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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-01-087-54405 Office: Vermont Service Center

Date: APR 30 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, Vermont Service Center, and is now before the Associate Commissioner for Examinations on appeal. The appeal will be dismissed.

The petitioner is a company which operates five gasoline station/convenience marts. It has 17 employees and an approximate gross annual income of \$9 million. The petitioner seeks to employ the beneficiary as an office manager 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.

Section 214(i)(1) of the Act, 8 U.S.C. 1184(i)(1), defines the term "specialty occupation" as an occupation that requires:

(A) theoretical and practical application of a body of highly specialized knowledge, and

(B) attainment of a bachelor's or higher degree in the specific specialty (or its equivalent) as a minimum for entry into the occupation in the United States.

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 failed to show that a baccalaureate degree in a specific field of study is a minimum requirement for the job offered.

On appeal, counsel argues in part that the Service takes an unduly narrow reading of the statute and regulations when it finds that a baccalaureate degree in a specific field of study, and only one specific field, must be a standard minimum requirement for the job offered.

Counsel's argument on appeal is noted. 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. The petitioner is a company which operates five EXXON gas stations in New Jersey. It wishes to employ the beneficiary as its office manager for all five stations. In the initial I-129 petition, the petitioner described the duties of the offered position as follows:

[C]oordinating the activities of clerical personnel;; analyzing and organizing office operations and procedures, such as bookkeeping, preparation of payrolls, flow of correspondence, filing, and requisitioning of supplies. Furthermore, [the beneficiary] will evaluate the operating procedures, revise the procedures, or devise new forms to improve efficiency of workflow. He will establish uniform correspondence procedures and formulate procedures to maintain company records. He will prepare employee ratings and conduct employee benefit and insurance programs using computers. He will prepare organizational budget and financial reports.

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.

Counsel argues on appeal that the Department of Labor (DOL) has determined in its Dictionary of Occupational Titles (DOT) that the position of office manager requires a baccalaureate degree or the equivalent. However, a reference in the DOL's 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.

Counsel's argument on appeal that the Service is unduly restrictive in its finding that a position must require a baccalaureate degree in one specific field of study in order to qualify as a specialty occupation is not persuasive. A reading of the statute and regulations clearly shows that an occupation must require a baccalaureate degree in a specific specialty in order to qualify as a specialty occupation. See Section 214(i)(1) of the Act, 8 U.S.C. 1184(i)(1) and 8 C.F.R. 214.2(h)(4)(ii).

The Service does not take the position that the baccalaureate degree must be in one, and only one, specialty area for any given occupation as stated by counsel. For example, the position of market research analyst may require a bachelor's degree in one of several related areas including business administration, economics, or marketing.

In this case, a review of the DOL's Handbook, 2002-2003 edition, at pages 417-419 indicates that there is no requirement of a baccalaureate or higher degree in a specialized area for employment as an office manager. Most firms fill office and managerial positions by promoting clerical or administrative support workers from within their organizations. When evaluating candidates, superiors look for strong teamwork, problem-solving, leadership, and communications skills, as well as determination, loyalty, poise, and confidence. They also look for more specific supervisory attributes, such as the ability to organize and coordinate work efficiently, to set priorities, and to motivate others.

The petitioner asserts that the degree requirement is common to the industry in parallel positions among similar organizations. In support of its assertion, the petitioner submits copies of four internet job advertisements for positions described variously as

office manager, store manager, and general manager. The ad for a store manager position specifies that a bachelor's degree in business administration or its equivalent is required. The other three ads merely state that a bachelor's degree is preferred. No specialized area is specified. It is noted that none of the other positions are for openings as the manager of a gas station or a group of gas stations. Furthermore, four employers' hiring practices do not exemplify the industry standard. It is concluded that the petitioner has not presented sufficient documentary evidence to establish 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.

Additionally, the petitioner has not shown that it normally requires a bachelor's degree in a specialized area for the position.

Finally, counsel argues that the petitioner is a company of sufficient size and complexity that the knowledge required to perform the duties of the position is usually associated with the attainment of a baccalaureate or higher degree. However, neither counsel nor the petitioner has submitted any evidence to corroborate this argument. The duties of the proffered position do not appear to be any more specialized or complex than those of any office manager as described in the Handbook.

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.

Beyond the decision of the director, the petitioner's labor condition application was certified on February 23, 2000, a date subsequent to February 16, 2000, the filing date of the visa petition. Regulations at 8 C.F.R. 214.2(h)(4)(i)(B)(1) provide that before filing a petition for H-1B classification in a specialty occupation, the petitioner shall obtain a certification from the Department of Labor that it has filed a labor condition application. As this matter will be dismissed on the grounds discussed, this issue need not be examined further.

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.