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U.S. Department of Justice

Immigration and Naturalization Service

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OFFICE OF ADMINISTRATIVE APPEALS
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File: LIN-01-190-52656 Office: Nebraska Service Center

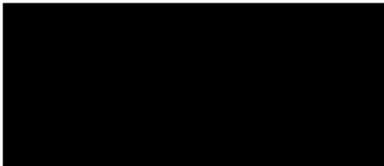
Date: OCT 10 2002

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

The petitioner is an electrical sign installation and repair business with 16 employees and an approximate gross annual income of \$2.4 million. The petitioner seeks to employ the beneficiary as its general 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 statement.

Section 214(i)(1) of the Act, 8 U.S.C. 1184(i)(1), defines the term "specialty occupation" as an occupation that requires:

(A) theoretical and practical application of a body of highly specialized knowledge, and

(B) attainment of a bachelor's or higher degree in the specific specialty (or its equivalent) as a minimum for entry into the occupation in the United States.

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 determined that the petitioner had failed to show that a baccalaureate degree in a specific field of study is a minimum requirement for the proffered position.

On appeal, counsel asserts that a bachelor's degree or higher is the minimum requirement for entry into the occupation. Counsel further asserts that the employer requires a bachelor's degree for the proffered position.

Counsel's assertions on appeal are 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. In the initial I-129 petition, the petitioner described the duties of the offered position as follows:

Checking purchases, expenditures, payroll, scheduling, supervising personnel, interacting with customers, and coordinating business operations.

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.

In these proceedings, the duties of the position are dispositive and not the job title. Although the title of the offered position is general manager, the position most closely resembles that of an administrative services manager as that job is described by the Department of Labor (DOL) in its Occupational Outlook Handbook (Handbook), 2002-2003 edition, at pages 24-26. According to the Handbook, administrative services managers coordinate and direct support services that allow organizations to operate efficiently, such as secretarial and reception, administration, payroll, materials scheduling and distributing, supply, and disposal. In small organizations a single administrative services manager may oversee all support services.

A review of the Handbook at pages 25-26 finds no requirement of a bachelor's degree in a specific field of study for employment as an administrative services manager. Educational requirements for administrative services managers vary widely, depending on the size

and complexity of the organization. In small organizations, experience may be the only requirement needed to enter a position as an administrative services manager. 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. Thus, the petitioner has not shown that a bachelor's degree in a specific field of study is the minimum requirement for entry into the occupation.

The petitioner has not submitted any evidence to show that the degree requirement is common to the industry in parallel positions among similar organizations.

The petitioner asserts that it normally requires a bachelor's degree for the proffered position. In support of this assertion, the petitioner provides a list of its previous general managers and their educational credentials. All four of these individuals have a bachelor's degree. One has a bachelor's degree in business administration and one has a bachelor's degree in political science. No information has been provided regarding the area of specialization of the other two individuals.

The petitioner further asserts that it requires a bachelor's degree as part of the hiring process. In support of this assertion, the petitioner submits copies of four job advertisements for the proffered position which appeared in local newspapers on January 14 and January 28, 2001. Each ad states that a bachelor's degree is required for the position, but none of the ads specifies that the degree must be in a specific field of study. It appears that the petitioner requires a bachelor's degree for the offered position, but the record does not contain any evidence to show that a bachelor's degree in a specific field of study is a requirement for the job.

Finally, the petitioner has not demonstrated that the specific duties of the proffered position are so specialized and complex that knowledge required to perform the duties is usually associated with the attainment of a baccalaureate or higher degree.

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.