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Immigration and Naturalization Service

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OFFICE OF ADMINISTRATIVE APPEALS
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File: LIN-01-248-53652

Office: Nebraska Service Center

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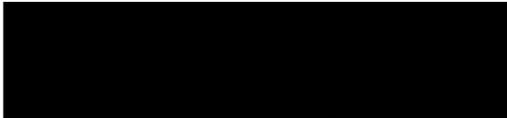
IN RE: Petitioner:
Beneficiary:



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

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 provides children and family services including domestic and international adoptions. It has 450 employees and a gross annual income of \$80 million. It seeks to employ the beneficiary as an international adoption specialist II (China) 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 petitioner had not demonstrated that a baccalaureate degree in a specialized and related area was required for the proffered position. On appeal, counsel states, in part, that the petitioner's staff members hold baccalaureate degrees in areas such as education, international relations, communications, and journalism, as there is no college degree in "international adoption." Counsel submits a letter from the petitioner's Asian programs supervisor and director of human resources who state, in part, that their program is in need of a native Chinese person who is able to fluently communicate cultural issues related to Chinese adoptions.

Counsel's statement and the additional information that the petitioner has submitted on appeal 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:

1. Communication to adoptive clients, U.S. authorities, and Chinese adoption authorities on matters of, but not limited to, related rules and regulations of both countries in the adoption of Chinese children by American families.
2. Developing and implementing comprehensive training seminars for adoptive parents prior to their travel and adoption in China. Thorough knowledge of intercultural communication issues, cross-cultural adjustment, and instructional methods in communications required.
3. Presenting China Adoption Program to the general public through frequent presentations both in U.S. and China, and in both English and Chinese.
4. Gathering information from both authorities about the process of Chinese adoptions and accurately conveying and translating those messages from English/Chinese or Chinese/English when necessary.
5. Requires excellent intercultural communication skills, college degree or graduate courses in communication studies in dealing with clients and authorities, advanced knowledge level of international adoption, bilingual ability in both English and Mandarin Chinese languages, and knowledge of international business marketing and other matters.

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 or higher in communications and journalism or a related field. The proffered position is similar to that of a social and human service assistant. In its Occupational Outlook Handbook, 2002-2003 edition, at page 159, the Department of Labor finds that while a bachelor's degree usually is not required for entry into this occupation, employers increasingly seek individuals with relevant work experience or education beyond high school. Certificates or associate degrees in subjects such as social work, human services, gerontology, or one of the behavioral or social sciences meets most employers' requirements. Furthermore, in a letter dated September 14, 2001, the petitioner's director of human resources states, in part, as follows:

More distinctively, the fact that our program currently needs a person who is a native of China and/or is able to fluently communicate cultural issues that are critical to adoptive parents' processes as well as in becoming a multi-cultural family is a very special performance requirement.

In light of such comment, it seems that the beneficiary's most important qualifications are her bilingual status and her familiarity with the Chinese culture. Such skills, however, are not learned through a baccalaureate program. 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 such as communications and journalism, for the offered position. Rather, the petitioner has employed individuals with a wide range of educational backgrounds such as education, international relations, and the Mandarin Chinese language. Third, 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.