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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: EAC-01-043-52071 Office: Vermont Service Center

Date: APR 2002

IN RE: Petitioner: [Redacted]  
Beneficiary: [Redacted]

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, 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 bank and consulting business with eight employees and a gross annual income of \$1.7 million. It seeks to employ the beneficiary as a claims investigator 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 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 petitioner had not demonstrated that a baccalaureate degree is required for the position of claims investigator. The director further found that the petitioner had not demonstrated that the proffered position was a realistic position considering the petitioner's size. On appeal, counsel states, in part, that the beneficiary was to be employed within one of the ten largest banks in the world. Counsel also states that investigators employed within large multi-national corporations are expected to possess baccalaureate degrees.

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. In the initial I-129 petition, the petitioner described the duties of the offered position as follows:

1. Coordinate claims investigations for possible fraudulent claims.
2. Lawsuit defense coordination.

3. Determine facts of incident and analysis of liability thereunder.
4. Inspection of mishap and recommendations to clients.
5. Create reports to provide insight on liability of company and for recommendations for future action.
6. Fraud unit coordination with civil litigation.
7. Case data management and investigation management with respect to fraud claims.
8. Assist in interpreting from Japanese to English and vice-versa and make reports in Japanese on particular fraud and liability matters.
9. Complete due diligence in fraud matters.
10. Attend meetings with individual customers as well as corporate clients in order to increase customer base.

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 criminal justice or a related field. The proffered position appears to be that of a claims investigator. A review of the Department of Labor's Occupational Outlook Handbook, 2002-2003 edition, finds

that although most companies prefer to hire college graduates for claims adjuster, appraiser, examiner, and investigator positions, no specific college major is necessary. Some may have accounting or business backgrounds while others may have medical or legal backgrounds. Thus, the petitioner has not shown that a bachelor's degree in a specialized area or its equivalent is required for the position being offered to the beneficiary.

Second, although the petitioner indicates that the bank where the beneficiary would be employed has one other investigator with a baccalaureate degree in criminal justice, in a letter dated March 28, 2001, the petitioner's president states that its investigators in Japan have bachelor degrees in a variety of areas. Thus, it has not been persuasively demonstrated that a degree in criminal justice is required for the proffered 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 record contains two letters from individuals involved in the bank consulting business. Both state that the usual requirement for positions such as the proffered position is a baccalaureate degree in criminal justice. Two letters are insufficient evidence of an industry standard. The writers have not provided evidence in support of their assertions. In addition, neither of the writers has indicated the number or percentage of claims investigators who hold such degrees.

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.