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U.S. Department of Homeland Security  
Citizenship and Immigration Services

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ADMINISTRATIVE APPEALS OFFICE  
CIS, AAO, 20 Mass, 3/F  
425 I Street, N.W.  
Washington, DC 20536



FILE: LIN 01 054 54487

OFFICE: NEBRASKA SERVICE CENTER

DATE:

DEC 24 2003

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



**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 Citizenship and Immigration Services (CIS) 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 Director of the Nebraska Service Center denied the nonimmigrant visa petition and the matter is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed. The petition will be denied.

The petitioner is an architecture and interior design firm with five employees and a gross annual income of \$257,600. It seeks to employ the beneficiary as an administrative assistant. The director denied the petition because she found that the proffered position was not a specialty occupation. On appeal, the petitioner submits a letter and states, in part, that the proffered position is so complex that it requires the services of an individual with a bachelor's degree or higher.

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 for the classification of qualified nonimmigrant aliens who are coming temporarily to the United States to perform services in a specialty occupation.

The issue to be discussed in this proceeding is whether the position offered to the beneficiary qualifies as a specialty occupation. 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 further 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.

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.

In the original petition filing, the petitioner described the proffered job duties thusly:

[The beneficiary] will analyze and organize office procedures such as typing, record keeping, preparation of payrolls, flow of correspondence, filing, requisition of supplies and other clerical services. She will also evaluate office production and revise procedures to improve efficiency of workflow. She will prepare the organizational budget and the monthly financial reports and also manage employee benefits. [The beneficiary] may perform business development functions and may prepare company promotional and marketing materials which she will be following-up to [sic] prospective clients. [The beneficiary] will also continuously maintain public relations work with our existing clients.

The director requested further information regarding the nature of the proffered position. In response, the petitioner provided a number of job announcements for administrative positions with different companies, as well as a statement explaining how the offered position meets the first three criteria listed at 8 C.F.R. § 214.2(h)(4)(iii)(A).

The director denied the petition on July 10, 2001, finding the evidence insufficient to classify the proffered position as a specialty occupation.

On appeal, the petitioner asserts that, given the job's responsibilities and the value of the petitioner's assets, it is reasonable to require a bachelor's degree for performance of the proposed duties.

The criterion at 8 C.F.R. § 214.2 (h)(4)(iii)(A)(1), that a baccalaureate or higher degree or its equivalent is normally the minimum requirement for entry into the particular position has not been established. Citizenship and Immigration Services (CIS) often looks to the Department of Labor's (DOL) *Occupational Outlook Handbook* (*Handbook*) when determining whether a baccalaureate or higher degree or its equivalent is normally the minimum requirement for entry into a particular position. The proposed duties appear to resemble those of an administrative support manager, as described in the *Handbook* 2002-2003 edition at page 417. An administrative support manager ensures that personnel, equipment, finances, and record keeping, among other tasks, are all in order. Administrative support managers coordinate work assignments, resolve staff and equipment problems, and handle a variety of responsibilities to assist in the effective operation of the business.

According to the *Handbook*, most managerial positions are filled by promoting workers from within. The *Handbook* does not indicate that a bachelor's degree in any specific specialty is a requirement for entry into this field. There is no other documentation on the record, either, that would indicate that a bachelor's degree is a minimum entry requirement for the proffered position.

The proffered position may also include some responsibilities for bookkeeping. According to the *Handbook* at page 387, the usual requirement for a bookkeeping or accounting clerk is a high school diploma or its equivalent. A higher level of training is favored but not required, and such training is available in community colleges or schools of business. Inasmuch as the *Handbook* indicates that a high school diploma is sufficient for most bookkeeping and financial clerk positions, the petitioner has not shown that a bachelor's degree or its equivalent is required for this component of the position being offered to the beneficiary.

The petitioner submitted several job postings to establish that the degree requirement is common to the industry in parallel positions among similar organizations. It is noted that these postings require either a bachelor's degree, with no specific specialty requirement, and/or alternative training, such as an associate's degree. In addition, there is no documentation regarding whether the companies that posted the announcements are similar to that of the petitioner. The petitioner has not shown, in the alternative, that the proffered position is so complex or unique that it can be performed only by an individual with a degree. Thus, the evidence does not meet the requirements of 8 C.F.R. § 214.1(h)(4)(iii)(A)(2).

There is no information that the petitioner has hired individuals in the proffered position previously. The petitioner has not established the criterion at 8 C.F.R. § 214.2(h)(4)(iii)(A)(3), that the employer normally requires a degree or its equivalent for the position.

The petitioner has not established that 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, as required by 8 C.F.R. § 214.2(h)(4)(iii)(A)(4).

The petitioner has failed to establish that any of the four criteria 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. The petition is denied.