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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

[Redacted]

File: LIN-01-176-55151 Office: Nebraska Service Center

Date: AUG - 6 2002

IN RE: Petitioner:
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:

[Redacted]

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 manufactures plastic hose. It has 41 employees and a gross annual income of \$13,448,000. It seeks to employ the beneficiary as a human resources advisor for a period of three years. The director determined the petitioner had not established that the proffered position is a specialty occupation or that the beneficiary is qualified to perform the duties of 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 the proffered position required a baccalaureate degree in a specialized area. The director also found that the beneficiary's degree in sociology was unrelated to the proffered position. On appeal, counsel states, in part, that the beneficiary received her baccalaureate degree from a U.S. institution. Counsel also states that the record contains excerpts from the *ECS Geographic Reports on Professional and Scientific Personnel Compensation*, published by Watson Wyatt Data Services, 2001, which shows that a baccalaureate or higher degree or its equivalent is normally the minimum requirement in human resource positions. Counsel submits an expanded description of the duties the petitioner anticipates the beneficiary would perform as a human resources advisor. Counsel further submits job advertisements to demonstrate that the degree requirement is common to the industry in parallel positions.

Counsel's statement on appeal that the proffered position is 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:

- * Providing general personnel assistance within the company by evaluating and resolving human relations and work performance problems with our employees,
- * Collect and examine detailed information about job duties, training, and skills different jobs require,
- * Work with various personnel and attend meetings to ensure effective interpersonal communication among employees, and to determine work related problems that affect employee morale and productivity,
- * Instruct managers of human relations skills including supervisory skills, conflict resolution, interpersonal communication, and effective group interaction, and
- * Schedule training sessions for employees to instruct on job-related skills and to improve work performance individually.

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 sociology or a related field. The proffered position appears to be that of a training specialist. Although a review of the Department

of Labor's Occupational Outlook Handbook (Handbook), 2002-2003 edition, finds that some human-resources-related jobs require a more technical or specialized background in engineering, science, finance, or law, the record contains no evidence that the generalized duties of the proffered position would require a baccalaureate or higher degree in a specialized area. The Handbook indicates that employers usually seek college graduates from a variety of educational backgrounds, including a well-rounded liberal arts education, in filling entry-level jobs. It is also noted that the publication from Watson Wyatt Data Services does not indicate that a baccalaureate or higher degree in a specialized area is required for a human resources generalist. Thus, the petitioner has not shown that a bachelor's degree or its equivalent in a specialized area 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 sociology, for the offered position. Third, although the record contains various job advertisements, 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.

As the petitioner has not sufficiently established that the proffered position is a specialty occupation, the beneficiary's qualifications need not be examined further in this proceeding.

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.