

U.S. Department of Homeland Security

Bureau of Citizenship and Immigration Services

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ADMINISTRATIVE APPEALS OFFICE  
425 Eye Street N.W.  
BCIS, AAO, 20 Mass, 3/F  
Washington, D.C. 20536

JUL 21 2003

File: SRC-02-029-55060

Office: TEXAS SERVICE CENTER

Date:

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)

ON BEHALF OF PETITIONER:

Identifying data deleted to  
prevent clearly unwarranted  
invasion of personal privacy

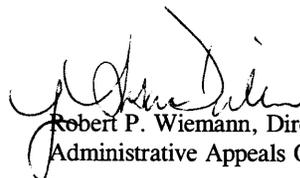
INSTRUCTIONS:

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 Bureau of Citizenship and Immigration Services (Bureau) 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.

  
Robert P. Wiemann, Director  
Administrative Appeals Office

**DISCUSSION:** The nonimmigrant visa petition was denied by the director and is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed.

The petitioner is a construction company with 60 employees and a gross annual income of \$8 million. It seeks to employ the beneficiary as an administration communications coordinator 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.

Section 101(a)(15)(H)(i)(b) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1101(a)(15)(H)(i)(b), provides in part for nonimmigrant classification to qualified aliens who are coming temporarily to the United States to perform services in a specialty occupation. Section 214(i)(1) of the Act, 8 U.S.C. § 1184(i)(1), defines a "specialty occupation" as an occupation that requires theoretical and practical application of a body of highly specialized knowledge, and 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.

Pursuant to section 214(i)(2) of the Act, 8 U.S.C. § 1184(i)(2), to qualify as an alien coming to perform services in a specialty occupation the beneficiary must hold full state licensure to practice in the occupation, if such licensure is required to practice in the occupation. In addition, the beneficiary must have completed the degree required for the occupation, or have experience in the specialty equivalent to the completion of such degree and recognition of expertise in the specialty through progressively responsible positions relating to the specialty.

The director denied the petition because the petitioner had not demonstrated that a baccalaureate degree is required for the proffered position. On appeal, counsel states, in part, that the petitioner has re-evaluated the proffered position, and has amended it to that of a manager of human resources, a position that requires a baccalaureate degree. Counsel submits a new certified labor condition application for a human resources manager and an expanded description of the duties the petitioner anticipates the beneficiary would perform as a human resources manager.

Counsel's statement on appeal is not persuasive. The new labor condition application and counsel's statement that the proffered

position is now a human resources manager are noted. The record, however, contains no evidence that an amended petition with fee has been filed. As such, for the purpose of this proceeding, the proffered position will be that of an administrative communications coordinator, as reflected on the petition.

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

[T]ranslating job duties and locations, answering all Spanish incoming phone calls, teaching English and Spanish to all who need to learn for communication purposes.

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 Bureau does not agree with counsel's assertion that the proffered position would normally require a bachelor's degree in a specific specialty. The proffered position is

primarily that of an administrative assistant with Spanish translation duties. In its *Occupational Outlook Handbook*, 2002-2003 edition, at pages 423-424, the DOL finds that although high school graduates with basic office skills may qualify for entry-level secretarial positions, employers increasingly require extensive knowledge of software applications, such as word processing, spreadsheets, and database management. Training ranges from high school vocational education programs that teach office skills and keyboarding to 1 and 2-year programs in office administration offered by business schools, vocational-technical institutes, and community colleges.

The petitioner also has not established that the beneficiary's duties as an interpreter/translator are of such complexity that a baccalaureate degree in a specific specialty, as distinguished from familiarity with the English and Spanish languages or a less extensive education, is necessary for the successful completion of its duties. Thus, the petitioner has not shown that a bachelor's degree or its equivalent is required for the position being offered to the beneficiary.

Second, the petitioner has not demonstrated that it has, in the past, required the services of individuals with baccalaureate or higher degrees in a specific specialty for the offered position. Third, the petitioner did not present any documentary evidence that a baccalaureate degree in a specific specialty or its equivalent is common to the industry in parallel positions among organizations similar to the petitioner. 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.

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.

DA

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ADMINISTRATIVE APPEALS OFFICE  
425 Eye Street, N.W.  
BCIS, AAO, 20 MASS, 3/F  
Washington, DC 20536

[REDACTED]

File: WAC 01 051 51478 Office: CALIFORNIA SERVICE CENTER

Date: **AUG 18 2003**

IN RE: Petitioner:  
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)

ON BEHALF OF PETITIONER:

[REDACTED]

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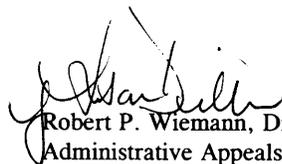
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Any motion must be filed with the office that originally decided your case along with a fee of \$110 as required under 8 C.F.R. § 103.7.

