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U.S. Department of Justice

Immigration and Naturalization Service

Identifying data deleted to prevent clearly unwarranted invasion of personal privacy

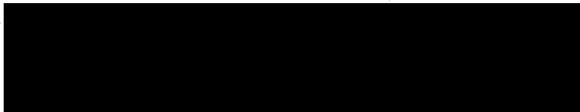
OFFICE OF ADMINISTRATIVE APPEALS
425 Eye Street N.W.
ULLB, 3rd Floor
Washington, D.C. 20536



File: LIN-02-110-52920 Office: Nebraska Service Center

Date: **JAN 31 2003**

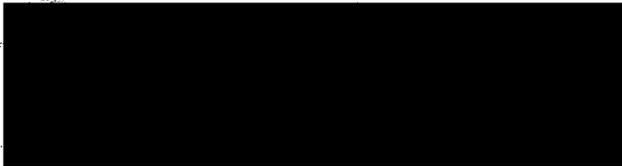
IN RE: Petitioner:
Beneficiary:



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)

PUBLIC COPY

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 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 director's decision will be withdrawn and the matter remanded for further action and consideration.

The petitioner is a dental laboratory with one employee and an estimated gross annual income of \$177,669. It seeks to employ the beneficiary as an E-commerce director 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 and additional documentation.

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 demonstrate that the proffered position could be successfully performed only by an individual who possessed a baccalaureate or higher degree in a specific specialty. On appeal, counsel argues that the proffered position is a specialty occupation because it is a management position requiring at least a bachelor's degree. Counsel asserts that the offered position can be considered professional in nature based upon the complexity of its duties. Counsel cites the education requirements for top executive positions such as a general manager as listed in the Department of Labor's (DOL) Occupational Outlook Handbook, (Handbook), as well as 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 which accompanied the initial I-129 petition, the petitioner described the duties of the offered position as follows:

The E-Commerce Director will be responsible for overview and development of the E-commerce for our organization. [The petitioner] is launching it's [sic] E-commerce

project by developing a corporate web site to market the services and products on the Internet. Responsibilities for the E-commerce director include developing and maintaining the web site as well as for developing a marketing plan to reach out to potential clients using the Internet. This requires an individual with a background in marketing, marketing media research, interactive media and such telecommunication technology management. Additional duties will include preparing HTML documentation to ensure consistency and security of the system, providing editorial management of web content, troubleshooting problems, providing technical and customer support, and managing sales and inventory.

In response to a subsequent Service request for additional information regarding the initial petition, the petitioner provided the following description of the duties of the proffered position:

1. Overview and development of the E-commerce for our organization. [The petitioner] is launching it's [sic] E-commerce project by developing a corporate web site to market the services and products on the Internet. Our long range plan is to offer subscription-based news letter type publications on our web site that will contain educational information for the dental community, with a strong emphasis on re-construction and natural esthetic ceramic works. [The petitioner] will provide technical assistance, for a fee, via the Internet. It is our intent to eventually be able to offer dental technology training on the Internet. The E-Commerce Director will provide the vision necessary to formulate a technology program, focusing on reaching out and developing these markets; development and delivery of innovative technology solutions for expansion; building a web repository to store all program documents. These responsibilities will account for approximately 25% of the E-Commerce Director's time.
2. Developing a marketing plan to reach out to potential clients using the Internet. This will include identifying, pursuing, and tracking new and innovative online acquisition relationships to enhance the organization's bottom line. The E-Commerce Director will set up and execute methods and controls to increase sales and expand our customer base and determine the advisability and availability, including developing marketing plans as marketing approaches. Responsibilities include contacting new customers using various methods and sources, in the dental community utilizing Internet and E-commerce solutions. This requires maintaining a technical focus on current

dental technology; marketing to customers through our Internet connections; maintaining an awareness of changes in both the dental community and in e-commerce. These responsibilities will account for approximately 30% of the E-Commerce Director's time.

- [3.] Developing and implementing security measures as required. This responsible [sic] will account for approximately 5% of the E-Commerce Director's time.
- [4.] Managing plans, budgets, contractors, and deliverables. This responsible [sic] will account for approximately 10% of the E-Commerce Director's time.
- [5.] Developing and maintaining the web site as well as troubleshooting and resolving unexpected issues quickly and efficiently. This responsible [sic] will account for approximately 10% of the E-Commerce Director's time.
- [6.] Preparing HTML documentation to ensure consistency and security of the system, providing editorial management of web content, troubleshooting problems, providing technical and customer support, and managing sales and inventory. This responsible [sic] will account for approximately 10% of the E-Commerce Director's time.
- [7.] IT decision making, provide strategic and tactical leadership for all IT aspects of the company. This responsible [sic] will account for approximately 10% of the E-Commerce Director's time.

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 proffered position appears to combine the duties of an internet web designer and developer with those of a marketing manager. A review of the DOL's Handbook, 2002-2003 edition, at page 28, finds no requirement of a baccalaureate or higher degree in a specific specialty for employment as a marketing manager. However, a further review of the Handbook reveals that the positions of web designer and web developer are listed under the section for systems analysts, computer scientists, and database administrators at pages 180-183. The Handbook notes that the usual requirement for employment in these computer positions is a baccalaureate degree in computer science, information science, or management information systems.

The duties of the offered job as described by the petitioner primarily involve the design, development, and maintenance of a web site, along with the simultaneous development and implementation of a market plan for the sale of products and services on this web site. Without an internet web site, the petitioner would have no need to devise and implement a specific marketing plan for electronic commerce sales. As such, it is concluded that a significant portion of the duties of the proffered position are sufficiently specialized and complex that the knowledge required to perform such duties is usually associated with the attainment of a baccalaureate or higher degree in one of the specific specialties of computer science, information science, or management information systems. In view of the foregoing, it is concluded that the petitioner has demonstrated that the proffered position is a specialty occupation within the meaning of the regulations.

Nevertheless, the petition may not be approved at this time. The director has not determined whether the beneficiary qualifies to perform services in the specialty occupation. Accordingly, the matter will be remanded to make such a determination and to review all relevant issues. The director may request any additional evidence he deems necessary. The petitioner may also provide additional documentation within a reasonable period to be determined by the director. Upon receipt of all evidence and representations, the director will enter a new decision.

ORDER: The decision of the director is withdrawn. The matter is remanded for further action and consideration consistent with the above discussion and entry of a new decision which, if adverse to the petitioner, is to be certified to the Associate Commissioner for review.