



DA

U.S. Department of Justice
Immigration and Naturalization Service

Identifying cases to
**prevent clearly unwarranted
invasion of personal privacy**

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



File: LIN-02-127-53787 Office: Nebraska Service Center

Date: OCT 30 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 international service organization with over 400 members and an annual budget in excess of \$65 million. It seeks to employ the beneficiary as its president-elect/president for a period of three years. The director determined the petitioner had not established that the proffered position is a specialty occupation.

On appeal, the petitioner submits a brief and supporting documentation.

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.

The term "specialty occupation" is defined at 8 C.F.R. 214.2(h)(4)(ii) 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 not shown that its previous presidents have held a baccalaureate degree in a specific specialty or that the degree requirement is common for top leadership positions among other large international service organizations.

On appeal, counsel argues that the petitioner normally requires a bachelor's degree or its equivalent for the position and also that such requirement is common for the office of president among large service organizations.

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 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 beneficiary in the offered position as follows:

In his term as President-Elect/President, [the beneficiary] will direct, lead and manage Rotary International in an executive capacity worldwide and serve as the principal spokesperson for our organization worldwide. Because of all of our international collaborations, it is essential that the President-Elect/President of the organization have extensive knowledge of the international laws and the laws of the individual countries that could impact the service work that we are attempting to provide. He will meet with other associations and government officials from around the world to plan goals and service activities. In addition, as President-Elect/President, [the beneficiary] will preside at association conventions and meetings and report regularly to the Rotary International Board of Directors. This requires that he be well-versed in parliamentary and rule-making procedures. The President-

Elect/President is a senior executive position that involves extensive management and decision making in connection with our worldwide organization.

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 assertion that a baccalaureate degree in a specific specialty is the normal minimum requirement for the position of president of an international service organization. The proffered position most closely resembles that of a top executive as that job is described by the Department of Labor (DOL) in its Occupational Outlook Handbook (Handbook), 2002-2003 edition. A review of the Handbook at pages 87-88 finds no requirement of a bachelor's degree in a specific specialty for a top executive position. The formal education and experience of top executives varies as widely as the nature of their responsibilities. Many top executives have a bachelor's or higher degree in business administration or liberal arts. Personal qualities such as the ability to communicate clearly and persuasively, leadership, self-confidence, motivation, decisiveness, flexibility, and determination are also important.

Counsel asserts on appeal that the Handbook indicates that most top executives have degrees related to the area of the organization they are overseeing. Since Rotary International (RI) is an international service organization which maintains a wide variety of service programs and initiatives around the world, there is no single area of service that the president of Rotary International oversees. The most important criterion for this position is not whether the president holds a baccalaureate degree in a specific specialty or its equivalent, but rather whether the president is a successful manager or executive with demonstrated leadership ability. Thus, the petitioner has not shown that a baccalaureate degree in a specific specialty is the normal minimum requirement for entry into the occupation.

Second, the petitioner has not shown that Rotary International normally requires that its presidents have a baccalaureate degree in a specific specialty or its equivalent. Counsel argues on appeal that the Service failed to take into account the professional standing required for membership in Rotary International. However, a review of the constitution of Rotary International finds no requirement of a baccalaureate degree in a specific specialty for membership in that organization. The constitution sets forth the requirements for membership in RI at Article V as follows:

Section 1. -- *How Constituted.* The membership of RI shall consist of clubs which continue to perform the obligations as set forth in this constitution and the bylaws.

Section 2 -- *Composition of Clubs.*

- (a) A club shall be composed of active members who are adult persons of good character and good business and professional reputation,
 - (i) engaged as a proprietor, partner, corporate officer, or manager of any worthy and recognized business or profession; or
 - (ii) hold an important position in any worthy and recognized business or profession or any branch or agency thereof and have executive capacity with discretionary authority; or
 - (iii) having retired from any position listed in subsection (i) or (ii) of this subsection. . .

The officers of Rotary International are elected at the annual convention. Section 6.050.2 describes the qualifications of the President of Rotary International as follows:

A candidate for the office of president of RI shall have served a full term as a director of RI prior to being proposed as such candidate. . .

Although the members of Rotary International must be successful managers with demonstrated leadership ability and the president must have served one full term on RI's Board of Directors, there is no stated requirement of a baccalaureate degree in a specific specialty or its equivalent for membership in RI or for election to the office of president of that organization.

Counsel further asserts that the Service failed to consider the qualifications of past presidents of Rotary International in light of the "equivalence to a degree" standard as set forth in the regulations at 8 C.F.R. 214.2(h)(4)(iii)(D)(5). The regulations state that, for purposes of determining the equivalent of the degree required by the specialty occupation, three years of specialized training and/or work experience must be demonstrated for each year of college-level training the beneficiary of an H-1B petition lacks. The record contains a list of the previous presidents of Rotary International and their credentials. A review of this list reveals that four of these individuals have a law degree; one has a business degree; two have engineering degrees; one has a degree in architecture; the remaining individuals have general degrees and/or many years of business experience. While the past presidents of RI have either a baccalaureate degree or the equivalent in work experience, the area of specialty and the type of work experience of these individuals varies widely. Therefore, it cannot be concluded that the qualifications of the past presidents demonstrates equivalence to a bachelor's degree in a *specific specialty*.

Third, the petitioner has not shown that the degree requirement is common to the industry in parallel positions among similar organizations. Counsel has previously submitted letters from [REDACTED] Executive Administrator and Secretary of The [REDACTED] and [REDACTED]

Executive Director of [REDACTED] states, "I am fully qualified to state my belief that the president of an international service organization ideally must have, at minimum, a bachelor's degree in a professional field or the equivalent through extensive professional experience." [REDACTED] states, "I. . . . can state without hesitation that the president of an international service organization ideally should have, at minimum, a bachelor's degree in a professional field or the equivalent through professional experience." However, neither of these individuals states that the degree requirement is an industry standard in parallel positions among similar organizations. Rather, they state, respectively, that such position "ideally must" have a bachelor's degree in a professional field and "ideally should have, at minimum, a bachelor's degree in a professional field." Furthermore, neither individual states that international service organizations typically require that their presidents have a bachelor's degree in a specific specialty or the equivalent.

Finally, the petitioner has not shown that the duties of the proffered position are so specialized and complex that the knowledge required to perform the duties is normally associated with the attainment of a baccalaureate degree in a specific specialty. According to the constitution of [REDACTED] the president is the principal person to speak on behalf of the organization. He presides at all conventions and meetings of the board, reviews the work of the general secretary and reports to the board at least annually an evaluation of the performance of the general secretary and the secretariat. The duties of this position require an individual who is skilled at public speaking, liaison, networking, management, and leadership. The knowledge required to perform these duties is not associated with the attainment of a baccalaureate degree in any specific specialty. As stated above, the position of president can be and has been held by individuals with a variety of baccalaureate degrees and work experience.

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.