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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-00-075-51566 Office: California Service Center

Date: MAY 14 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)

PUBLIC COPY

IN BEHALF OF PETITIONER: Self-represented

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 is a supplier of construction material with two employees and no stated gross annual income. It seeks to employ the beneficiary as an administrative officer for a period of two years and ten months. The director determined the petitioner had not established that the proffered position is a specialty occupation.

On appeal, the petitioner's owner 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 or higher degree is the normal requirement for employment in the proffered position. On appeal, the petitioner's owner argues that because it is a new business and because local economic conditions are unstable (weak), the offered job is a specialty occupation with a minimum entry level requirement of at least a baccalaureate degree in business administration. The petitioner's owner asserts that the nature of the proffered position's duties is so complex and specialized as to mandate the stated degree requirement to perform such duties.

The statements of the petitioner's owner 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 an exhibit which accompanied the initial I-129 petition, the petitioner's owner described the duties of the offered position as follows:

Aids executive in staff capacity by coordinating office services, such as personnel, budget preparation and control, housekeeping, records control, and special mgmt. studies; studies mgmt. methods in order to improve

workflow, simplify reporting procedures, or implement cost reductions in purchasing of demanded materials. Analyzes unit operating practices, such as record keeping systems, personnel and budgetary requirements, and performance standards to create new systems or revise est. procedures. Analyze jobs to delimit position responsibilities for use in salary and wage adjustments, promotions, and evaluation of workflow. Studies methods of improving work measurements or performance standards. Coordinates collection and prep. of operating reports, such as time-and-attendance records, terminations, new hires, transfers, budget expenditures, and statistical records of performance data. Prepare reports including conclusions and recommendations for solution of administrative problems. Issues and interprets operating policies. Reviews and answers correspondence, including client proposals. May assist in preparation of budget needs and annual reports of organization. May interview job applicants, conduct orientation of new employees, and plan training programs to familiarize employees with construction/industrial materials. May direct services, such as maintenance. repair, supplies, mail and client vendor files. May compile, store, and retrieve mgmt. data, using computer.

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.

The proffered position appears to combine the duties of an office manager with those of an administrative services manager. A review

of the Department of Labor's Occupational Outlook Handbook (Handbook), 2002-2003 edition, finds no requirement of a baccalaureate or higher degree in a specialized area for employment as an office manager. Some office managers hold a baccalaureate degree while others hold an associate (two-year) degree or no degree at all.

Similarly, a review of the Handbook also finds no requirement of a baccalaureate degree in a specialized area for employment as an administrative services manager. Some administrative services managers hold baccalaureate degrees in a variety of fields of study while others hold an associate degree or high school diploma. The Handbook states:

In small organizations, experience may be the only requirement needed to enter a position as an office manager.

In view of the foregoing, it is concluded that the petitioner has not demonstrated that a bachelor's degree or its equivalent is required for the position being offered to the beneficiary.

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 or a related field for the offered position. While the petitioner's owner infers that this is the result of it being a newly incorporated business, the record does not contain 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.

The assertion by the petitioner's owner that the nature of the proposed duties is so specialized and complex that the knowledge required to perform such duties is usually associated with the attainment of at least a baccalaureate degree in business administration is not persuasive. As noted above, an analysis of the specific duties of the offered position in conjunction with the petitioner's business operations demonstrates that the proffered position combines the duties of an office manager with those of an administrative services manager. The Handbook does not provide any indication that a baccalaureate degree in a specialized area is required for employment as either an office manager or administrative services manager. While the petitioner's owner has objected to the Service's reliance upon the Handbook as a source of authority in these proceedings, he has failed to either cite any alternate authority or provide any independent evidence which would tend to support his assertions. Consequently, the petitioner has failed to establish 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 in a specific specialty.

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.