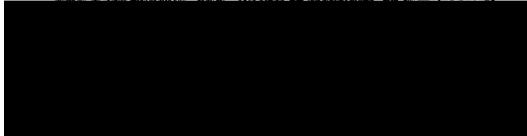




DR

U.S. Department of Justice
Immigration and Naturalization Service

identifying data deleted 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: EAC-01-214-50471 Office: Vermont Service Center

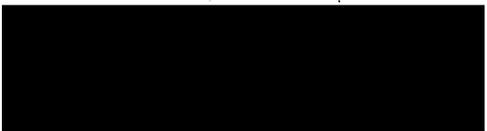
Date: JAN 24 2003

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:



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

The petitioner is a real estate brokerage with three employees, fifteen associated agents and a stated gross annual income in excess of \$934,000. It seeks to employ the beneficiary as an administrative assistant 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.

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 concluded that the petitioner had failed to submit sufficient evidence to demonstrate that a bachelor's degree in a specific specialty is a requirement for employment in the proffered position. On appeal, counsel argues that the offered position can be considered a specialty occupation because it is professional in nature. Counsel asserts that the duties of the offered job are so special and complex that the knowledge required to perform such duties is usually associated with the attainment of a baccalaureate or higher degree. Counsel contends that the petitioner is best suited to determine the minimum education requirements needed to perform the duties of the offered job. Counsel cites several court decisions in support of the arguments put forth on appeal.

The Service does not rely solely on the title of a position in determining whether that position 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 a letter that accompanied the initial I-129 petition, the petitioner described the duties of the offered position as follows:

Assist the president in coordinating office services, such as personnel, housekeeping and budget preparation.

Keep Corporation records and executes administrative policies determined by the president.

Review and answer correspondence.

Analyze operating practices and performance standards.

Interview job applicants and conduct orientation of new employees.

Assist in methods to improve workflow and implement cost reduction.

Assist in improving and simplifying mortgage loan procedures.

Issue operating policies and makes recommendation for solution of administrative problems.

To qualify the offered position as a specialty occupation, the petitioner must establish that:

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.

8 C.F.R. 214.2(h)(4)(iii)(A).

The petitioner has not met any of the above requirements to classify the offered position as a specialty occupation.

The proffered position appears to combine the duties of an office and administrative support worker manager with those of an administrative assistant. A review of the Department of Labor's (DOL) Occupational Outlook Handbook (Handbook), 2002-2003 edition, at page 418, does not list a requirement of a baccalaureate degree

in a specific specialty for employment as an office and administrative support worker manager. Most businesses fill administrative and office support supervisory and managerial positions by promoting clerical or administrative support workers within their organizations. In addition, certain personal qualities such as strong teamwork and problem solving skills and a good working knowledge of the organization's computer system are often considered as important as a specific formal academic background.

A further review of the Handbook at pages 423-424, finds no requirement of a baccalaureate or higher degree in a specific specialty for employment as an administrative assistant. High school graduates with basic office skills may qualify for entry-level administrative assistant positions. Training ranges from high school vocational education programs to 1 and 2-year programs in office administration offered by business schools, vocational-technical institutes, and community colleges. Thus, the petitioner has not shown that a bachelor's degree in a specific specialty or its equivalent is required for the position being offered to the beneficiary.

The petitioner has not provided any evidence that it has, in the past, required the services of individuals with baccalaureate or higher degrees in a specific specialty for the offered position.

Counsel's argument that the petitioner should be allowed to determine the minimum education requirements needed to fill the proffered position in light of its own business and employment needs is not persuasive. While counsel asserts that the holding reached in Unico American Corp. v. Watson, CV No. 896958 (C.D. Cal. Mar. 19, 1991), dictated such an outcome in this particular case, the proffered position at issue in the cited decision was that of a computer programmer, which can be readily distinguished from the position of an administrative assistant in this case. Counsel has not demonstrated that the cited decision is relevant to the facts and issues of this proceeding.

Counsel asserts that the offered position is a specialty occupation because it is professional in nature. In support of this assertion, counsel cites the holdings reached in Matter of Essex Cryogenics, Inc., 14 I. & N. Dec. 196 (Comm. 1972), and Matter of General Atomic Co., 17 I. & N. Dec. 532 (Comm. 1980). However, this proceeding is not concerned with membership in the professions, but rather whether the job is a specialty occupation. The term "specialty occupation" is specifically defined in section 214(i) of the Act. That statutory language effectively supersedes the cited decisions.

The petitioner has failed submit any evidence demonstrating that businesses similar to it in their type of operations, number of employees, and amount of gross annual income require the services

of individuals with bachelor's degrees in a specific specialty in parallel positions.

Counsel's contention that the duties of the offered job are so unique and complex that the performance of such duties in the business setting customarily requires an individual with a minimum of a baccalaureate degree is not persuasive. As noted above, the Handbook does not provide any indication that a baccalaureate degree in a specific specialty is required for employment as an office and administrative support worker manager or an administrative assistant. The record does not contain any independent evidence that would tend to support counsel's contention. Consequently, the petitioner has failed to establish 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 in a specific specialty.

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. Accordingly, the decision of the director will not be disturbed.

ORDER: The appeal is dismissed.