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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: EAC-01-220-55446 Office: Vermont Service Center

Date: JAN 14 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: SELF-REPRESENTED

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
Robert P. Wiemann, Director
Administrative Appeals Office

DISCUSSION: The nonimmigrant visa petition was denied by the Director, Vermont Service Center, and is now before the Associate Commissioner for Examinations on appeal. The appeal will be dismissed.

The petitioner owns and operates check cashing and gas station and convenience store facilities at 25 locations in the New York City area. It has 165 employees and a gross annual income in excess of \$7 million. The petitioner seeks to employ the beneficiary as an assistant manager for a period of three years. The director denied the petition because the petitioner had not established that the proffered position is a specialty occupation.

On appeal, the petitioner submits a statement and additional 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.

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 the petitioner had not shown that the duties of the proffered position of assistant manager are so specialized and complex that a baccalaureate degree in a specific specialty is required for the successful performance of the duties.

On appeal, the petitioner asserts that the duties of the proffered position most closely parallel those of an accountant or auditor, occupations that would normally require a bachelor's degree in accounting. The petitioner further asserts that all its assistant managers have a bachelor's degree.

The Service does not agree with the petitioner's assertion that the proffered position requires a baccalaureate degree in a specific specialty. 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 offered position as follows:

Employee will be responsible beside others for cash handling (about \$250,000.00) at the beginning of the shift and will verify this amount physically at the start and at the end of the shift and verify this amount with the disbursement and cashiers receipts. At closing he will prepare a report to this effect and mention any shortage or any other discrepancy to the senior management.

Employee will prepare, daily, weekly and monthly reports and forward those for the review of Senior Management and will perform other duties as may be specified from time to time or as and when needed.

In response to a Service request for additional evidence, the petitioner provided the following, expanded description of the duties:

- * Take charge of \$250,000.00 at the start of shift.
- * Distribute allocated money to the cashiers.
- * Speak with the management of banks to verify funds against an issued check.
- * Speak with the Management of an organization to confirm the authenticity of an issued check.
- * Audit previous twenty-four hour activity of the branch.
- * Audit each transaction with the presented checks.
- * Audit all Western Union transfers/money orders issued and cash or personal checks presented in this regard.
- * Prepare detailed daily, weekly and monthly [a]udit reports for the review of Senior Management.

- * Perform other duties as required and specified from time to time.

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 agree with the petitioner's assertion that the proffered position parallels that of an internal auditor. In its Occupational Outlook Handbook (Handbook), 2002-2003 edition, the Department of Labor (DOL) describes the job of an internal auditor at page 21 as follows:

Internal auditors verify the accuracy of their organization's records and check for mismanagement, waste, or fraud. Specifically, they examine and evaluate their firms' financial and information systems, management procedures, and internal controls to ensure that records are accurate and controls are adequate to protect against fraud and waste. They also review company operations -- evaluating their efficiency, effectiveness, and compliance with corporate policies and procedures, laws, and government regulations.

The duties of this position do not correspond to those of an internal auditor. The beneficiary will not verify the accuracy of company records or check company financial records for mismanagement, waste, or fraud. The duties the petitioner endeavors to have the beneficiary perform involve the supervision

and oversight of daily check cashing transactions at a branch check cashing facility. For example, the beneficiary will distribute cash to the cashiers at the start of the business day; compare daily transaction records with cashed checks at the end of the business day and prepare a report noting any shortage or other discrepancy; contact banks and companies in order to verify authenticity of checks customers are attempting to cash; and prepare daily, weekly, and monthly audit reports for the review of senior management.

The proffered position appears to combine the duties of a general manager or operations manager with those of an auditing clerk. In contrast to the description of an internal auditor, the DOL describes the duties of auditing clerks at page 390 of the Handbook as follows:

Auditing clerks verify records of transactions posted by other workers. They check figure, postings, and documents for correct entry, mathematical accuracy, and proper codes. They also correct or note errors for accountants or other workers to adjust.

A review of the Handbook at page 387 finds no requirement of a baccalaureate degree in a specific specialty for employment as an auditing clerk. However, having some college is becoming increasingly important, particularly for those occupations requiring knowledge of accounting. For auditing clerk positions, an associate's degree in business or accounting often is required.

Similarly, the Handbook lists no requirement of a baccalaureate degree in a specific specialty for employment as a general manager or operations manager. In some industries it is possible for individuals without a college degree to work their way up within the company and become managers.

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

The petitioner states that its other assistant managers have bachelor's degrees. The petitioner provides a list of the names and job titles of those individuals, but gives no indication of the specific subject areas of those degrees, nor has the petitioner provided any evidence to corroborate this claim. Thus, the petitioner has not shown that it normally requires a baccalaureate degree in a specific specialty for the proffered position of assistant manager.

Finally, the petitioner has failed to establish that the nature of the specific duties of the position 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 a specific specialty. The duties of the position in question do not appear to be any more complex than those normally required of a general manager or an auditing clerk. The DOL, which is an authoritative source for educational requirements for certain occupations, does not indicate that a bachelor's degree in a specific specialty is the minimum requirement for employment as either a general manager or an auditing clerk.

The petitioner has failed to establish that any of the four factors enumerated above are present in this proceeding. 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.