



DA

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: LIN-01-056-56111 Office: Nebraska Service Center Date: DEC 18 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)

PUBLIC COPY

IN BEHALF OF PETITIONER:



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

DEC1802 - 4152101

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 is a hotel with 100 employees and a gross annual income of \$11.2 million. It seeks to employ the beneficiary as an administrative officer 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.

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 duties described by the petitioner did not appear to be so complex as to require a baccalaureate degree. On appeal, counsel states, in part, that the Department of Labor (DOL) in its Occupational Outlook Handbook (Handbook) finds that more recently lodging chains have primarily been hiring persons with 4-year college degrees in the liberal arts or other fields for its managerial positions. Counsel provides an expanded description of the proposed duties, stating that such duties are so complex that a baccalaureate degree is required.

Counsel's statement on appeal 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:

* Formatting, proofreading and sending out all the correspondence with appropriate enclosures, preparing and calculating general manager's expense reports, planning and organizing general manager's schedule, travel arrangements, conference calls, assisting as needed with special projects and initiatives.

- * Managing calendars, scheduling and planning meetings, reserving conference rooms, and scheduling interviews.
- * Preparing agendas, taking meeting minutes and preparing notes for team on meeting procedures.
- * Other administrative tasks will include managing mail and email, ordering supplies, filing, coordinating new hire logistics, working with the hotel managers to trouble shoot management issues and working with various team members on revolving projects.
- * Processing invoices, time sheets, expense reports, facilities, supplies as well as travel arrangements.
- * Maintaining database information and report generation, fund performance number gathering and reporting, powerpoint presentations, large customer mailings, and special projects assigned.

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 tourism or a related field. The proffered position is primarily that of an administrative assistant. In its Handbook, 2002-2003 edition, at pages 422-423, the DOL describes the job of an administrative assistant, in part, as follows:

As technology continues to expand in offices across the Nation, the role of the office professional has greatly evolved. Office automation and organization restructuring have led secretaries and administrative assistants to assume a wider range of new responsibilities once reserved for managerial and professional staff. Many secretaries and administrative assistants now provide training and orientation for new staff, conduct research on the Internet, and operate and troubleshoot new office technologies . . .

They serve as an information manager for an office, schedule meetings and appointments, organize and maintain paper and electronic files, manage projects, conduct research, and provide information via the telephone, postal mail, and e-mail. They may also prepare correspondence and handle travel arrangements . . .

In addition, secretaries and administrative assistants increasingly use personal computers to create spreadsheets, compose correspondence, manage databases, and create reports and documents via desktop publishing, and using digital graphics--all tasks previously handled by managers and other professionals.

A review of the Handbook finds that although high school graduates with basic office skills may qualify for entry-level secretarial positions, employers increasingly require extensive knowledge of software applications, such as word processing, spreadsheets, and database management. Training ranges from high school vocational education programs that teach office skills and keyboarding to 1 and 2-year programs in office administration offered by business schools, vocational-technical institutes, and community colleges. Thus, the petitioner has not shown that a bachelor's degree or its equivalent 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 specific specialty 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.

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.