  
Robert P. Wiemann, Director  
Administrative Appeals Office

**DISCUSSION:** The nonimmigrant visa petition was denied by the Acting Director, California Service Center, and the matter is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed.

The petitioner is a Los Angeles manufacturer and distributor of custom kitchen cabinets. It has 30 employees and a gross annual income of \$8 million dollars. It seeks to temporarily employ the beneficiary as a financial analyst for a period of three years. The Acting Director determined that the petitioner had not established that the beneficiary was qualified to perform the duties of the proffered position.

On appeal, counsel submits that the combination of the beneficiary's seventeen years of experience as an officer manager and her vocational high school diploma amounts to the equivalent of a baccalaureate degree in the required specialty field.

Section 214(i)(1) of the Immigration and Nationality Act (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 field 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.

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 described the beneficiary's proposed job duties thusly:

(P)reparing and reviewing budgets, financial forecasts, and cash flow schedules, researching, analyzing, and developing business performance plans and models, sourcing and structuring financing for such plans and models, reviewing sales data with respect to front/back end results, direct marketing initiatives, profit risks, and market segments, reviewing the company's financial structure, and calculating growth rates.

The title the petitioner has given these duties is that of "financial analyst". According to the Department of Labor's *Occupational Outlook Handbook* (Handbook) 2002-2003 edition at page 50, financial analysts assess the economic performance of companies and industries for firms and institutions with money to invest. The duties described by the petitioner appear to better fit under the Handbook's heading "financial managers" at page 52. According to the Handbook, financial managers oversee the preparation of financial reports, direct investment activities, and implement cash management strategies. The Handbook points out that a bachelor's degree in finance, accounting, or a related field is the minimum academic preparation to perform the tasks of a financial manager. Accordingly, whether the proffered position is a specialty occupation is not an issue in this case.

The issue here is whether the beneficiary's education and work experience qualify her to perform this specialty occupation. Pursuant to 8 C.F.R. § 214.2(h)(4)(iii)(C), to qualify to perform services in a specialty occupation, the alien must meet one of the following criteria:

1. Hold a United States baccalaureate or higher degree required by the specialty occupation from an accredited college or university;

2. Hold a foreign degree determined to be equivalent to a United States baccalaureate or higher degree required by the specialty occupation from an accredited college or university;

3. Hold an unrestricted State license, registration, or certification which authorizes him or her to fully practice the specialty occupation and be immediately engaged in that

specialty in the state of intended employment; or

4. Have education, specialized training, and/or progressively responsible experience that is equivalent to completion of a United States baccalaureate or higher degree in the specialty occupation and have recognition of expertise in the specialty through progressively responsible positions directly related to the specialty.

Upon review of the record, it is determined that the beneficiary's qualifications to perform the specialty occupation do not fall within §214.2(h)(4)(iii)(C)(1), (2), or (3), therefore her education and experience will be considered in light of §214.2(h)(4)(iii)(C)(4).

With regard to judging whether practical experience or specialized training is equivalent to the completion of a college degree, 8 C.F.R. § 214.2(h)(4)(iii)(D) states:

. . . equivalence to completion of a United States baccalaureate or higher degree shall mean achievement of a level of knowledge, competence, and practice in the specialty occupation that has been determined to be equal to that of an individual who has a baccalaureate or higher degree in the specialty and shall be determined by one or more of the following:

- (1) An evaluation from an official who has authority to grant college-level credit for training and/or experience in the specialty at an accredited college or university which has a program for granting such credit based on an individual's training and/or work experience;
- (2) The results of recognized college-level equivalency examinations or special credit programs, such as the College Level Examination Program (CLEP), or Program on Noncollegiate Sponsored Instruction (PONSI);
- (3) An evaluation of education by a reliable credentials evaluation service which specializes in evaluating foreign educational credentials;
- (4) Evidence of certification or registration from a nationally-recognized professional association or society for the specialty that is known to grant certification or registration to persons in the occupational specialty who have achieved a certain level of competence in the specialty;
- (5) A determination by the Service that the equivalent of the degree required by the specialty occupation has been acquired through a combination of education, specialized training, and/or work experience in areas related to the specialty and that the alien has achieved recognition of expertise in the specialty occupation as a result of such

training and experience. For purposes of determining equivalency to a baccalaureate degree in the specialty, three years of specialized training and/or work experience must be demonstrated for each year of college level training the alien lacks. For equivalence to an advanced (or Masters) degree, the alien must have a baccalaureate degree followed by at least five years of experience in the specialty. If required by a specialty, the alien must hold a Doctorate degree or its foreign equivalent. It must be clearly demonstrated that the alien's training and/or work experience included the theoretical and practical application of specialized knowledge required by the specialty occupation; that the alien's experience was gained while working with peers, supervisors, or subordinates who have a degree or its equivalent in the specialty occupation; and that the alien has recognition of expertise in the specialty evidenced by at least one type of documentation such as:

