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U.S. Department of Justice
Immigration and Naturalization Service

OFFICE OF ADMINISTRATIVE APPEALS
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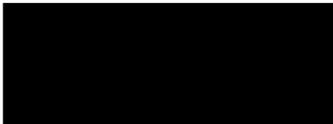


File: LIN-99-180-53582 Office: Nebraska Service Center Date: 16 DEC 2002

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:



**Identifying data deleted to
prevent identity information
invasion of personal privacy**

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. A subsequent appeal was dismissed by the Associate Commissioner for Examinations. The matter is now before the Associate Commissioner on a motion to reopen and reconsider. The motion will be granted and the previous decisions of the director and the Associate Commissioner will be affirmed.

The petitioner is a bankruptcy trustee business with 37 employees and a gross annual income of \$43,690,582. It seeks to employ the beneficiary as a receipts 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 argued that the Service had erred in denying the petition because the proffered position requires training in economics, finance, or banking, and that individuals filling this position have always had a baccalaureate degree or its equivalent. Counsel asserted that the petitioner's job description for the offered job demonstrated that a college degree is required.

The Associate Commissioner dismissed the appeal reasoning that the petitioner had not established that the proffered position is a specialty occupation because it had not demonstrated that a baccalaureate degree was required for employment in this position.

On motion, counsel argues that the duties of the proffered position combine those of an accountant with those of a financial manager, especially those of a cash manager, as described in the Department of Labor's (DOL) Occupational Outlook Handbook, (Handbook). Counsel contends that the office of the United States Trustee should be given deference in determining the degree requirement needed for employment in the offered job.

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.

Counsel's statements on motion are 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:

Duties will include reviewing plans of individual bankruptcies, processing Bankruptcy Court approval, and processing payroll deductions.

The Payroll Specialist is responsible for assisting the Financial Analyst with all facets of receipt processing. Must be able to perform all functions on an as needed basis and is responsible for assisting Financial Analyst on other financial tasks.

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 Service does not agree with counsel's argument that the duties of the proffered position combine those of an accountant with those of a financial manager, especially those of a cash manager, as described in the DOL's Handbook. At page 52 of the 2002-2003 edition of the Handbook, the DOL describes the general duties of financial managers as follows:

Almost every firm, government agency, and organization has one or more financial managers who oversee the preparation of financial reports, direct investment activities, and implement cash management strategies. As computers are increasingly used to record and organize data, many financial managers are spending more time

developing strategies and implementing the long-term goals of their organization.

The Handbook continues with the following description of the specific duties of the position of a cash manager:

Cash managers monitor and control the flow of cash receipts and disbursements to meet the business and investment needs of the firm. For example, cashflow projections are needed to determine whether loans must be obtained to meet cash requirements or whether surplus cash should be invested in interest-bearing instruments.

The duties of the proffered position as described above, do not include any activities that would entail the supervision of individuals preparing financial reports, directing investment strategies and actions, or implementing cash management plans to meet the business and investment needs of the petitioner.

The DOL describes the job of a management accountant as follows at page 21 of the Handbook:

Management accountants - also called industrial, corporate or private accountants - record and analyze the financial information for the companies for which they work. Other responsibilities include budgeting, performance evaluation, cost management, and asset management. Usually, management accountants are part of executive teams involved in strategic planning or new-product development. They analyze and interpret the financial information that corporate executives need to make sound business decisions. They also prepare financial reports for non-management groups, including stockholders, creditors, regulatory agencies, and tax authorities. Within accounting departments, they may work in areas including financial analysis, planning and budgeting, and cost accounting.

A review of the description of the duties of the offered job does not reflect any activity which could be construed as involvement in an executive decision-making team. Furthermore, there is no evidence that the proffered position includes complex or advanced accounting duties such as the preparation of detailed financial reports for outside agencies or corporate stockholders, or that the position requires an individual with a knowledge of sophisticated accounting techniques normally associated with the duties of a management accountant. Additionally, the petitioner's description of the proffered position indicates that it has in the past and currently employs a "Financial Analyst" that could reasonably be expected to have performed and continue to perform any of the

complex or advanced financial management or accounting functions and duties needed by the petitioner.

While the duties of the proffered position as described by the petitioner are general in nature, such duties appear to be primarily financial transaction reporting, payroll, and auditing duties, which are similar to the duties that a financial clerk such as bookkeeping, accounting, auditing, or payroll clerk would execute in a small business establishment. In contrast to the descriptions of a financial manager and an accountant, the DOL describes financial clerks working in the positions of a bookkeeping, accounting, and auditing clerk in its Handbook at page 390, as follows:

In small establishments, *bookkeeping clerks* handle all financial transactions and recordkeeping. They record all transactions, post debits and credits, and prepare reports for supervisors and managers....

