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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: WAC-01-260-55110 Office: California Service Center

Date: JUN 24 2002

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)

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,
IMMIGRATION AND NATURALIZATION SERVICE

Robert P. Wiemann, Director
Administrative Appeals Office

DISCUSSION: The nonimmigrant visa petition was denied by the Director, California Service Center, and is now before the Associate Commissioner for Examinations on appeal. The appeal will be dismissed.

The petitioner is an independently owned real estate company with 20 employees and a gross annual income of \$725,058. It seeks to employ the beneficiary as an administrative services manager 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 and additional documentation.

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 proffered position does not require a baccalaureate degree in a specialized area.

On appeal, counsel asserts that the offered position is a highly complex one which needs to be filled by a "professionally educated person who is multilingual and has specialized knowledge to direct the operations of the company for management."

Counsel's argument on appeal is noted. The Service does not rely solely on the title of a position in determining whether that position qualifies as a specialty occupation. The Service considers the specific duties of the offered position combined with the nature of the petitioning entity's business operations. The petitioner, Nevada Real Estate Corporation, is engaged in the business of real estate sales, property management, tax consulting, and document preparation. Counsel states on appeal that a large portion of the firm's clientele are wealthy non-resident Chinese nationals who seek to invest in real estate in the Las Vegas area. The petitioner has previously stated:

The rapid growth of the Las Vegas valley has led to an expansion in the number of realty companies throughout

the valley. This expansion has presented a unique challenge for real estate companies serving the Asian community, as there is a shortage of qualified, bilingual (Chinese-English) professionals seeking positions in real estate. Additionally, due to the educational background in order to maintain credibility in a management position within the Asian culture. [sic] This is especially true if the management position entails the supervision of other Asians, especially when an Asian female manager is responsible for overseeing positions held by Asian males, all of whom have baccalaureate degrees or greater.

The petitioner wishes to employ the beneficiary as its administrative services manager. The petitioner states that the holder of the position being offered must be a professionally educated person who is bilingual and who has the ability to direct the operations of the company on a day-to-day basis in the absence of the company's owner, Judith Sullivan.

In the initial I-129 petition, the petitioner described the duties of the offered position as follows:

[The beneficiary] will plan, direct or coordinate supportive services of our organization, such as accounting

The petitioner subsequently provided the following, expanded description of the duties of the offered position:

1. Planning: To be involved annually with the owners and management team in strategic planning which include establishing goals for the company, determine the short term and long term income projects. Assist the management team in setting up the target markets and company needs for the coming financial year. Assist the setting up of profit margin goals and determine the investment plan for the company.
2. Organizing: Assist the management team in determining what activities need to be completed to accomplish these goals. Review all the marketing tools. Coordinate and supervise staff performance of the marketing projects. Serve as the designated person, in lieu of the owners in solving day to day problems associated [with] accomplishment [of] the stated goals.

3. Leadership: Insuring that the right people are on the job with appropriate skills, and motivating them to levels of high productivity. Provide and plan training programs and continuing education for the employees. Make sure all the employees have a safe and fair working environment. To stay up dated and follows [sic] the labor laws, such as but not limited to: Civil Rights Act, laws affecting discrimination practices, EEO charge, OSHA, sexual harassment issues. Oversee and provide training for the employees about the violation of those laws. Having authority to hire or terminate employee[s].
4. Controlling: Monitoring activities to ensure those goals are met. Making sure the company is financially healthy. Supervise the tax preparation for the company, clients and real estate investors. Issuing checks to the employees and paying monthly company expenses. Prepare all the financial statements monthly. The position reports directly to the owner on the company financial issue.

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.

Counsel asserts that the Department of Labor (DOL) has determined in the new online version of its Dictionary of Occupational Titles, O*NET, that the position of administrative services manager requires a bachelor's degree in a specialized area. However, a reference in the DOL's O*NET, standing alone, is not enough to establish that an occupation is a specialty occupation. The O*NET classification system and its categorization of an occupation as "professional and kindred" are not directly related to membership in a profession or specialty occupation as defined in immigration law. In the O*NET listing of occupations, any given subject area within the professions contains nonprofessional work, as well as work within the professions. For example, the JobZone portion of the O*Net website groups the position of administrative services manager with occupations such as accountant, chef and head cook, computer programmer, historian, pharmacist, and police detective. It is noted that the DOL describes the educational requirements of the occupations in this grouping as follows:

Most of these occupations require a four-year bachelor's degree, but some do not. (Emphasis added.)

