

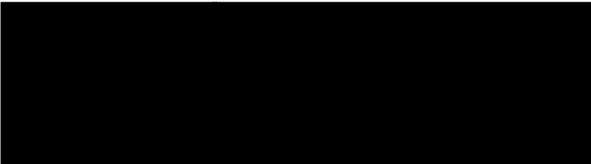


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U.S. Department of Justice  
Immigration and Naturalization Service

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OFFICE OF ADMINISTRATIVE APPEALS  
425 Eye Street N.W.  
ULLB, 3rd Floor  
Washington, D.C. 20536



File: LIN 00 058 52259 Office: NEBRASKA SERVICE CENTER Date: 15 FEB 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:



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

The petitioner is a firm that specializes in providing services for visiting Japanese business professionals with a staff of 3 employees and a projected gross annual income of \$60,000. It seeks to employ the beneficiary as a services manager for a three-year period. The director determined the petitioner had not established that the beneficiary was qualified to perform services in a specialty occupation.

On appeal, counsel submits a brief.

The regulation at 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.

Further, the regulation at 8 C.F.R. 214.2(h)(4)(iii)(A) that a petitioner could qualify the offered position as a specialty occupation if the petitioner could establish that:

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 petition is accompanied by a description of the duties of the proffered position that indicates that the beneficiary will be responsible for, among other things, making client contacts, building relationships for sales departments and for making service sales. In addition, the beneficiary will be responsible for reviewing service packages, overseeing corporate communications, and for making agreements with local vendors. The record reflects that the beneficiary has a bachelor's degree in Japanese law issued by a university in Japan. The petition is also supported by an evaluation performed by a professional evaluation service indicating that the degree is equivalent to a bachelor's degree issued by a university in the United States in a major not offered at the undergraduate level in the United States.

The director, relying on the Department of Labor's Occupational Outlook Handbook, 2000-2001 edition, determined that the proffered position was a specialty occupation and that a degree in marketing, advertising, business administration, hotel or tourism administration was required. The director then denied the petition finding that the beneficiary did not have a bachelor's degree or its equivalent in the specialty occupation.

On appeal, counsel for the petitioner argues that the beneficiary has the equivalent of a United States bachelor's degree and that the director incorrectly categorized the beneficiary's position. Finally, counsel asserts that the director failed to recognize the cultural aspects of the position.

Counsel's argument on appeal is not persuasive. The record does not establish that the beneficiary is qualified to perform services in a specialty occupation. Further, the cultural aspects of the proffered position are not a relevant factor in this proceeding.

The record reflects that the beneficiary has a bachelor's degree in an academic major not offered by a university in the United States. In addition, the record contains the beneficiary's resume that indicates that she has been employed in a variety of positions since 1982.

The regulation at 8 C.F.R. 214.2(h)(4)(iii)(D)(5) allows the Service to determine whether an alien's education and experience is the equivalent of a bachelor's degree. The regulation provides that three years of specialized training and/or work experience must be demonstrated for each year of college-level training the alien lacks. The regulation also provides that it must be clearly demonstrated that the alien's training and/or work experience included the theoretical and practical application of specialized knowledge required by the specialty occupation; that the alien's experience was gained while working with peers, supervisors, or subordinates who have a degree or its equivalent in the specialty

occupation; and that the alien has recognition of expertise in the specialty. Finally, in order to establish the alien's experience and training is equivalent to academic training, the regulation provides that one of the following types of documentation must be submitted:

1. Recognition of expertise in the specialty occupation by at least two recognized authorities in the same specialty occupation;
2. Membership in a recognized foreign or United States association or society in the specialty occupation;
3. Published material by or about the alien in professional publications, trade journals, books, or major newspapers;
4. Licensure or registration to practice the specialty occupation in a foreign country; or
5. Achievements which a recognized authority has determined to be significant contributions to the field of the specialty occupation.

While the record contains a copy of the beneficiary's resume, the resume does not describe the beneficiary's duties so that a determination can be made that the alien's experience and training is equivalent to academic training. Further, counsel has not submitted any of the five types of documentation enumerated above. As a result, it has not been shown that the beneficiary has the equivalent of a bachelor's or higher degree in a field related to the occupation. Therefore, the director's decision will not be disturbed.

In closing, while the director determined that the proffered position qualified as a specialty occupation, the record is not convincing that the proffered position does, in fact, qualify as a specialty occupation. The petitioner should be prepared to address this issue further if the matter is reopened.

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. Accordingly, the decision of the director will not be disturbed.

**ORDER:** The appeal is dismissed.