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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.  
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Washington, D.C. 20536



File: WAC-01-197-55133 Office: California Service Center Date: JUL 08 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: SELF-REPRESENTED

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 transformer servicing business with approximately seven employees and a gross annual income of \$650,000. It seeks to employ the beneficiary as an administrative assistant/analyst for a period of three years. The director determined the petitioner had not established that the proffered position is a specialty occupation or that the beneficiary is qualified to perform the duties of a specialty occupation.

On appeal, the petitioner 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, the petitioner's vice president states, in part, that there is a significant difference between an ordinary secretary and the proffered position. He submits an expanded description of the duties the petitioner anticipates the beneficiary would perform as an administrative assistant/analyst. The petitioner's vice president further states that the duties of the offered position are more complex than the duties handled by ordinary secretaries. He additionally submits six case examples to demonstrate that the degree requirement is common to the industry in parallel positions among similar organizations.

The petitioner'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:

1. Prepare reports including conclusions and recommendations for solution of administrative problems and customers' complaints regarding quality issues.
2. Assist in the reconstruction of the company organizational structure layout.
3. Assist marketing department personnel in gathering data or information on the market and analyze prices, sales, and methods of promotion of services.
4. Assist president in coordinating with sales department manager regarding service availability, quality issues and all of problems with parts vendors.
5. Assist in preparation of budget needs and annual reports of the company.
6. Assist executive in staff capacity by coordinating office service, such as personnel, budget preparation and control, record controls, and special management studies.
7. Study management methods to improve workflow, simplify reporting procedures, and implement cost reduction[.]
8. Analyze jobs to delimit position responsibilities for use in wage and salary adjustments, promotions, and evaluation of workflow[.]
9. Coordinate collection and preparation of operating reports, such as time-and attendance records, terminations, new hires, transfers, budget expenditures, and other statistical records.

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 the petitioner's argument that the proffered position would normally require a bachelor's degree in business administration, marketing, or management. The proffered position appears to be primarily that of an administrative assistant. A review of the Department of Labor's Occupational Outlook Handbook (Handbook), 2002-2003 edition, describes a secretary and administrative assistant position as follows:

Office automation and organizational 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. In the midst of these changes, however, their core responsibilities have remained much the same, although changed from manual to electronic--performing and coordinating an office's administrative activities, storing[,] retrieving, and integrating information for dissemination to staff and clients.

Secretaries and administrative assistants are responsible for a variety of administrative and clerical duties necessary to run an organization efficiently. 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 also may prepare correspondence and handle travel arrangements.

A review of the Handbook finds no requirement of a baccalaureate or higher degree in a specialized area for employment as an administrative assistant. High school graduates with basic office skills may qualify for entry-level administrative assistant positions. Training ranges from high school vocational education programs to 1 and 2-year programs in office administration offered by business schools, vocational-technical institutes, and community colleges. It is further noted that even if the Service were to conclude that the proffered position is that of an "administrative services and facility manager," a position whose duties include overseeing an organization's support services, the Handbook finds no requirement of a baccalaureate or higher degree in a specialized area for that occupation either. Many employers prefer an associate's degree in business or management, although a high

school diploma may suffice when combined with appropriate experience. For technical activities, postsecondary technical training is preferred. Managers of highly complex services, such as contract administration, generally need at least a bachelor's degree in business, human resources, or finance. It is noted that the petitioner has not demonstrated that the proposed position is that of a manager of highly complex services. Thus, the petitioner has not shown that a bachelor's degree or its equivalent is required for the position being offered to the beneficiary. accounting or a related field.

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 business administration, marketing, or management, for the offered position. Third, although the petitioner has presented various Service approvals to demonstrate that the proffered position is a specialty occupation, 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.

It is also noted that with respect to the petitioner's objection to denial of this petition in view of the approval of a similar petition in the past, the Associate Commissioner, through the Administrative Appeals Office, is not bound to follow the contradictory decision of a service center. Louisiana Philharmonic Orchestra v. INS, 2000 WL 282785 (E.D.La. 2000), aff'd, 248 F.3d 1139 (5th Cir. 2001), cert. denied, 122 S. Ct.51 (U.S. 2001).

As the petitioner has not sufficiently established that the proffered position is a specialty occupation, the beneficiary's qualifications need not be examined further in this proceeding.

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.