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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]

DEC 10 2002

File: SRC-01-127-51686 Office: Texas Service Center

Date:

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 that 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 that 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 that 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, Texas Service Center, and is now before the Associate Commissioner for Examinations on appeal. The appeal will be dismissed.

The petitioner is a travel agency with three employees and a stated gross annual income of \$335,000. It seeks to employ the beneficiary as a contract specialist 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 and additional documentation.

Section 101(a)(15)(H)(i)(b) of the Immigration and Nationality Act (the Act), 8 U.S.C. 1101(a)(15)(H)(i)(b), provides in part for nonimmigrant classification to qualified aliens who are coming temporarily to the United States to perform services in a specialty occupation. Section 214(i)(1) of the Act, 8 U.S.C. 1184(i)(1), defines a "specialty occupation" as an occupation that requires theoretical and practical application of a body of highly specialized knowledge, and 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.

Pursuant to section 214(i)(2) of the Act, 8 U.S.C. 1184(i)(2), to qualify as an alien coming to perform services in a specialty occupation the beneficiary must hold full state licensure to practice in the occupation, if such licensure is required to practice in the occupation. In addition, the beneficiary must have completed the degree required for the occupation, or have experience in the specialty equivalent to the completion of such degree and recognition of expertise in the specialty through progressively responsible positions relating to the specialty.

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 the petitioner had not shown that the proffered position of contract specialist requires a baccalaureate

degree in a specific specialty or that the degree requirement is an industry standard.

On appeal, counsel asserts that the Service has previously determined that the position of contract specialist is a specialty occupation in that the Service has approved other H-1B petitions for contract specialist positions. In support of this assertion, counsel submits copies of two H-1B approval notices relating to I-129 petitions filed by other companies. Counsel further asserts that the petitioner has shown that the degree requirement is an industry standard.

Counsel's assertions on appeal are 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 described the duties of the offered position as follows:

[The beneficiary] will negotiate, administer, extend, terminate and renegotiate contracts. She will formulate and coordinate procurement proposals. She will evaluate and monitor contract performance to determine the necessity for amendments and extensions of contracts, and compliance to contract evaluations. She will approve and reject requests for deviations of contract specifications and delivery schedule.

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 failed to establish that any of the four factors enumerated above are present in this proceeding.

In these proceedings, the duties of the position are dispositive and not the job title. The proffered position most closely parallels that of a purchasing agent as that job is described by the Department of Labor (DOL) in its Occupational Outlook Handbook (Handbook), 2002-2003 edition. The Handbook describes the work of purchasing agents at page 80 as follows:

Purchasing managers, buyers, and purchasing agents seek to obtain the highest quality merchandise at the lowest possible purchase cost for their employers. . . . Purchasers and buyers determine which commodities or services are best, choose the suppliers of the product or service, negotiate the lowest price, and award contracts that ensure that the correct amount of the product or service is received at the appropriate time. . . .

Purchasing managers, buyers, and purchasing agents evaluate suppliers based upon price, quality, service support, availability, reliability, and selection. . . . Once all the necessary information is gathered, orders are placed and contracts are awarded to those suppliers who meet the purchasers' needs. . . . Purchasing agents and managers obtain items ranging from raw materials, fabricated parts, machinery, and office supplies to construction services and airline tickets.

A review of the Handbook at page 82 finds no requirement of a baccalaureate degree in a specific specialty for employment as a contract specialist or purchasing agent. Educational requirements tend to vary with the size of the organization. Retail and wholesale firms prefer to hire applicants who have a college degree, and are familiar with the merchandise they sell and with wholesaling and retailing practices.

Counsel cites the 2000-2001 edition of the Handbook as follows:

Educational requirements tend to vary with the size of the organization. Large stores and distributors, especially those in wholesale and retail trade, prefer applicants who have completed a bachelor's degree program with business emphasis. Many manufacturing firms tend to put a greater emphasis on formal training. They prefer applicants with a bachelor's or master's degree in business, economics or technical training. . . .

Counsel contends that this statement indicates that a bachelor's degree in business, economics or technical training is an industry standard. However, the petitioner in this case is neither a large

store or distributor nor a manufacturing firm. There is no indication in the Handbook that a business such as a small travel agency would normally require a baccalaureate degree in a specific specialty for employment as a purchasing agent or contract specialist. Furthermore, the above statement indicates that such degree is a preference on the part of those employers rather than a normal requirement.

Counsel further cites the Handbook as follows:

Persons who have a bachelor's degree in business should have the best chance in obtaining a buyer job in wholesale or retail trade or within government. A bachelor's degree, combined with industry experience and knowledge of a technical field, will be an advantage for those interested in working for a manufacturing or industrial company.

While this statement does not appear in the 2002-2003 edition of the Handbook, it must be pointed out that the DOL does not state that a bachelor's degree in business is the normal minimum requirement for purchasing agent or contract specialist jobs, but rather that such degree is advantageous for individuals applying for those jobs. In view of the foregoing, counsel's assertion is not persuasive.

In an attempt to show that the requirement of a bachelor's degree in a specific specialty is common to the industry in parallel positions among similar organizations, counsel submits one internet advertisement for a contract analyst job. Although this job requires a college degree in a business-related field, it cannot be considered to be a parallel job in a similar organization since the prospective employer is a pharmaceutical product development company. Counsel has also submitted a letter from a representative of another travel agency, Costamar Traveling. This individual states:

We have always hired an individual with at least a bachelor's degree for this position. It is imperative that the individual negotiating and reviewing the contracts have the formal Education to do so. Because contracts and negotiations require knowledge of business we always request that the bachelor's degree have an emphasis in business.

The writer of this letter does not state that his travel agency requires a bachelor's degree with an emphasis on business for its contract specialist position, only that it prefers such degree. Additionally, one letter does not demonstrate an industry standard. It is concluded that the petitioner has not shown that the degree

requirement is common to the industry in parallel positions among similar organizations.

The petitioner has not submitted any evidence to show that it requires a bachelor's degree in a specific specialty for the proffered position as part of the hiring process.

Finally, the petitioner has not shown that the specific duties of the position are 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 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.

ORDER: The appeal is dismissed.