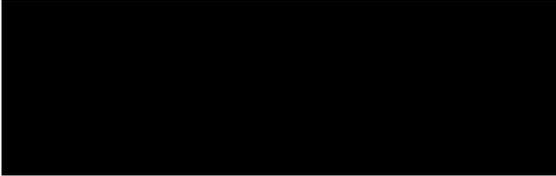




U.S. Department of Justice  
Immigration and Naturalization Service

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**PUBLIC COPY**

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



**JAN 29 2002**

File: EAC-00-089-53900 Office: Vermont Service Center Date:

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)

*identification data deleted to  
prevent clearly unwarranted  
invasion of personal privacy.*

IN BEHALF OF PETITIONER:  
[Redacted]

**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 and is now before the Associate Commissioner for Examinations on appeal. The appeal will be dismissed.

The petitioner is a direct mail marketing and production business with 120 employees and a gross annual income of \$14 million. It seeks to employ the beneficiary as a customer service assistant manager and client representative 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 proffered position is similar to an assistant account executive/manager, an occupation that qualifies as a specialty occupation.

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:

- \* Assistant Manager to prepare and give presentation to corporate clients. May propose project concepts and theme of presentation. When Manager is unavailable, must take charge of handling clients' needs and questions.

- \* Log orders by clients onto computer and assist them in choice and quality of production. To perform this job satisfactorily, the candidate must have knowledge of

production from the start to finish. The candidate must have college level of desktop publishing, understand the technical specifications, color reproduction, etc.

\* Assist Manager in planning and controlling budget, time, and human resources in each project of assigned accounts.

\* Assist Manager to maintain corporate client relationship. Sometime accompany the Manager in making presentation to clients in new projects or project development.

\* Maintain and update clients' files onto computer.

\* Gather and enter all financial data and management information of each corporate client who ordered for database management report. Then under Manager's supervision and instruction, will format the data into systematic classification.

\* Monitor the production of assigned projects to ensure quality and timely budget.

\* Internet research on assigned projects.

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 communication or a related field. The proffered position appears to combine the duties of a general manager with those of an accounting clerk. A review of the Department of Labor's Occupational Outlook Handbook (Handbook), 2000-2001 edition, at pages 50-51 finds no requirement of a baccalaureate or higher degree in a specialized area for employment as a general manager or executive. Degrees in business and in liberal arts fields appear equally welcome. In addition, certain personal qualities and participation in in-house training programs are often considered as important as a specific formal academic background.

A review of the Handbook at page 318 finds the usual requirement for a bookkeeping or accounting clerk is a high school diploma or its equivalent. A higher level of training is favored but not required, and such training is available in community colleges or schools of business. Here again, certain personal qualities and participation in in-house training programs are often considered as significant as the beneficiary's specific educational background. 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 specialized area such as management, for the offered position. Although the record indicates that eight out of the petitioner's ten customer service personnel hold bachelor's degrees, it has not been shown that such degrees were in a specialized area such as management. 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 provided excerpts from publications in support of its argument that the proffered position is a specialty occupation. In one such publication, it is stated that candidates for an assistant account manager/executive "should possess at least a bachelor's degree, but a specific major in advertising or marketing is not a prerequisite, and communications majors are highly regarded." The writer does not state that positions such as the proffered one require a baccalaureate degree in management. Rather, it appears that a wide variety of degrees would be acceptable. Such is also the case in another of the publications which indicates only that a bachelor's degree is necessary; no

specific field of study is designated. A third publication indicates that an aspiring associate account executive should have a bachelor's degree in business administration, communications, or advertising. Such publication, however, is insufficient evidence of an industry standard. The writer has not provided evidence in support of her assertions. In addition, nowhere is it indicated the number or percentage of associate account executives who hold such degrees. It is also noted that the Service is not bound by any of the publications cited by the petitioner and counsel.

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.