- (i) Recognition of expertise in the specialty occupation by at least two recognized authorities in the same specialty occupation;
- (ii) Membership in a recognized foreign or United States association or society in the specialty occupation;
- (iii) Published material by or about the alien in professional publications, trade journals, books, or major newspapers;
- (iv) Licensure or registration to practice the specialty occupation in a foreign country; or
- (v) Achievements which a recognized authority has determined to be significant contributions to the field of the specialty occupation.

The record regarding the beneficiary's qualifications to perform the proffered occupation include her Italian high school diploma, letters from her three former employers in Italy, an educational equivalency evaluation by a credentials evaluator, and her own resumé.

The record does not contain an evaluation from an official who has the authority to grant college level credit in the professional area for the proffered position at an accredited college or university which had a program for granting such credit based on an individual's training or work experience, as required under 8 C.F.R. § 214.2(h)(4)(iii)(D)(1). The petitioner has not submitted any results of recognized college-level equivalency examinations or special credit programs, as mentioned in 8 C.F.R. § 214.2(h)(4)(iii)(D)(2).

The evaluation of education provided, executed by Credentials

Evaluator Bradley L. Spencer, states that the beneficiary has the equivalent of a U.S. high school diploma. The evaluation goes on to state that, given her seventeen years' experience in office management, the beneficiary could be considered to have the equivalent of a bachelor's degree in office management with an emphasis in bookkeeping and accounting. Per 8 C.F.R. § 214.2(h)(4)(iii)(D)(3), however, this type of credentials evaluator is limited to a consideration of education alone, not education and employment.

The petitioner has not submitted evidence of a certification or registration from a nationally-recognized professional association or society, as required by 8 C.F.R. § 214.2 (h)(4)(iii)(D)(4).

Finally, pursuant to 8 C.F.R. § 214.2 (h)(4)(iii)(D)(5), the Bureau can make a determination that the equivalent of the degree required by the specialty occupation has been acquired through a combination of education, specialized training, and/or work experience in areas related to the specialty and that the alien has achieved recognition of expertise in the specialty occupation as a result of such training and experience. It appears that the acting director's decision contains a misinterpretation of the statutory and regulatory criteria in that it states that "a combination of education with progressive experience in the specialty is required." It is recognized that experience alone may establish that a beneficiary is qualified. It must be clearly demonstrated, however, that the alien's training and/or work experience included the theoretical and practical application of specialized knowledge required by the specialty occupation. A review of the beneficiary's work history does not reveal the requisite specialized experience in the area of financial management or analysis, nor does the record contain any documentation of recognition of expertise in the specialty occupation based on the types of evidence outlined in the above-mentioned paragraph.

The beneficiary's resumé reflects the following work history:

1982-1988 Office Assistant: Kept records and handled other duties relating to insurance policies.

1985-1999 Administrator: Office management, liaison with accountants and attorneys, furnishing information for payroll service, scheduling payments, supervising bookkeeping, and other duties.

1999 Coordinator: Organized office and phones, worked with computers, coordinated volunteers, supervised staff.

The duties and job titles listed in the beneficiary's resumé are different from those listed in letters from her three former employers. The beneficiary's list of previous job duties does not illustrate the requisite progressively responsible, theoretical and practical application of specialized knowledge required by the specialty occupation. Referring once again to the job duties of the

proffered position, such as developing business plans, sourcing and structuring finance for such plans, and reviewing data with regard to marketing and risk management, it is unclear from the resumé that the beneficiary has any such experience at all. It is incumbent upon the petitioner to resolve any inconsistencies in the record by independent objective evidence, and attempts to explain or reconcile such inconsistencies, absent competent objective evidence pointing to where the truth, in fact, lies, will not suffice. *Matter of Ho*, 19 I&N Dec. 582, 591-92 (BIA 1988).

The record contains no attempt to reconcile the inconsistencies between the job duties found in the resumé and those listed in the employers' letters. Consequently, it is determined that no credible evidence of the beneficiary's past job duties is found in the record. The assertions made on appeal fail to overcome the acting director's determination that the beneficiary is not qualified to perform in the specialty occupation.

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. Accordingly, the appeal will be dismissed.

**ORDER:** The appeal is dismissed.