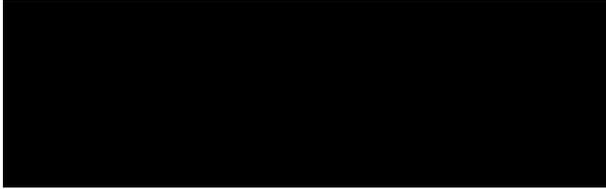




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U.S. Department of Justice
Immigration and Naturalization Service

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



File: WAC-00-066-50366

Office: California Service Center

Date: 1 APR 2002

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:



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 local airfreight transportation business with 25 employees and a gross annual income of \$980,000. It seeks to employ the beneficiary as an administrative assistant 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 duties described by the petitioner appeared to relate to the job of an office manager, an occupation that does not require a baccalaureate degree in a specialized area. On appeal, counsel states, in part, that the petitioner did not provide an adequate explanation of the duties to be performed by the beneficiary. Counsel submits an expanded description of the duties the petitioner anticipates the beneficiary would perform as an administrative assistant. Counsel further states that the duties of the offered position are so complex as to require a baccalaureate degree in business management. Counsel also cites an unpublished AAU decision, which has no precedential effect in this proceeding. See 8 C.F.R. 103.3(c).

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:

Under supervision of owner, aids in staff capacity by coordinating office services, such as personnel, budget

preparation and control, housekeeping, records control. Studies management methods to improve workflow, simplify reporting procedures, or implement cost reductions. Analyzes job to delimit position responsibilities for use in wage and salary adjustments, promotions, and evaluation of workflow. Studies method of improving. Using computer, prepares reports such as attendance records, terminations, new hires, transfers, budget expenditures and records of performance. Prepare reports including conclusions and recommendations for solutions for administrative problems. Review and answers all correspondence.

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 business administration or a related field. Counsel asserts that the Department of Labor (DOL) has determined that the proffered position is a specialty occupation. However, a reference in the DOL's Dictionary of Occupational Titles (DOT), Fourth Edition, 1977, standing alone, is not enough to establish that 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.

The proffered position appears to be primarily that of an office and administrative support worker supervisor or manager. In its Handbook, 2002-2003 edition, the (DOL) describes the job of office and administrative support worker supervisors and managers, in part, as follows:

These workers are employed in virtually every sector of the economy, working in positions as varied as *customer services manager, teller supervisor, and shipping-and-receiving supervisor.*

Planning the work of their staff and supervising them are key functions of this job. To do these effectively, the supervisor must know the strengths and weaknesses of each member of the staff, as well as the required level of quality and time allotted to each job.

After allocating work assignments and issuing deadlines, office and administrative support supervisors and managers oversee the work to ensure that it is proceeding on schedule and meets established quality standards.

Office and administrative support supervisors and managers usually interview and evaluate prospective clerical employees.

Office and administrative support supervisors and managers often act as liaisons between the clerical staff and the professional, technical, and managerial staff. This may involve implementing new company policies or restructuring the workflow in their departments. They must also keep their superiors informed of their progress and abreast of any potential problems. Often this communication takes the form of research projects and progress reports. Because they have access to information such as their department's performance records, they may compile and present these data for use in planning or designing new policies.

The types of duties the petitioner ascribes to the beneficiary fall primarily within the scope of an office and administrative support

worker supervisor or manager. For example, the petitioner states that the beneficiary will "[study] management methods to improve workflow, simplify reporting procedures, or implement cost reductions" and "prepares reports such as attendance records, terminations, new hires, transfers, budget expenditures and records of performance." Such duties are normally associated with an office and administrative support worker supervisor or manager position. 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 business administration, 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. The job fits the description of an office and administrative support worker supervisor or manager. According to the Handbook, although many employers require postsecondary training such as an associate's or even a bachelor's degree, most businesses fill the office and administrative support supervisory and managerial positions by promoting clerical or administrative support workers from within their organizations. 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.