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U.S. Department of Justice

Immigration and Naturalization Service

~~denial of entry to~~  
~~prevent clearly inadmissible~~  
~~division of personal privacy~~

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



File: EAC-01-041-52312

Office: Vermont Service Center

Date: 24 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)

**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, Director  
Administrative Appeals Office

APR 24 02 01A 2101

**DISCUSSION:** The nonimmigrant visa petition was denied by the Director, Vermont Service Center, and is now before the Associate Commissioner for Examinations on appeal. The appeal will be dismissed.

The petitioner is a window installation business with 120 employees and an approximate gross annual income of \$10.6 million. It seeks to employ the beneficiary as a health service manager for a period of three years. The director determined that the petitioner had not established that the offered position is a specialty occupation.

On appeal, the petitioner submits a statement.

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 determined that the record does not convincingly establish that, due to the nature, size, and scope of the petitioner's business, the position of health service manager is a realistic position. The director, therefore, concluded that the proffered position is not a specialty occupation.

On appeal, the petitioner states that it has contracts with Columbia Presbyterian Hospital, New York Hospital, Brooklyn Navy Yard, and Knapp Street Water Pollution Plant, among others. The petitioner further states that it requires the services of a health service manager because these contracts will obligate it to comply with many federal laws and regulations regarding occupational safety and environmental protection standards.

The petitioner's statement on appeal is not persuasive. The Service does not rely solely on the title of a position in determining whether that position 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 stated that the duties of the position being offered include planning, directing, coordinating, and supervising the health and safety system of the petitioner. On appeal, the

petitioner provides the following expanded description of the duties of the proffered position:

- \* Monitor federal and state OSHA [Occupational, Safety, and Health Administration] and EPA [Environmental Protection Agency] standards, develop methods, procedures and programs to meet those requirements, and make sure [the company is] in compliance with regulations designed to protect the Environment, Health and Safety [EH&S].
- \* Identify EH&S trends in industry and determine internal EH&S trends by gathering needs and performing root cause analysis so that predictive and proactive guidelines can be established.
- \* Design and implement a Sickness and Accident Disability Benefit Plan and establish a Job-related injury/incident reporting procedure.
- \* Determine and implement the Family & Medical Leave Act (FMLA) Administration Process.
- \* Establish and administer an Ergonomics program to provide a comprehensive approach for the prevention, early detection, reporting, and management of potential cumulative trauma disorders within the corporation.
- \* Determine and make sure that our corporation is in compliance with legally required examinations, health assessments, pre-placement evaluations, drug and alcohol testing, work restrictions, fitness-for-duty evaluations, and workplace health consultations.

The duties described, while quite detailed, are not the responsibilities of a health services manager as set forth in the Department of Labor's (DOL) Occupational Outlook Handbook (Handbook), 2002-2003 edition. Therefore, the Service is not persuaded to classify the position as the specialty occupation of a health services manager.

The first reason why the Service is not persuaded to classify the offered position as a health services manager position concerns the particular duties of the offered position compared with the duties of a typical health services manager. At page 75 of the Handbook, the DOL states that

the term 'medical and health services manager' encompasses all individuals who plan, direct, coordinate, and supervise the delivery of healthcare. The structure

and financing of healthcare is changing rapidly. Future medical and health services managers must be prepared to deal with evolving integrated healthcare delivery systems, technological innovations, an increasingly complex regulatory environment, restructuring of work, and an increased focus on preventive care.

While the amended description of the duties of the proffered position appears to paraphrase some of the duties of a health services manager as described in the Handbook, the duties of the proffered position are actually quite different from those of a health services manager. The proffered position does not involve the planning and coordinating of the delivery of healthcare by a health care provider or health insurance company. Rather, the position involves ensuring that the petitioner is in compliance with federal health and safety regulations.

The second reason why the Service is not persuaded to classify the offered position as a health services manager position relates to the type of industry in which the beneficiary would be employed. Information in the Handbook, at page 75, provides insight into the types of industries in which health services managers are normally found. According to the DOL:

Medical and health services managers held about 250,000 jobs in 2000. Almost 2 out of 5 jobs were in hospitals. About 1 in 5 were in nursing and personal care facilities or offices and clinics of physicians. The remainder worked mostly in home health agencies, ambulatory facilities run by state and local governments, offices of dentists and other health practitioners, medical and dental laboratories, residential care facilities, and other social service agencies.

Although the list of employers of health services managers is not all inclusive, the DOL's description of a health service manager's job implies that these types of positions are found within medical facilities and managed care settings.

