] principle duties will be analyzing freight data to determine optimal forwarding solutions, and insuring the fastest possible freight turnover time. In meeting these goals, she will take into consideration such vital factors as the nature of the shipped cargo, size, weight and destination, applicable insurance rates, foreign customs regulations regarding the import and export of such cargo, U.S. Customs and export regulations (e.g. State Department end-user regulations and export restrictions on certain technologies and weapons), and the availability of port berths and space on commercial cargo carriers.

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 international studies 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 (DOL) Dictionary of Occupational Titles (DOT), Fourth Edition, 1977, 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 latest edition of 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 DOL in the various editions of the Occupational Outlook Handbook (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.

Although counsel argues that the proffered position is not that of a general manager, in its Handbook, 2000-2001 edition, at page 521, under the category of "communications, transportation, and utilities operations managers," the DOL indicates that general managers of large operations or establishments should be reported as general managers or top executives. A review of the DOL's 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. 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, although the petitioner has been established since 1982, 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 international studies, 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. Accordingly, the decision of the director will not be disturbed.

ORDER: The decision of the Associate Commissioner dated January 31, 2000, is affirmed.