More advanced accounting clerks may total, balance, and reconcile billing vouchers; ensure completeness and accuracy of data on accounts; and code documents, according to company procedures. They post transactions in journals and on computer files and update these files when needed....

Auditing clerks verify records of transactions posted by other workers. They check figures, postings, and documents for correct entry, mathematical accuracy, and proper codes.

At page 392, the Handbook continues by describing the duties of the position of a payroll clerk as follows:

Payroll clerks, also called payroll technicians, screen timecards for calculating, coding, or other errors. They compute pay by subtracting allotments, including Federal and State taxes, retirement, insurance, and savings, from gross earnings. Increasingly, computers perform these calculations and alert payroll clerks to problems or errors in the data. In small organizations, or for new employees whose records are not yet entered into a computer system, clerks may perform the necessary calculations manually. In some small offices, clerks or other employees in the accounting department process payroll.

Payroll clerks record changes in employee addresses; close out files when workers retire, resign, or transfer; and advise employees on income tax withholding and other mandatory deductions. They also issue and record

adjustments to pay because of previous errors or retroactive increases. Payroll clerks need to follow changes in tax and deduction laws, so they are aware of the most recent revisions. Finally they prepare and mail earnings and tax withholding statements for employees use in preparing income tax returns.

The duties of the proffered position relate more closely to those of financial clerks in the positions of bookkeeping, accounting, auditing, and payroll clerk than to those of either a financial manager or management accountant. For example, the petitioner states that the beneficiary reviews plans of individual bankruptcies, processes payroll deductions, and assists the financial analyst with all facets of receipt processing. The auditing of financial plans, executing payroll transactions, and providing assistance in receipt processing are not duties normally associated with either a financial manager or a management accountant. Thus, the petitioner has not shown that a bachelor's degree or its equivalent is required for the position being offered to the beneficiary.

The petitioner has not shown that it has, in the past, required the services of individuals with baccalaureate or higher degrees in a specific specialty such as economics, for the offered position. The record contains the resumes of the previous two employees who filled the receipts specialist position. The resumes do not list the level of education completed by either of these individuals. However, the resumes indicate that one of these individuals has employment experience consisting of eight years as a bank teller and fourteen years as a loan processor, while the other individual has twenty years of experience as an insurance underwriting supervisor and manager, as well as two years of full-time and seven years of part-time work experience as an office manager for a vending machine company. Nevertheless, the record does not contain an evaluation of either of these individuals' work experience from an official who has authority to grant college-level credit for training and/or experience in the specialty at an accredited college or university which has a program for granting such credit based on an individual's training and/or work experience. Moreover, the record does not contain any independent evidence such as employment letters or affidavits from former employers that would tend to corroborate the representations relating to the claimed employment of these two individuals as listed in their respective resumes. Consequently, the employment experience of these two individuals in such positions cannot be considered as relevant experience in a specialty occupation.

The record also contains a copy of the petitioner's listing of the job opening for the proffered position. This listing specifies a college degree is required for employment in the offered position without indicating that such degree be in a specific specialty.

Counsel contends that the office of the United States Trustee should be given deference in determining the degree requirement needed for employment in the offered job. However, counsel has failed to cite any relevant legal authority that would support his contention. Additionally, counsel's reasoning is problematic when viewed in light of the statutory definition of specialty occupation. The petitioner's creation of a position with a perfunctory bachelor's degree requirement will not mask the fact that the position is not a specialty occupation. As with employment agencies as petitioners, the Service must examine the ultimate employment of the alien, and determine whether the position qualifies as a specialty occupation. Cf. Defensor v. Meissner, 201 F.3d 384 (5th Cir. 2000).

The critical element is not the title of the position or an employer's self-imposed standards, but whether the position actually requires the theoretical and practical application of a body of highly specialized knowledge, and the attainment of a bachelor's degree in the specific specialty as the minimum for entry into the occupation as required by the Act. To interpret the regulations any other way would lead to absurd results: if the Service was limited to reviewing a petitioner's self-imposed employment requirements, then any alien with a bachelor's degree could be brought into the United States to perform a menial, non-professional, or an otherwise non-specialty occupation, so long as the employer required all such employees to have bachelor's degrees. See id. at 388.

In this case, the proffered position of receipts specialist does not meet the statutory definition of specialty occupation. The position does not require the theoretical and practical application of a body of highly specialized knowledge. Therefore, even though the petitioner has indicated that it requires a bachelor's degree for employment in the offered job, such a requirement is the petitioner's preference rather than an indication that the position is a specialty occupation requiring a bachelor's degree in a specific specialty.

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.

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 previous decision dated July 6, 2001, by the Associate Commissioner dismissing the appeal is affirmed.