Employees in these occupations usually need several years of work-related experience, on-the-job training, and/or vocational training.

Clearly, this grouping includes some jobs which require a bachelor's degree and others which do not. Furthermore, JobZone does not specify that a bachelor's degree in a specific, specialized area is required for any of the jobs in this grouping. Therefore, counsel's argument that the DOL has determined in its O*NET website that the offered position qualifies as a specialty occupation is not persuasive.

The Service often looks to the DOL's Occupational Outlook Handbook (Handbook) when determining whether a job qualifies as a specialty occupation. The latter publication is given considerable weight (certainly much more than O*NET) in determining whether an occupation qualifies as a specialty occupation. This is because the Handbook provides specific and detailed information regarding the educational and other requirements for occupations.

According to the DOL's Handbook, 2002-2003 edition, at page 24, educational requirements for administrative services managers vary widely. In small organizations, experience may be the only requirement needed to enter a position as administrative services manager. When an opening in administrative services management occurs, the office manager may be promoted to the position based on past performance. Whatever the manager's educational background, it must be accompanied by related work experience reflecting demonstrated ability. Good communication skills and an ability to

establish effective working relationships with many different people are also important.

Counsel on appeal cites the Handbook at page 25 as follows:

For managers of highly complex services, such as contract administration, a bachelor's degree, preferably in business administration or finance, is usually required. The curriculum should include courses in office technology, accounting, business mathematics, computer applications and business law. Similarly, facilities managers often need a bachelor's degree in engineering, architecture, or business administration. Some administrative service managers have advanced degrees.

However, the offered position does not involve the management of a highly complex service such as contract administration or facilities management. The duties of the offered position do not appear to be any more complex than those normally associated with the management of a real estate and property management business.

The petitioner has submitted advisory opinion letters from [REDACTED] Management Consultant for Alexander, Scott & Associates; [REDACTED] Bianne Bilderback, Adjunct Professor of Business, Community College of Southern Nevada; [REDACTED] Professor and Chair, Department of Food and Beverage Management, University of Nevada, Las Vegas; Professor Mohsen Azizzoltani, Food and Beverage Management Department, University of Nevada, Las Vegas; and [REDACTED] Former Department Chair, Business Management, Community College of Southern Nevada. [REDACTED] states that the proffered position requires the services of an individual with a bachelor's degree in business administration or its equivalent. She further states that the holder of the position must be able to speak Chinese and understand Chinese culture since the clientele of Nevada Real Estate Corp. are of Chinese origin and speak little English.

[REDACTED] states:

[T]here is a shortage of qualified, bi-lingual (Chinese-English) professionals seeking positions in real estate. Additionally, due to the prevalent culture based perceptions, a young Chinese woman must have a strong educational background in order to maintain credibility in a management position within the Asian culture. This is especially true if the management position entails the supervision of other Asians, especially when an Asian female manager is responsible for overseeing positions held by Asian males, all [of whom] have baccalaureate degrees or greater.

[REDACTED] further states that the requirements of the administrative services manager position qualify the position as a specialty occupation.

[REDACTED] states that the offered position is a specialty occupation in that it requires a great deal of formal education as well as superior management skills that are usually learned in a hospitality baccalaureate level degree program.

Professor Azizoltani states:

After reviewing [REDACTED] job title, job description, and duties, I personally believe that it is almost essential for anyone, with similar responsibilities as [REDACTED] to have a bachelor's degree from a four year school in a related field.

[REDACTED] states:

I have reviewed the Nevada Real Estate Corporation Office Manual's job description for the position of **Administrative Services Manager**. In my judgment, successfully fulfilling the responsibilities of that job requires a well-developed awareness, understanding and set of managerial skills . . . A Bachelor's Degree is a wise and appropriate minimum.

On appeal, counsel submits an advisory opinion letter from Professor James Cross, Department of Marketing, University of Nevada, Las Vegas. Professor Cross states, "I would think that the position offered is so complex and unique that it could only be fil[l]ed by a highly trained and educated person with special skills. It appears that [REDACTED] meets these qualifications." None of the authors has provided any credentials setting forth his or her ability to give expert testimony regarding the question of whether the proffered position qualifies as a specialty occupation.

