



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

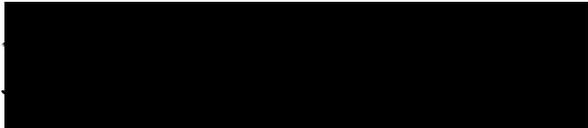
Identifiable data deleted to
prevent clearly unwarranted
invasion of personal privacy.



File: WAC-00-036-50237 Office: California Service Center Date: 11 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, Acting 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, a wholesaler and distributor of airline tickets and travel packages, has 130 employees and a gross annual income of \$40 million. It seeks to employ the beneficiary as a personnel supervisor for a period of two years. The director determined the petitioner had not established that the proffered position is a specialty occupation.

On appeal, counsel had provided additional information in support of the appeal.

The Associate Commissioner dismissed the appeal reasoning that the proffered position appeared similar to that of a general manager or executive and a placement manager, occupations which do not require a baccalaureate degree in a specialized area.

On motion, counsel states, in part, that the petitioner has already demonstrated that the beneficiary's proposed duties, which require a certain degree of knowledge in a variety of areas such as personnel functions and finance/budget preparation, are so specialized and complex as to require a baccalaureate degree. Counsel further states that the Department of Labor's (DOL) Dictionary of Occupational Titles (DOT) is applicable in this case as it was utilized by the courts in various cases such as Hong Kong T.V. Video Program, Inc. v. Ilchert (Hong Kong), 685 F. Supp. 712 (N.D. Cal. 1988), to determine whether the president and CEO of a film and distribution company was a member of the professions.

Counsel's argument on motion that the proffered position qualifies as a specialty occupation 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:

Plans & [c]arries out policies relating to all phases of personnel activities; Recruit, interview & select employees to fill vac[a]nt positions; Plan & conduct new employee orientation to foster positive at[t]itude toward company goals; Coordinate & directs personnel training & staff development on company businesses systems or changes in products or services; Keep records of

insurance coverage & personnel transactions e.g. hires & fires; Promotions, transfer, prepares budget & personnel operations.

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 psychology or a related field. The proffered position appears similar to that of a human resources, training, and labor relations manager or specialist. In its Occupational Outlook Handbook (Handbook), 2002-2003 edition, the Department of Labor (DOL) describes the job of a human resources, training, and labor relations manager or specialist as follows:

In the past, these workers have been associated with performing the administrative function of an organization, such as handling employee benefits questions or recruiting, interviewing, and hiring new personnel in accordance with policies and requirements that have been established in conjunction with top management. Today's human resources workers juggle these tasks and, increasingly, consult top executives regarding strategic planning. They have moved from behind-the-scenes staff work to leading the company in suggesting and changing policies. Senior management is recognizing the importance of the human resources department to their bottom line.

A review of the Handbook finds no requirement of a baccalaureate or higher degree in a specialized area for employment as a human resources, training, and labor relations manager or specialist. Employers usually seek college graduates from a variety of educational backgrounds in filling entry-level jobs. Many employers prefer applicants who have majored in human resources, personnel administration, or industrial and labor relations. Other employers prefer college graduates with a technical or business background or a well-rounded liberal arts education. 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 such as psychology, 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.

Counsel's comments regarding the DOT are noted. As noted in the Associate Commissioner's previous decision, however, 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 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. It is also noted that the court case Hong Kong, cited by counsel, dealt with membership in the professions, not membership in a specialty occupation. While these terms are similar, they are not synonymous. The term "specialty occupation" is specifically defined in section 214(i) of the Act. That statutory language effectively supersedes Hong Kong.

In this case, although the petitioner requires a baccalaureate degree in psychology for the proffered position, the position, nevertheless, does not meet the statutory definition of specialty occupation. The position, itself, does not require the theoretical

and practical application of a body of highly specialized knowledge. Therefore, even though the petitioner has such degree requirement, the position still does not require a bachelor's degree in a specific specialty.

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 March 21, 2001, is affirmed.