The record indicates that the petitioner is engaged in window installation. The business of window installation is not within the DOL's list of industries that typically require the services of a health services manager. For these reasons, the Service is not persuaded to label the offered position as that of a health services manager.

Although the Service does not agree with the petitioner that the position it is offering is a health services manager position, the petitioner could, nevertheless, qualify the offered position as a specialty occupation if the petitioner could establish that:

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.

See. 8 C.F.R. 214.2(h) (4) (iii) (A) .

An analysis of the beneficiary's proposed duties reveals that the job being offered appears to combine the duties of an occupational health and safety specialist with those of an employee assistance plan manager. According to the DOL at page 291 of the Handbook:

*occupational health and safety specialists analyze work environments and design programs to control, eliminate, and prevent disease or injury caused by chemical, physical, and biological agents or ergonomic factors. They may conduct inspections and enforce adherence to laws, regulations, or employer policies governing worker health and safety.*

The beneficiary's proposed job duties, which include monitoring federal and state regulations governing occupational health and safety and environmental protection in order to ensure company compliance with such regulations; establishing and administering an ergonomics program for the prevention, early detection, reporting, and management of potential repetitive stress injuries within the company; and ensuring that the company is in compliance with legally required examinations, health assessments, pre-placement evaluations, drug and alcohol testing, work restrictions, fitness-for-duty evaluations, and workplace health consultations, parallel the job responsibilities of an *occupational health and safety specialist*. Information at page 291 of the Handbook does not indicate that a position as an occupational health and safety specialist position requires a bachelor's degree in a specific field of study. Rather, the requirements include a combination of education, experience, and passing scores on written examinations.

All occupational health and safety specialists are trained in the applicable laws through some combination of classroom and on-the-job training.

The duties of the proffered position also parallel those of an employee assistance plan manager. The Handbook describes the duties of an employee assistance plan manager at page 61 as follows:

*Employee assistance plan managers, also called employee welfare managers, are responsible for a wide array of programs covering occupational safety and health standards and practices; health promotion and physical fitness, medical examinations, and minor health treatment, such as first aid.*

A review of the Handbook at page 62 finds no requirement of a baccalaureate degree in a specialized area for employment as an employee assistance plan manager. In filling entry-level jobs, employers usually seek college graduates. Many prefer applicants who have majored in human resources, personnel administration, or industrial and labor relations. Others look for college graduates with a technical or business background or a well-rounded liberal arts education. Entry-level workers often enter formal or on-the-job training programs. They then are assigned to specific areas in the personnel department to gain experience.

The record contains an evaluation of the position and the beneficiary's credentials by Professor Edward J. Trapido, Professor of Epidemiology and Public Health at the School of Medicine, University of Miami. Professor Trapido states that the position is a specialty occupation requiring no less than a bachelor's degree in an "appropriate field", including training in medicine, or a related area, and the application of specialized knowledge in those fields. Professor Trapido further states that health services managers who will be responsible for formulating and implementing integrated systems of health care provision should demonstrate academic training in areas such as "Medicine, Medical Science, Health Care Administration, Health Science, General Surgery, Clinical Semiology, Health Training, and related subjects, or are learned through substantial professional training and work experience in these and related areas."

The Service is not persuaded that the position being offered requires the services of an individual with a bachelor's degree in medicine or a related medical field. Most of the duties of the position do not involve the provision of medical care or medical examinations. Rather, the majority of the duties involve insuring compliance with federal and state occupational health and safety regulations; developing programs to prevent on-the-job ergonomic injuries; and with administering a family leave program. These

duties are normally performed by individuals with training and/or experience in human resources management.

Furthermore, while the holder of the proffered position may be charged with insuring compliance with legally required examinations, health assessments, pre-placement evaluations, drug and alcohol testing, work restrictions, fitness-for-duty evaluations, and workplace health consultations, such services are typically provided by a medical professional such as a registered nurse under the supervision of the employee assistance plan manager rather than directly by such manager. In view of the foregoing, it is concluded that the petitioner has not shown that a bachelor's degree or its equivalent is required for the position being offered to the beneficiary.

Additionally, the petitioner has not provided any evidence that it has, in the past, required the services of individuals with baccalaureate or higher degrees in a specialized area for the offered position.

The petitioner states on appeal that it has conducted research into the practices of similar companies and learned that other employers in the industry typically employ registered nurses, physicians, and specialists in occupational or "workplace" health issues in similar positions. However, the petitioner has not submitted any independent evidence to corroborate his assertion.

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 in a specialized area.

The petitioner has failed to establish that any of the four factors enumerated above are present in this proceeding for the position of a market research manager or marketing manager. Therefore, the director's decision is affirmed.

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 appeal is dismissed.