Additionally, while the petitioner requires that its administrative services manager speak Chinese and understand Chinese culture, there is no evidence in the record to show that the knowledge required to perform this aspect of the job is usually associated with the attainment of a baccalaureate or higher degree in Chinese language and culture. The beneficiary's transcript from the University of Nevada, Las Vegas, does not indicate that she took any courses in Chinese language or Chinese culture during her studies at that institution. Accordingly, the petitioner has failed to establish that a baccalaureate degree in a specialized area is the normal minimum requirement for entry into the occupation.

While the petitioner states that it requires a minimum of a bachelor's degree in business or its equivalent for the position being offered, the petitioner has not submitted any documentary evidence to demonstrate that it requires a bachelor's degree in a specific, specialized area as part of the hiring process, such as copies of previous job announcements or public advertising for open positions.

On appeal, counsel states that all of the company's marketing and real estate sales personnel hold baccalaureate or higher degrees. In support of this statement, counsel submits photocopies of five diplomas: a Bachelor of Science degree in Hotel Administration from the University of Nevada, Las Vegas belonging to Tsaio Fang Nieh; a Master of Architecture degree from the University of Minnesota belong to Wayne Wu; a Bachelor of Science degree in Hotel Administration from the University of Nevada, Las Vegas, belonging to Minhua Lin; a Master of Business Administration degree from the University of Nevada, Las Vegas belonging to Hairang Zhong; and a Bachelor of Business Administration degree from National Taiwan University belonging to Lin Sho Hwa. Although it appears that the petitioner prefers to employ individuals with a bachelor's degree, the evidence of record does not support a finding that the petitioner requires a bachelor's degree in a specific, specialized area for the position of administrative services manager.

It is noted that the record contains a copy of the petitioner's proposed organization chart for 2001. According to the chart, Mark Gaughan is the manager of the company's commercial division; Davis Zhong is the manager of the company's residential division; and the beneficiary would be the manager of the business service division. The chart shows the proffered position as parallel to that of the commercial division manager and residential division manager, not in authority over those managers in a direct line of authority from the owner of the company. According to the chart, the holder of the proffered position would supervise Alice Burns, who is identified as an "administrative person." There is no indication in the organization chart that the beneficiary, as administrative services manager, would supervise the members of the marketing staff.

The petitioner has not shown 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 with a bachelor's degree in a specialized area in parallel positions. It is noted that the petitioner has submitted letters from an unidentified official (signature illegible) of Ideal Realty & Management, Inc. and from Mei-Fan Hung, Employment Consultant for Sierra Health Services, Inc. Both authors state that it is common in the Las Vegas area for realty companies dealing with Chinese clientele to require a bachelor's degree for similar positions. However, two letters do not establish an industry standard.

Furthermore, the authors do not indicate that realty companies in the Las Vegas area routinely require a bachelor's degree in a specific, specialized area for similar positions.

Counsel argues on appeal that a position as a general manager has been found to qualify as a specialty occupation in cases where the duties are much more complex and unique than those usually performed by a general manager. In support of his argument, counsel cites Arctic Catering, Inc. v. Thornburgh, 769 F.Supp. 1167 (D. Colo. 1991); Hong Kong T.V. Video Program, Inc. v. Ilchert, 685 F. Supp. 712, 7124; and Tapis International v. INS, 94 F. Supp. 2d 172 (2000). However, the facts in those cases are not parallel to those in this case. Hong Kong T.V. Video Program, Inc. v. Ilchert dealt narrowly with membership in the professions, not with membership in a specialty occupation. While these terms are similar, they are not synonymous. The term "specialty occupation" is specifically defined in section 214(i) of the Act. That statutory language effectively supersedes the aforementioned decisions.

The position in Arctic Catering Inc. v. Thornburgh is that of a manager for a firm which caters to the living needs of workers at geophysical drilling and mining camps in remote regions of the world. The offered position in Tapis International was that of an interior design showroom manager, an unusual position for which there is no specific degree available. In this case, as stated above, the duties of the offered position do not appear to be more specialized or complex than those normally performed by an administrative services manager in a real estate and property management business. Thus the petitioner has not shown that the duties of the offered position are so specialized and complex that the knowledge required to perform the duties is usually associated with the attainment of a baccalaureate or higher degree in a specialized area.

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.